TEXAS REGISTER

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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.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

Open Meetings

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

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

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

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

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

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

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

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

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

THE 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.)

Opinions

Opinion No. GA-0904

The Honorable J. Steven Houston

Brewster County Attorney

107 West Avenue E #7

Alpine, Texas 79830

Re: Whether two bills that amend section 36.121 of the Water Code, which relates to the regulatory authority of groundwater conservation districts, are in irreconcilable conflict (RQ-0985-GA)

S U M M A R Y

Although House Bills 3109 and 2702 enacted by the Eighty-second Legislature are in facial conflict, House Bill 2702 provides that, to the extent of its conflict with another bill enacted at the same session, the other bill prevails. As a consequence, the two bills may ultimately be harmonized with the result that House Bill 3109 prevails and thus amends section 36.121 of the Water Code.

Opinion No. GA-0905

The Honorable Troy Fraser

Chair, Natural Resources Committee

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Authority of the Aransas County Navigation District to develop, maintain, and finance Rockport Beach Park (RQ-0986-GA)

S U M M A R Y

The Aransas County Navigation District is authorized to have and maintain parks and recreation facilities to the extent necessary or incidental to navigation of inland or coastal waters, or in aid of the conservation and other purposes set forth in section 62.101 of the Water Code. By its terms, Texas Constitution article XVI, section 59, subsection (c-1) does not limit the authority a conservation and reclamation district would otherwise have with respect to the development and financing of parks and recreational facilities. We express no opinion on other limitations that may exist on the District's authority or on the legality of any particular financing arrangement.

Opinion No. GA-0906

The Honorable Susan Combs

Texas Comptroller of Public Accounts

Post Office Box 13528

Austin, Texas 78711-3528

Re: Whether section 74.501 of the Property Code prohibits the Comptroller from making direct payments of unclaimed property proceeds to certain persons (RQ-0988-GA)

S U M M A R Y

As the agency charged with implementing and enforcing Property Code section 74.501, the Comptroller's construction of the word "assignee," as used in that section, would be shown deference by the courts so long as it is reasonable and not contrary to the plain language of the statute. A reasonable construction of the word "assignee" could include a person to whom property is transferred based on a purchase of the property for value.

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

TRD-201200197
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: January 18, 2012

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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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER F. PHARMACY SERVICES

DIVISION 3. MEDICATIONS

1 TAC §354.1853

The Texas Health and Human Services Commission (HHSC) proposes new §354.1853, concerning Specialty Drugs.

Background and Justification

Section 1.02(d), Senate Bill 7, 82nd Legislature, First Called Session, 2011, amends Texas Government Code §533.005(a) by adding paragraph (23)(G) to require Medicaid managed care organizations (MCOs) and subcontracted pharmacy benefit managers (PBMs) to adopt policies and procedures for reclassifying prescription drugs from retail to specialty drugs that are consistent with rules adopted by the Executive Commissioner. MCOs and subcontracted PBMs cannot individually determine which retail drugs to reclassify as specialty drugs but will instead be required to follow HHSC's specialty drugs list, as described in the proposed new rule.

Section-by-Section Summary

New §354.1853 provides a definition and criteria for specialty drugs.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed new rule is in effect, there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no effect on small businesses or micro businesses to comply with the proposed rule, as they will not be required to alter their business practices as a result of the new rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Billy Millwee, Deputy Executive Commissioner for Health Services Operations, has determined that for each year of the first five years the section is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit of enforcing the proposed rule will be the use of a standard definition of specialty drugs by all Medicaid MCOs that has gone through the public comment process.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Stacey Johnston, Policy Analyst, Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, Austin, TX 78708-5200, Mail Code H310; by fax to (512) 491-1953; or by e-mail to Stacey.Johnston@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled for February 21, 2012, from 10:00 a.m. to 11:00 a.m. (central time) at the Health and Human Services Building H, Lone Star Conference Room, located at 11209 Metric Boulevard, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Leigh Van Kirk at (512) 491-2813.

Statutory Authority

The new rule is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §533.005(a)(23)(G), which requires HHSC to define specialty drugs.

The proposed new rule affects Texas Human Resources Code Chapter 32 and Texas Government Code Chapters 531 and 533. No other statutes, articles, or codes are affected by this proposal.

§354.1853. Specialty Drugs.

(a) The Health and Human Services Commission (HHSC) will develop, maintain, and publish a list of specialty drugs on the Texas Medicaid Vendor Drug Program website.

(b) HHSC will include a drug on the specialty drug list if HHSC determines that the drug meets all of the following criteria:

(1) The drug is used to treat and is prescribed for a person with a complex, chronic, or rare medical condition that is progressive, can be debilitating or fatal if left untreated or undertreated, or for which there is no known cure. Examples of such conditions include multiple sclerosis, hepatitis C, cystic fibrosis, hemophilia, and rheumatoid arthritis.

(2) The drug is not stocked at a majority of community retail pharmacies.

(3) The drug has special handling, storage, inventory, or distribution requirements.

(4) Patients receiving the drug require complex education and treatment maintenance, such as complex dosing, intensive monitoring, or clinical oversight.

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 January 11, 2012.

TRD-201200115
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: February 26, 2012
For further information, please call: (512) 424-6900

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS SUBCHAPTER II. COMMISSIONER'S RULES CONCERNING TEXAS HIGH PERFORMANCE SCHOOLS CONSORTIUM

19 TAC §102.1201

The Texas Education Agency (TEA) proposes new §102.1201, concerning the Texas High Performance Schools Consortium. The proposed new rule would establish the procedures for school district and eligible charter school participation in the Texas High Performance Schools Consortium required under the Texas Education Code (TEC), §7.0561, as added by Senate Bill (SB) 1557, 82nd Texas Legislature, 2011.

SB 1557, 82nd Texas Legislature, 2011, added the TEC, §7.0561, which created a Texas High Performance Schools Consortium. The TEC, §7.0561, authorizes the commissioner of education to adopt rules applicable to the consortium, including the establishment of the application process for school districts and eligible open-enrollment charter schools to participate in the consortium. Based on an application process, the consortium will be comprised of up to 20 school districts and eligible open-enrollment charter schools. The consortium, under the leadership of the commissioner, is to convene periodically to prepare for the governor and legislature a plan to improve learning standards and assessment and accountability systems that the consortium will implement. The consortium's plan is to emphasize digital learning, high-priority learning standards, and an accountability system that relies on multiple assessments and allows for greater parent and community involvement. The commissioner shall recommend to the legislature the waiver of any prohibitions, requirements, or restrictions necessary to enable consortium participants to implement the plan.

Proposed new 19 TAC §102.1201 would establish in rule the requirements necessary for school districts and eligible open-enrollment charter schools to participate in the Texas High Performance Schools Consortium. The proposed new rule would include definitions and provisions relating to eligibility, application, criteria and methodology for selecting consortium participants, notification, and financing of the consortium.

School districts and eligible open-enrollment charter schools interested in participating in the consortium must submit an application in compliance with the TEC, §7.0561(e), and semi-annual progress reports indicating the extent to which they have implemented their proposed plan as set forth in the TEA request for applications. Any locally maintained paperwork requirements resulting from the proposed new rule would correspond with and support the stated procedural and reporting implications.

Anita Givens, associate commissioner for standards and programs, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule action that exceed the fees that the commissioner is allowed, by statute, to charge participating districts. Costs include travel to Austin for representatives of participating school districts and open-enrollment charter schools to attend consortium meetings and a full-time staff member to handle logistics, prepare required reports, and conduct analysis and review of evaluation results.

Costs will be offset by application fees and annual participation fees. An eligible applicant must submit an application fee not to exceed $500 to cover the costs of the application review process. To recover TEA costs, the commissioner may charge a participation fee of at least $2,500 annually and not to exceed $10,000 annually to each school district selected to participate in the consortium. The commissioner may adjust the fee proportionate to the number of campuses the district has designated to participate in the consortium. Each school district's participation fee shall be reduced by the application fee amount paid.

Ms. Givens has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the rule action will be the opportunity for interested school districts and open-enrollment charter schools to contribute to the development of innovative, next-generation learning standards and assessment and accountability systems. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility anal-

ysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins January 27, 2012, and ends February 27, 2012. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 27, 2012.

The new section is proposed under the TEC, §7.0561, which authorizes the commissioner of education to adopt rules applicable to the Texas High Performance Schools Consortium, including the establishment of the application process for school districts and eligible open-enrollment charter schools to participate in the consortium.

The new section implements the TEC, §7.0561.

§102.1201. Texas High Performance Schools Consortium.

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

(1) Consortium--A group of school districts selected to participate in the Texas High Performance Schools Consortium as established under the Texas Education Code (TEC), §7.0561, for the purpose of informing the governor, legislature, and commissioner of education concerning methods for transforming public schools in Texas by improving student learning through the development of innovative, next-generation learning standards and assessment and accountability systems.

(2) Consortium principles--The following four principles shall be addressed by the consortium as mandated by the TEC, §7.0561:

(A) digital learning--engagement of students in digital learning, including, but not limited to, engagement through the use of electronic textbooks and instructional materials adopted under the TEC, Chapter 31, Subchapters B and B-1, and courses offered through the state virtual school network under the TEC, Subchapter 30A;

(B) learning standards--emphasis on learning standards that focus on high-priority learning standards identified in coordination with school districts and open-enrollment charter schools participating in the consortium;

(C) multiple assessments--use of multiple assessments of learning capable of being used to inform students, parents, school districts, and open-enrollment charter schools on an ongoing basis concerning the extent to which learning is occurring and the actions consortium participants are taking to improve learning; and

(D) local control--reliance on local control that enables communities and parents to be involved in the important decisions regarding the education of their children.

(3) Curricular goal--A measurable learning outcome expected as a result of student participation in instruction covering a specific portion of the curriculum.

(4) High-priority learning standards--Learning standards that are manageable in number and of high importance in student learning such as those that have been identified by the Texas Education Agency (TEA) as "readiness standards." Additional high-priority learning standards will be identified no earlier than the 2013-2014 school year in coordination with school districts and open-enrollment charter schools participating in the consortium.

(5) Learning standards--Standards that a student must master to be successful in a competitive, postsecondary environment, including standards approved by the State Board of Education as part of the Texas Essential Knowledge and Skills.

(6) School district--For the purposes of this section, the definition of school district includes an open-enrollment charter school unless otherwise specified.

(b) Eligibility. To be eligible to apply for participation in the consortium, the following criteria must be met, as applicable.

(1) A school district and its participating campus(es) must have been awarded an exemplary rating as its most recent state academic accountability rating under §97.1001 of this title (relating to Accountability Rating System).

(2) In accordance with the TEC, §7.0561(c), an open-enrollment charter school must have been awarded an exemplary rating as its most recent state academic accountability rating under §97.1001 of this title.

(3) A school district and an open-enrollment charter school must be in compliance with the TEA audit requirements determined under §109.41 of this title (relating to Financial Accountability System Resource Guide).

(4) A school district and an open-enrollment charter school shall also meet other criteria determined by the commissioner and specified in the request for application (RFA).

(c) Application.

(1) An eligible school district must apply through the RFA process to be considered as a participant in the consortium.

(2) An eligible school district must submit an application fee not to exceed $500 to cover the costs of the application review process.

(3) In the application, a school district must:

(A) identify the individual who will serve as the school district's coordinator for consortium activities and point of contact for participation in the consortium;

(B) designate which campus or campuses will participate in the consortium;

(C) provide a detailed action plan to support improved instruction of and learning by students that includes the following features:

(i) a description of how the school district and its campuses currently are addressing or plan to address the four consortium principles specified in subsection (a)(2) of this section;

(ii) a detailed description of the curricular goals to be addressed in the action plan;

(iii) a description of how resources will be acquired to support teachers in improving student learning;

(iv) an analysis of evidence that demonstrates the accuracy of any assessment(s) used or planned to be used in the school district to measure the quality of learning, including the methodology and metrics employed; and

(v) a description of any waiver(s) for a prohibition, requirement, or restriction for which the school district wishes to apply;

(D) provide evidence that school district stakeholders, including parents, teachers, students, and community members, have participated in the development and/or review and approval of the action plan;

(E) provide evidence that the application and action plan have been considered and approved by the school district's board of trustees;

(F) include assurances that the school district and its board of trustees will conform to the policies and procedures governing the operation of the consortium, as established by the commissioner, addressing such issues as attendance, reporting, financial support, and mentoring; and

(G) meet any additional requirements specified in the RFA.

(d) Criteria and methodology for selecting participants in the consortium.

(1) Applications will be selected based on quality of the application and the extent to which the district's participation ensures representation in the following categories in compliance with the TEC, §7.0561(c).

(A) Type. Using definitions of type as set forth in the TEA's District Type Data for 2009-10, the commissioner shall select at least one district in each of the following categories:

(i) urban, as represented by categories titled Major Urban and Other Central City;

(ii) suburban, as represented by categories titled Major Suburban and Other Central City Suburban;

(iii) non-metropolitan, as represented by categories titled Independent Town, Non-Metropolitan: Fast-Growing, Non-Metropolitan: Stable; and

(iv) rural, as represented by the category titled Rural.

(B) Size. Using student enrollment figures reported to the TEA for the previous school year, the commissioner shall select at least one district in each of the following categories:

(i) large district: district with a student population of 10,000 or more students;

(ii) mid-size district: district with a student population between 1,000 and 9,999; and

(iii) small district: district with a student population of 999 or fewer.

(C) Student demographics. Using the most recent available data in the TEA's Public Education Information Management System, the commissioner shall select districts whose student demographics, when aggregated with other consortium participants, will result in a diverse student population that is representative of the state's overall public school student population in the following categories:

(i) ethnicity and race;

(ii) economically disadvantaged;

(iii) English language learners;

(iv) students identified to receive special education services; and

(v) students identified as gifted and talented.

(2) In selecting school districts, the commissioner shall ensure, in accordance with the TEC, §7.0561(d), that the aggregate number of students enrolled in campuses participating in the consortium does not exceed 5.0% of the total number of students enrolled in Texas public schools based on student enrollment figures reported to the TEA for the previous school year. In order to ensure compliance with this statutory requirement:

(A) a school district may designate in its application the entire district or only one or more campus(es) to participate in the consortium; and

(B) the commissioner may require a school district to reduce the number of campuses designated in the school district's application as a condition for participation in the consortium.

(3) The commissioner may select no more than 20 school districts to participate in the consortium.

(e) Notification. The TEA will notify each applicant in writing of its selection or non-selection for participation in the consortium.

(f) Financing of consortium.

(1) For the purpose of implementing this section, the commissioner or a school district participating in the consortium may accept gifts, grants, or donations from any source, including a private entity or governmental entity.

(2) To recover TEA costs, the commissioner may charge a participation fee of at least $2,500 annually and not to exceed $10,000 annually to each school district selected to participate in the consortium. The commissioner may adjust the fee proportionate to the number of campuses the district has designated to participate in the consortium. Each school district's participation fee shall be reduced by the application fee amount paid in accordance with subsection (c)(2) of this section.

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

Filed with the Office of the Secretary of State on January 13, 2012.

TRD-201200156
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: February 26, 2012
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

The Texas Board of Veterinary Medical Examiners (Board) proposes the repeal of Chapter 573, Subchapter A, General Professional Ethics, §§573.2 - 573.9; Subchapter B, Supervision of Personnel, §§573.10 - 573.16; Subchapter C, Responsibilities to Clients, §§573.20 - 573.29; Subchapter D, Advertising, Endorsements and Certificates, §573.30 and §§573.32 - 573.37; Subchapter E, Prescribing and/or Dispensing Medication, §§573.41 - 573.45; Subchapter F, Records

Keeping, §§573.51 - 573.54; and Subchapter G, Other Provisions, §§573.60, 573.61, 573.63 - 573.66 and 573.68 - 573.77. The Board also proposes the following new rules: Subchapter A, General Professional Ethics, §§573.2 - 573.9; Subchapter B, Supervision of Personnel, §§573.10 - 573.18; Subchapter C, Responsibilities to Clients, §§573.20 - 573.29; Subchapter D, Advertising, Endorsements and Certificates, §§573.30, 573.32 - 573.37; Subchapter E, Prescribing and/or Dispensing Medication, §§573.41 - 573.45; Subchapter F, Records Keeping, §§573.51 - 573.55; and Subchapter G, Other Provisions, §§573.60, 573.61, and 573.63 - 573.80.

The proposed repeal and replacement result from the Board's rule review of Chapter 573 conducted in accordance with Texas Government Code §2001.039. Elsewhere in this issue of the *Texas Register,* the Board proposes the review of Chapter 573.

The Board proposes the following changes to 22 TAC Chapter 573, to clarify, organize and improve the organization of the Board's rules of professional conduct, and to implement changes necessitated by recent legislation, including House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers.

Proposed new §573.2, regarding avoidance of encroachment on another's practice, is proposed to apply to all licensees, both veterinarians and equine dental providers alike. The proposed rule replaces the term "unfaithful" with "substandard" to clarify that licensees have the right to complain about another licensee's substandard or negligent work. The clause suggesting but not requiring that a licensee speak with the licensee accused of performing substandard work before making a complaint has been removed from the proposed rule because it had created too great a deterrent effect and led many veterinarians to believe falsely that they could not file a complaint against another licensee. The proposed rule includes new language intended to protect licensees who file complaints with the Board, or act as witnesses for the Board, from any sort of reprisal or intimidation by another licensee, because the Board has seen several instances of attempted witness intimidation by licensees under investigation by the Board against other licensees.

Proposed new §573.3, regarding exposure of corrupt or dishonest conduct, is proposed to apply to all licensees, both veterinarians and equine dental providers alike.

Proposed new §573.4, regarding adherence to the law, is proposed to apply to all licensees, both veterinarians and equine dental providers alike. The proposed rule includes new language referencing the list of crimes that the Board considers to be related to the practice of veterinary medicine and the practice of equine dentistry, located in §575.50, to clarify which violations of law by a licensee are also a violation of the Board's rules. The proposed language reflects the Board's long-standing interpretation of this rule.

Proposed new §573.5, regarding avoidance of corruption of others, is proposed to apply to all licensees, both veterinarians and equine dental providers alike.

Proposed new §573.6, regarding restriction of partnerships to members of veterinary profession, is proposed to apply only to veterinarians, because the Veterinary Licensing Act only precludes veterinarians from partnering with non-veterinarians and has no similar preclusion for equine dental providers.

Proposed new §573.7, regarding no abuse of position or trust, is proposed to apply to all licensees, both veterinarians and equine dental providers alike. The proposed rule includes new language stating that a licensee may not attempt to influence the opinion of any person that has given a statement or opinion to the Board. This new language is intended to stop licensees under investigation from attempting to intimidate or influence witnesses that are assisting the Board with investigations, or testifying on the Board's behalf in contested case proceedings.

Proposed new §573.8, regarding loss of accreditation, is proposed to apply to all licensees, both veterinarians and equine dental providers alike. The rule is also proposed to require that a licensee report any revocation or suspension of any accreditation, licensure, certification or registration to the Board within 30 days. This change will put the onus on licensees to report revocations or suspensions, and expands the list of reportable revocations and suspensions to those involving all licenses, certifications and registrations, in order to include equine dental providers licensed or certified by other states, veterinarians licensed in other states or countries, and veterinarians with DEA and DPS certifications and USDA accreditation.

Proposed new §573.9, regarding non-resident consultants, is proposed to clarify that for purposes of the rule, a veterinarian may enter Texas for purposes of consultation in person, by mail, or by electronic means. This change is intended to modernize the rule to ensure that it applies in all consultations by veterinarians not licensed in Texas, including but not limited to internet sites and web conferencing. The definition of consultation, which previously appeared in §573.9, has been moved to proposed new §573.80 with other definitions that apply throughout Chapter 573 for clarity and ease of reference.

Proposed new §573.10, regarding supervision of non-licensed persons, is proposed to clarify both the responsibility of a veterinarian for individuals he supervises, and the limitations on what a non-veterinarian can do under veterinary supervision. The language of the proposed rule clarifies that a veterinarian is subject to discipline if he either improperly delegates duties to any non-licensee, whether an employee or an independent contractor, or if he fails to properly supervise any non-licensee, whether an employee or an independent contractor, to whom he has delegated treatment responsibilities.

Proposed new §573.10 also limits the types of independent contractors a veterinarian can supervise to chiropractors and licensed equine dental providers; all other individuals working under veterinary supervision must be direct employees of the veterinarian. This carve-out for licensed equine dental providers and chiropractors is intended to create a very limited exception to the proposed new §573.11, which requires the veterinarian take direct responsibility for the actions of all employees working under his supervision. Both licensed equine dental providers and licensed chiropractors are independently regulated by the state of Texas, and therefore are separately accountable for their actions while working under veterinary supervision. By allowing licensed equine dental providers and chiropractors to work under veterinary supervision as independent contractors rather than employees, the veterinarian will only be responsible only for improper delegation of care to, or improper supervision of, these separately regulated independent contractors.

Proposed new §573.10 also consolidates provisions regarding what a non-veterinarian can do under veterinarian supervision that had previously appeared in other rules in Chapter 573. Specifically, the provisions on supervision for non-veterinarians administering rabies vaccine and using a veterinarian's signature stamp on official health documents such as rabies cer-

tificates have been split out from their prior location in §573.51. It also incorporates the limitations set by the Texas Legislature in HB 414 and Texas Occupations Code §801.262 on the services that licensed equine dental providers can perform under general veterinary supervision, and that non-licensed employees of a veterinarian can perform under direct supervision.

Additionally, proposed new §573.10 is intended to clarify and simplify the rule. The qualifications for registered veterinary technicians (RVT) are simplified so that the proposed rule considers an individual registered as an RVT by the Texas Veterinary Medical Association to be a RVT under the rule. The proposed rule also seeks to clarify the suturing a RVT can do under direct veterinary supervision by including suturing to close both surgical skin incisions and skin lacerations. The proposed rule further clarifies that the emergency care and hospitalized animals provisions are both exceptions to the general supervision rules.

Proposed new §573.11, regarding responsibility for unlicensed employees, is intended to make veterinarians subject to discipline for the actions of their employees that violate the Board's rules if the employee is acting within the scope of his or her employment. In recent years, the Board's rule on supervision had been interpreted by some administrative law judges to mean that a veterinarian could only be liable for the actions of an employee if the veterinarian had explicitly told the employee to take some action that violated the Board's rules. This interpretation made it extremely easy for veterinarians to evade responsibility for actions taken by their employees, even if the employee was acting completely within the scope of his or her employment by the veterinarian. The proposed new §573.11 invokes the language of the long-standing respondeat superior doctrine from civil common law, which holds an employer responsible for the actions of employees taken within the scope of their employment. By using the language of the respondeat superior doctrine, proposed new §573.11 is intended to be easy for courts and the State Office of Administrative Hearings to interpret consistently and in keeping with the Board's belief that a veterinarian should be directly responsible for the actions of his employees.

Proposed new §573.12, regarding responsibility for licensure of licensed persons, is proposed to require that a veterinarian ensure that all other veterinarians and equine dental providers that the veterinarian employs or supervises hold active licenses with the Board. The proposed rule has been renumbered from §573.11.

Proposed new §573.13, regarding delegation and supervision relating to official health documents, has been split out from where it previously appeared in §573.10 to clarify and simplify the supervision rules that particularly relate to official health documents. The term "official health documents" used in proposed §573.13 has been given a standard definition under proposed new §573.80 to allow uniformity and clarity. Otherwise, the text has not been substantively changed.

Proposed new §573.14, regarding alternative therapies--chiropractic and other forms of musculoskeletal manipulation, is proposed to clarify that the supervision requirements relate only to supervision by veterinarians. The word "non-standard" as a description of chiropractic treatment has been removed because some found it to have disparaging implications. The proposed new rule has been renumbered from §573.12.

Proposed new §573.15, regarding use of ultrasound in diagnosis or therapy, has been renumbered from §573.13, but the text is otherwise unchanged.

Proposed new §573.16, regarding alternative therapies--acupuncture, has been renumbered from §573.14, but the text is otherwise unchanged.

Proposed new §573.17, regarding alternative therapies--holistic medicine, has been renumbered from §573.15. Two minor errors have been corrected in the proposed new rule: the words "holistic medicine" were added to subsection (b) where they had been previously left out, and the word "treating" replaced the word "treatment" in subsection (d), but the text is otherwise unchanged.

Proposed new §573.18, regarding alternative therapies--homeopathy, has been renumbered from §573.16, but the text is otherwise unchanged.

Proposed new §573.20, regarding responsibility for acceptance of medical care, has been proposed to include a provision prohibiting a veterinarian from refusing to return a client's animal regardless of whether the client owes the veterinarian money for veterinary services rendered to the animal, other than as is allowed for large animals under Texas Property Code §70.010. The Attorney General has stated in Opinion JC 0421, "a veterinarian, in the usual circumstances, at most holds an equitable lien on the animal for those services. Because an equitable lien is not possessory, a veterinarian may not refuse to return the animal to the owner merely because the owner is unwilling or unable to pay for the medical services rendered." Thus, the proposed new rule only removes veterinarian's ability to create a contractual possessory lien by having the owner sign an agreement to that effect prior to treatment. The Board intends this provision to prohibit veterinarians from creating possessory liens against animals--outside of the statutory liens the Texas Legislature has created specifically for large animals--in order to prevent animals from becoming trapped in limbo and to allow animal owners to seek other medical treatment for their animals during fee disputes between owners and veterinarians. The focus on the health and welfare of the animal patient over the economic interest of the veterinarian parallels the policy reasoning behind other Board rules such as §573.53, which holds that veterinarians cannot withhold patient records even when the client has refused to pay the veterinarian amounts owed.

Proposed new §573.21, regarding direct responsibility to client, is proposed to apply to all licensees of the Board, veterinarian and equine dental provider alike.

Proposed new §573.22, regarding professional standard of care, is proposed to apply to all licensees of the Board, in keeping with Texas Occupations Code §801.263, which states that an equine dental provider shall be held to the same standard of care as a veterinarian providing equine dental services. The title of the proposed rule is changed to "standard of care" from "standard of humane treatment" to reflect what the standard is commonly called.

Proposed new §573.23, regarding board certified specialists, has been proposed to address only the higher standard of care for specialists and how that higher standard of care impacts the Board's investigation process, while the language regarding a veterinarian's duty to refer that previously appeared in §573.23 has been split out in the interests of clarity and ease of reference and now appears in proposed new §573.24. The term "special-

ist" is now defined under new §573.80 to increase uniformity and clarity in the Board's rules, and employed in this new rule.

Proposed new §573.24, regarding the responsibility of a veterinarian to refer a case, is split out from the previous version of §573.23 in the interests of clarity and ease of reference, and covers the duty of a veterinarian to refer a case to a more qualified veterinarian if the care and treatment of the animal is beyond his or her capabilities. The term "specialist" is now defined under new §573.80 to increase uniformity and clarity in the Board's rules, and employed in this new rule.

Proposed new §573.25, regarding issuance of official health documents through direct knowledge only, is proposed to clarify that it applies only to veterinarians because the recent licensure of equine dental provider has changed the meaning of "licensee" in Board rules and equine dental providers are not authorized by law to issue official health documents. Proposed §573.25 employs the term "official health documents," which is now defined under §573.80 to increase uniformity and clarity in the Board's rules. The proposed rule has been renumbered from §573.24.

Proposed new §573.26, regarding avoidance of guaranteeing cures, is proposed to apply to all licensees of the Board, veterinarian and equine dental provider alike. It has also been renumbered from §573.25.

Proposed new §573.27, regarding honesty, integrity and fair dealing, is proposed to apply to all licensees of the Board, veterinarian and equine dental provider alike. It has been renumbered from §573.26. Additionally, the rule has been proposed to explicitly require that veterinarians obtain informed consent from clients prior to beginning treatment on a patient. There is no requirement in the new rule that the veterinarian obtain the consent in writing. The Board has long interpreted the honesty, integrity and fair dealing rule as requiring that a licensee obtain informed consent, and the proposal is in keeping with that long-standing interpretation.

Proposed new §573.28, regarding the observance of confidentiality, is proposed to allow veterinarians to waive confidentiality as necessary to collect on a debt owed by a client for veterinary services, in keeping with the Texas Legislature's amendment of the Veterinary Licensing Act, codified in Texas Occupations Code §801.353(d-1). The rule is also proposed to replace "rabies" with "communicable disease" to ensure that veterinarians are free to disclose information regarding communicable disease vaccines to governmental entities for purposes of protection of public health and safety. The proposed rule is also renumbered from §573.27.

Proposed new §573.29, regarding complaint information and notice to clients, is proposed to apply to all licensees of the Board, veterinarian and equine dental provider alike.

Proposed new §573.30, regarding advertising, is proposed to apply to all licenses of the Board, veterinarian and equine dental provider alike. The rule is also proposed to include a clarification of the limitation on the language a licensee can use in advertising, to eliminate any advertising that implies the licensee's services or facilities are superior to those of other licensees, and that is not subject to verification by the public. The proposal is intended to clarify the rule in keeping with the Board's long-standing interpretation that an implication is a form of a statement, and is improper unless it has a basis verifiable by the general public.

Proposed new §573.32, regarding specialty listings, is proposed to include the requirement that a veterinarian indicate his or her specialty when the veterinarian indicates that he or she is a specialist. The proposal is intended to prevent any misleading or confusing advertising by specialized veterinarians, and to allow the public to determine more easily which veterinarians are board certified in a particular area of expertise.

Proposed new §573.33, regarding display of degree, certificate or title from approved institutions, is proposed to apply to all licenses of the Board, veterinarian and equine dental provider alike.

Proposed new §573.34, regarding authorized degrees, certificates or titles, is proposed to apply to all licenses of the Board, veterinarian and equine dental provider alike.

Proposed new §573.35, regarding display of license, is proposed to apply to all licenses of the Board, veterinarian and equine dental provider alike.

Proposed new §573.36, regarding corporate and assumed names, is proposed to apply to all licenses of the Board, veterinarian and equine dental provider alike.

Proposed new §573.37, regarding ban on the use of solicitors, is proposed to apply to all licenses of the Board, veterinarian and equine dental provider alike. It is also proposed to remove an introductory sentence that contained no legally meaningful language.

Proposed new §573.41, regarding use of prescription drugs, is proposed to include administration of drugs in the list of conduct that is unprofessional for a veterinarian unless the veterinarian has first established a veterinarian-client-patient relationship. Under §802 of the federal Controlled Substances Act, the term "dispense" is defined including administering a drug, so the Board intends this change as a clarification to conform the language of the rule with federal law. This proposal does not change the Board's interpretation of §573.41.

Proposed new §573.42, regarding use of scheduled drugs in training and/or racing, is proposed to clarify that it applies only to veterinarians, since the recent licensure of equine dental provider has changed the meaning of "licensee" in Board rules, and equine dental providers are not authorized to use scheduled drugs without obtaining the drugs from the supervising veterinarian on the basis of a diagnosis of a medically sound need for the drugs by the supervising veterinarian.

Proposed new §573.43, regarding controlled substances registration, is proposed to clarify that it applies only to veterinarians, since the recent licensure of equine dental provider has changed the meaning of "licensee" in Board rules, and equine dental providers are not authorized to use controlled substances without obtaining the drugs from the supervising veterinarian licensed by DPS and DEA. The rule is also proposed to clarify that a veterinarian who has a DPS controlled substances registration can dispense and administer controlled substances even if he or she does not have his or her own DEA controlled substance registration so long as the veterinarian is supervised by another veterinarian who does have a DEA controlled substances registration, but may not procure, purchase or issue a prescription for a controlled substance. The Board does not intend to alter the meaning of the rule at all, but simply to clarify what many had found to be confusing language. Under §802 of the federal Controlled Substances Act, the term "dispense" is defined including administering a drug, so the Board intends the addition of the word "administer" as a clarification to conform the language of the rule with federal law. The title of the proposed rule

is amended to remove the term "DEA" because the rule covers both DEA and DPS controlled substance certifications.

Proposed new §573.44, regarding compounding drugs, is proposed to comport with current state and federal regulations on the compounding of drugs by veterinarians. The proposed rule has a simplified structure designed by subject-area, to clarify the limitations that apply to all compounded products, the limitations on compounding for food producing animals, and the limitations on promotion and sale of compounded drugs. The rule is proposed to strengthen the requirement that a veterinarian establish and maintain a veterinarian-client-patient relationship with any animal for which the veterinarian compounds drugs. The proposed rule is intended to limit drug compounding by veterinarians only to treat a specific occurrence of a disease or condition that the veterinarian has diagnosed in a specific patient, and to prohibit veterinarians from compounding on any other basis or in quantities greater than those needed for the treatment of the particular disease occurrence in the specific diagnosed patient. The Board's concern is that some veterinarians compound significant quantities of drugs in advance of diagnosis for business profit reasons without first diagnosing the condition or disease the compounded drug is designed to treat in a particular patient with whom the veterinarian has established and maintained a veterinarian-client-patient relationship. The proposed rule includes more detailed provisions requiring that a veterinarian only compound products made from FDA-approved drugs, and not promote or distribute compounds that are essentially the same as other FDA-approved drugs. The subsection of the proposed rule regarding compounding for food-producing animals parallels existing federal and state law on the subject by requiring that the veterinarian set withdrawal times that are based on scientific information and note the method used to determine the withdrawal period in the patient records, and ensure that procedures are in place to maintain the identity of any food-producing animal that receives a compounded drug. The provisions of the proposed rule on labeling requirements for compounded drugs is simplified to eliminate those requirements that were redundant of the labeling information required for all drugs under §573.40, and clarified with respect to the medically active ingredients to require both name and strength of the ingredients.

Proposed new §573.45, regarding extra-label or off-label use of drugs, is proposed to include compounded drugs explicitly among the list of extra-label or off-label uses for drugs. Although compounding is commonly considered an off-label use, some licensees had expressed confusion in whether the limitations on extra-label use applied to compounding as well. The proposed rule has also been amended to include limitations on extra-label drug use in food-producing animals, based on federal regulations and intended to parallel the requirements for compounded drugs set out in proposed new §573.44.

Proposed new §573.51, regarding rabies control, is proposed to remove the rules on supervision by a veterinarian of a non-veterinarian using the veterinarian's signature for official health documents or administering rabies vaccines, but the text is otherwise unchanged. Those provisions have been moved to proposed new §573.10, so that rules regarding supervision of employees are consolidated into one section for purposes of enhanced clarity and ease of reference.

Proposed new §573.52, regarding veterinarian patient record keeping, is proposed to add new items for veterinarians to include in patient records: information regarding referrals to other veterinarians and the client's response to the referral, information regarding consultations with other veterinarians regarding a patient, and copies of any official health documents issued for the animal. This new required information covers the aspects of veterinary practice from which many complaints to the Board arise. Requiring veterinarians to record the information in patient records will expedite the Board's investigations by creating a contemporaneous account of what the veterinarian did during the treatment of the animal. The language of the rule is also proposed to make it apply only to veterinarians rather than all licensees because the recent licensure of equine dental provider has changed the meaning of "licensee" in Board rules. The rule also contains a proposal that requires veterinarians to include any information necessary to either substantiate or document the examination of the patient, broadening the "catch-all" provision to ensure that veterinarians include as much pertinent information as possible in their patient records. The proposed rule is further amended to conform the language of the rule to comport with a previous rule change that altered the records retention requirement so that veterinarians are now required keep both rabies certifications and patient health records for five years. The proposed rule is also amended to standardize and simplify its wording.

Proposed new §573.53, regarding equine dental provider patient record keeping, sets out the information that equine dental providers are required to record for each patient, as well as the requirements that equine dental providers maintain records for five years and provide copies to the client at the time of treatment and to the supervising veterinarian within 15 days of request. This rule parallels proposed §573.52 regarding veterinarian patient record keeping, but is simplified to require equine dental providers to record and maintain only information pertinent to their practice. The requirements that equine dental providers give a copy of their records to the client at the time of treatment and make the records available if the supervising veterinarian requests them were both set by the Texas Legislature in HB 414 and codified in Texas Occupations Code §801.262(d).

Proposed new §573.54, regarding patient records release and charges, is proposed to clarify that it applies only to veterinarians, and not to all licensees of the Board, because equine dental providers are required to deliver their patient records to the client at the time of service. The proposed rule is also renumbered from §573.53.

Proposed new §573.55, regarding transfer and disposal of patient records, is renumbered from §573.54, but the text is otherwise unchanged.

Proposed new §573.60, regarding prohibition against treatment of humans, is proposed to clarify that it applies only to veterinarians, and not to all licensees of the Board, because much of the practice of equine dentistry is inapplicable to humans, whose teeth do not continue to grow throughout their lives. Moreover, any equine dental provider who attempted to practice on humans would be in violation of the laws prohibiting the practice of dentistry on humans by anyone who is not licensed by the State Board of Dental Examiners. Moreover, a majority of the violations of this rule by veterinarians involve prescribing drugs to humans, and equine dental providers cannot legally prescribe drugs.

Proposed new §573.61, regarding minimum security for controlled substances, is proposed to clarify that it applies only to veterinarians, and not to all licensees of the Board, because equine dental providers are not authorized to prescribe or dispense controlled substances. The reference in the rules to Texas

Department of Public Safety laws has been removed, as many of the requirements in the rule originate from U.S. Drug Enforcement Administration laws and policies rather than from the Texas Department of Public Safety. The rule is also proposed to include a requirement that a veterinarian maintain a written list of persons who have access to the controlled substance storage areas, which is a requirement based on DEA guidelines.

Proposed new §573.63, regarding inspection of facilities and records, is proposed to apply to all licensees of the Board, veterinarians and equine dental providers alike.

Proposed new §573.64, regarding continuing education requirements, sets out the required number of continuing education hours for veterinarians and equine dental providers respectively. The six-hour requirement for equine dental provider licensees is set by the Texas Legislature in HB 414 and codified in Texas Occupations Code §801.307. The rule is also proposed to clarify and standardize the language regarding continuing education requirements, carrying over continuing education hours from year to year, extensions, and makeup hours so that it applies to all licensees of the Board. The proposed rule also clarifies the language regarding exemptions from continuing education requirements, which apply only to veterinarians because the fee exemptions set by the Texas Legislature under Texas Occupations Code §801.304 apply only to veterinarians. Other subsections that were previously included in §573.64 have been split out into new rules that are proposed in this issue.

Proposed new §573.65, regarding proof of acceptable continuing education, is split out from §573.64 for clarity and ease of reference, and covers types of continuing education, the distribution of hours in each of the various types of continuing education that a licensee can earn each year, and the documents required for proof of each type of continuing education. The proposed rule contains requirements for both equine dental providers and veterinarians.

For equine dental providers, proposed new §573.65 allows credit only for continuing education that relates to clinical practice. Veterinarians can receive credit for continuing education hours related to either clinical practice or practice management under the proposed rule, although veterinarians can only claim five hours per year related to practice management. The proposed rule allows equine dental providers to attain continuing education credit by attending any meeting sponsored by the International Association of Equine Dentistry, to parallel the credit veterinarians receive for attending meetings sponsored by the American Veterinary Medical Association.

Under proposed new §573.65, only veterinary licensees are allowed credit for continuing education classes taken by correspondence, which includes most online classes, and veterinarians are limited to only five hours per year of continuing education by correspondence. The Board believes that there are intangible benefits in taking courses from a live person and meeting peers face-to-face that online courses cannot offer, in that in-person meetings for continuing education hold an attendee's attention more completely and offer enhanced networking and community-building opportunities that benefit the profession. Therefore, under the proposed rule, the Board has set the continuing education requirements for licensees to encourage licensees to attend live classes or other forms of continuing education courses that require extensive interaction. The proposed rule therefore requires that veterinarians receive at least seven hours per year of live continuing education instruction, and that equine dental providers receive at least four hours per year. All licensees are allowed to get continuing education credit for verifiable, monitored online classes that meet new rigorous requirements under the proposed rule, including extensive real-time interaction between students and instructor, and extensive documentation of the students' participation through verbal interaction, software documentation, and real-time surveys. Veterinarians are limited to ten hours per year of verifiable, monitored online courses meeting these requirements, and equine dental providers are limited to two hours per year. The intention of the Board in proposing these limitations on online courses is to ensure that licensees take only the best of the vast array of courses offered online, and that licensees continue to attend live classes for continuing education.

Under proposed new §573.65, all licensees can get continuing education credit for self-study such as reading journal articles relevant to their profession, but these hours are limited to one hour for equine dental providers and three hours for veterinarians. With regard to keeping records of continuing education, the proposed rule is amended to clarify that a licensee must keep records of continuing education for the last four calendar years. The language previously used in §573.64, which required that licensees keep records for the last three renewal cycles, caused confusion among many licensees. The proposed language is not intended as a significant change in how long licensees must keep records.

Proposed new §573.65 also includes more specific requirements regarding the documentation that a licensee must obtain and keep from a multi-day continuing education course. Under the proposed rule, a licensee must indicate which specific sessions of the multi-day program the licensee attended by marking them on a printed agenda for the program. This proposal is consistent with current Board policy, and is intended to keep licensees from claiming credit for a whole multi-day program despite only attending part of it. During the Board's last sunset review, the Texas Sunset Commission recommended this change in the way licensees document their attendance at multi-day courses.

Proposed new §573.66, regarding disciplinary action for noncompliance with continuing education requirements, is split out from previous §573.64 in the interests of clarity and simplification, and states that licensees will be subject to disciplinary action by the Board if they fail to obtain adequate continuing education and maintain appropriate records of the continuing education. Splitting out the proposed new rule from §573.64 will make it easier for the Board to reference the particular rule violated when creating disciplinary orders for licensees that fail to obtain continuing education or maintain continuing education records.

Proposed new §573.67, regarding continuing education as disciplinary action, is split out from previous §573.64 in the interests of clarity and simplification, and states that the Board may require a licensee to obtain additional continuing education as a method of disciplining a violation of the Veterinary Licensing Act or the Board's Rules. Splitting out the proposed new rule from §573.64 will make it easier for the Board to reference the particular rule violated when creating disciplinary orders when the Board orders continuing education as discipline for a licensee.

Proposed new §573.68, regarding monitoring licensee compliance, is renumbered from §573.66. The rule is proposed to apply to all of the Board's licensees, veterinarians and equine dental providers alike. Because inspections of veterinarians and equine dental providers will necessarily involve inspection of different documents and items depending on the profession of the licensee, and because the previous version of the rule stated

that the items enumerated in the rule were not an exclusive list of items and documents the Board could inspect, the Board has decided to amend the rule to remove these non-exclusive lists of items for inspection in the interests of simplicity and clarity. The proposal will not change the current practice of the Board.

Proposed new §573.69, regarding conditions relative to license suspension, is proposed to apply to all licensees of the Board, both equine dental providers and veterinarians alike. The proposed new rule is renumbered from §573.68.

Proposed new §573.70, regarding reporting of criminal activity, is proposed to apply to all licensees of the Board, both equine dental providers and veterinarians alike. The proposed rule is renumbered from §573.69. The proposed rule is amended to remove the requirement that licensees report arrests to the Board, replacing it with a requirement that licensees report indictments to the Board. The Board has noted scientific studies that have shown minorities are more likely to be arrested than non-minorities, and has therefore made the proposal in the interests of preventing any inadvertent discriminatory impact of the rule.

Proposed new §573.71, regarding operation of temporary limited-service veterinary services, is proposed to reflect the fact that it applies only to veterinarians, rather than to all licensees. The proposed rule is also amended to require veterinarians operating temporary limited service clinics to keep both rabies vaccination records and treatment records for five years, to comport with the length of time that veterinarians operating traditional, full-service clinics are required to keep such records. This proposal is intended to conform the language of the rule to comport with a previous rule change that altered the records retention requirement so that veterinarians are now required keep both rabies certifications and patient health records for five years, and did not distinguish between veterinarians working in full-service clinics and those working in temporary limited-service clinics. The proposed rule is renumbered from §573.70.

Proposed new §573.72, regarding employment by nonprofit or municipal corporations, is proposed to reflect the fact that it applies only to veterinarians, rather than to all licensees. The proposed rule is renumbered from §573.71. There is no statutory limitation on the ownership of an equine dental provider's practice as there is for veterinary practices, so there is no need for an exception for equine dental providers employed by a nonprofit organization.

Proposed new §573.73, regarding animal reproduction, is renumbered from §573.72, but the text is otherwise unchanged.

Proposed new §573.74, regarding management services organizations in veterinary practice, is renumbered from §573.73, but the text is otherwise unchanged.

Proposed new §573.75, regarding duty to cooperate with Board, is proposed to apply to all licensees, equine dental providers and veterinarians alike. The proposed rule is renumbered from §573.74.

Proposed new §573.76, regarding notification of licensee addresses, is proposed to apply to all licensees, equine dental providers and veterinarians alike. The proposed rule is renumbered from §573.75. The proposed rule is amended to include new requirements that licensees inform the Board of their business telephone number and residence or cellular telephone number, to allow Board representatives to contact licensees more readily.

Proposed new §573.77, regarding sterilization of animals from releasing agencies, is renumbered from §573.76, but the text is otherwise unchanged.

Proposed new §573.78, regarding default on student loan/child support payments, is renumbered from §573.77, but the text is otherwise unchanged.

Proposed new §573.79, regarding the maintenance of sanitary premises, is proposed to apply to all licensees of the Board, veterinarian and equine dental provider alike. The proposed rule is also renumbered from §573.28.

Proposed new §573.80, regarding definitions, would define words used throughout Chapter 573 including: accepted livestock management practices, designated caretaker, food production animals, biologic, pregnancy testing, invasive dentistry, invasive dental procedures, consultation, general supervision, direct supervision, immediate supervision, official health documents, and specialist. The terms accepted livestock management practices, designated caretaker, food production animals, biologic, pregnancy testing, invasive dentistry, invasive dental procedures, consultation terms were previously defined in §573.65; general supervision, direct supervision and immediate supervision were all previously defined in §573.10; and term specialist was previously defined in §573.23. These terms have been broken out and placed in the definitions section for ease of use. The term official health documents is defined to add clarification and uniformity to the Board's rules regarding supervision, knowledge, and recordkeeping regarding documents signed by a veterinarian and attesting to an animal's health, including but not limited to vaccination certificates and health certificates for shipment of animals.

Throughout Chapter 573, numerous grammatical, capitalization, conforming and non-substantive changes are proposed. Also, statutory citation references are updated and standardized to reflect current law and Texas Register formatting requirements.

Nicole Oria, Executive Director, Texas State Board of Veterinary Medical Examiners, has determined that for each year of the first five years that the proposed repeals and new rules are in effect, there will be increased cost to state government required to enforce rules of professional conduct against the newly licensed equine dental providers. The increased cost to the state required to enforce the rules for licensed equine dental providers will be offset by the reduction in cost of the amounts the Board previously spent on enforcing the unlicensed practice of veterinary medicine by unlicensed equine dentists. Ms. Oria has also determined that the proposed repeals and new rules may create some reduction in cost for state government for each of the first five years the proposal is in effect, as many of the changes and additions in the proposed rules are intended to make the rules more clear and enforceable, saving the agency staff time, as well as investigation and litigation expenses. Ms. Oria does not anticipate any fiscal implications for local government as a result of the proposed repeals and new rules.

Ms. Oria has also determined that for each year of the first five years that the proposed repeals and new rules will be in effect, the public benefit anticipated as a result of the proposal is that the public will be able to rely on the training and quality of service from the regulation of licensed equine dental providers. The public will further benefit from having all licensees maintain patient records for five years, because it will allow the public longer to request records from veterinarians and will make the Board's enforcement process more efficient. The public will also

benefit from being able to seek Board enforcement of discipline against the veterinarian if employees of the veterinarian violate the Board's rules under the new respondeat superior standard. The public will further benefit from not having to worry that an animal could be held by a veterinarian through a contractual lien. The public will benefit from the clarification of the Board's compounding rules, which will allow the Board to more readily ensure that compounded medications are only used when no other drug could substitute, under the confines of a veterinarian-client-patient relationship, and with significant cautionary measures in place when used in food-producing animals. Moreover, the public will benefit from being able to more easily determine which specialized veterinarians are best qualified to treat their animal, and from the prevention of misleading advertising by licensees, either by statement or implication. The public will also benefit from additional required information in veterinarian patient records, which will provide useful documentation in Board disciplinary actions and more clarity to the treatment a veterinarian provided. The public will benefit from the requirement that veterinarians keep a log of which individuals have access to their controlled substances, as it will prevent diversion of the controlled substances. The public will also benefit from the requirement that all licensees report any loss of certification, licensure or registration to the Board, as it will allow the Board to take disciplinary action in Texas, including revocation of a Texas license, if necessary to protect the public in Texas, depending on the severity of the offense that caused the loss of licensure, certification or registration, and the extent of the resulting danger to the public. Furthermore, the public will benefit from licensees better maintaining and improving their professional skills by taking a majority of their continuing education courses either in person or through highly interactive online classes, and by only being able to claim credit for the portion of a multi-day course they actually attended. Another public benefit anticipated as a result of the proposal is that the rules of professional conduct for Board licensees will be clearer, better organized, and more easily understood. Ms. Oria has determined that there is no anticipated economic impact on veterinarians who are required to comply with the proposal. Furthermore, Ms. Oria does not anticipate a local employment impact from the proposal.

Ms. Oria has determined that equine dental providers, including micro-businesses operating as equine dental provider practices, will experience minor economic costs increase associated with complying with the proposed repeals and new rules for each year of the first five years that the proposal is in effect, due to the costs associated with creating and maintaining patient records, and the costs associated with attending continuing education classes. The Board estimates that there are approximately 30 equine dental provider micro-businesses in Texas. The proposed rules regarding equine dental providers are necessary to implement HB 414, which required that equine dental providers be licensed and regulated by the Board. In HB 414, the Texas Legislature itself set many of the parameters that are creating costs for equine dental providers under the proposal including, but not limited to, the number of continuing education hours an equine dental provider must obtain per year, the standard of care that an equine dental provider must use in his practice, and the requirement that an equine dental provider create patient records to give to both the client, and the supervising veterinarian on request. Where the Legislature did not specifically set the requirements that will cause licensed equine dental providers to incur additional costs, the Board has paralleled the requirements already in place for licensed veterinarians, such as in type of continuing education required and in how long patient records must be maintained. The Board considered setting separate and lesser requirements for equine dental providers with regard to the length of time records must be kept, but determined that a lesser period of record retention would hinder the effectiveness of the Board's enforcement process, and thereby decrease public safety. The Board also considered having lesser limitations on what type of continuing education an equine dental provider could attain and the distribution of hours among the various types of continuing education, but determined that any distribution requirements that allowed for fewer clinical hours or more self study to save money would not be rigorous enough to adequately maintain and improve the skills of licensed equine dental providers. Thus, the Board determined that there are no legal and feasible alternatives or other less expensive methods of regulating equine dental providers' continuing education and patient recordkeeping that could adequately to protect the health of Texas horses, or the economic interests of Texas horse owners.

The Texas Board of Veterinary Medical Examiners invites comments on the proposal 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, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by email to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

SUBCHAPTER A. GENERAL PROFESSIONAL ETHICS

22 TAC §§573.2 - 573.9

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

The repeals are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151, which states that the Board may adopt rules necessary to administer the chapter; may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; may adopt rules to protect the public; and may adopt rules to ensure that equine dentistry is performed only by a veterinarian who is active and in good standing or by a licensed equine dental provider who is active and in good standing under the appropriate level of supervision of a veterinarian who is active and in good standing and who has established a veterinarian-client-patient relationship with the owner or other caretaker of an animal. The repeals are also proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.501, which states that the Board by rule shall develop a system of monitoring a license holder's compliance with the requirements of the Veterinary Licensing Act; §801.356, which states that the Board by rule may establish the conditions under which a veterinarian may operate temporary limited-service veterinary clinics; §801.307, which allows the Board by rule to establish a minimum number of continuing education hours required to renew a license to practice veterinary medicine; and §801.203, which allows the Board by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the Board.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.2. Avoidance of Encroachment on Another's Practice.

§573.3. Exposure of Corrupt or Dishonest Conduct.

§573.4. Adherence to the Law.

§573.5. Avoidance of Corruption of Others.

§573.6. Restriction of Partnerships to Members of Profession.

§573.7. No Abuse of Position or Trust.

§573.8. Loss of Accreditation.

§573.9. Nonresident Consultants.

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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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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SUBCHAPTER B. SUPERVISION OF PERSONNEL

22 TAC §§573.10 - 573.16

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

The repeals are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151, which states that the Board may adopt rules necessary to administer the chapter; may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; may adopt rules to protect the public; and may adopt rules to ensure that equine dentistry is performed only by a veterinarian who is active and in good standing or by a licensed equine dental provider who is active and in good standing under the appropriate level of supervision of a veterinarian who is active and in good standing and who has established a veterinarian-client-patient relationship with the owner or other caretaker of an animal. The repeals are also proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.501, which states that the Board by rule shall develop a system of monitoring a license holder's compliance with the requirements of the Veterinary Licensing Act; §801.356, which states that the Board by rule may establish the conditions under which a veterinarian may operate temporary limited-service veterinary clinics; §801.307, which allows the Board by rule to establish a minimum number of continuing education hours required to renew a license to practice veterinary medicine; and §801.203, which allows the Board by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the Board.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.10. Supervision of Non-Licensed Employees.

§573.11. Responsibility for Unlicensed and Licensed Employees.

§573.12. Alternate Therapies--Chiropractic and Other Forms of Musculoskeletal Manipulation.

§573.13. Use of Ultrasound in Diagnosis or Therapy.

§573.14. Alternate Therapies--Acupuncture.

§573.15. Alternate Therapies--Holistic Medicine.

§573.16. Alternate Therapies--Homeopathy.

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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Loris Jones
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Texas Board of Veterinary Medical Examiners
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SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §§573.20 - 573.29

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

The repeals are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151, which states that the Board may adopt rules necessary to administer the chapter; may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; may adopt rules to protect the public; and may adopt rules to ensure that equine dentistry is performed only by a veterinarian who is active and in good standing or by a licensed equine dental provider who is active and in good standing under the appropriate level of supervision of a veterinarian who is active and in good standing and who has established a veterinarian-client-patient relationship with the owner or other caretaker of an animal. The repeals are also proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.501, which states that the Board by rule shall develop a system of monitoring a license holder's compliance with the requirements of the Veterinary Licensing Act; §801.356, which states that the Board by rule may establish the conditions under which a veterinarian may operate temporary limited-service veterinary clinics; §801.307, which allows the Board by rule to establish a minimum number of continuing education hours required to renew a license to practice veterinary medicine; and §801.203, which allows the

Board by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the Board.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.20. Responsibility for Acceptance of Medical Care.

§573.21. Direct Responsibility to Client.

§573.22. Professional Standard of Humane Treatment.

§573.23. Board Certified Specialists and Duty of Licensee To Refer a Case.

§573.24. Issuance of Certificates through Direct Knowledge Only.

§573.25. Avoidance of Guaranteeing Cures.

§573.26. Honesty, Integrity, and Fair Dealing.

§573.27. Observance of Confidentiality.

§573.28. Maintenance of Sanitary Premises.

§573.29. Complaint Information and Notice to Clients.

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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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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SUBCHAPTER D. ADVERTISING, ENDORSEMENTS AND CERTIFICATES

22 TAC §§573.30, 573.32 - 573.37

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

The repeals are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151, which states that the Board may adopt rules necessary to administer the chapter; may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; may adopt rules to protect the public; and may adopt rules to ensure that equine dentistry is performed only by a veterinarian who is active and in good standing or by a licensed equine dental provider who is active and in good standing under the appropriate level of supervision of a veterinarian who is active and in good standing and who has established a veterinarian-client-patient relationship with the owner or other caretaker of an animal. The repeals are also proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.501, which states that the Board by rule shall develop a system of monitoring a license holder's compliance with the requirements of the Veterinary Licensing Act; §801.356, which states that the Board by rule may establish the conditions under which a veterinarian may operate temporary limited-service veterinary clinics; §801.307, which allows the Board by rule to establish a minimum number of continuing education hours required to renew a license to practice veterinary medicine; and §801.203, which allows the Board by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the Board.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.30. Advertising.

§573.32. Speciality Listings.

§573.33. Display of Degree, Certificate, or Title from Approved Institutions Only.

§573.34. Authorized Degrees, Certificates, or Titles Only.

§573.35. Display of License.

§573.36. Corporate and Assumed Names.

§573.37. Ban on Use of Solicitors.

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

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Texas Board of Veterinary Medical Examiners
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SUBCHAPTER E. PRESCRIBING AND/OR DISPENSING MEDICATION

22 TAC §§573.41 - 573.45

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

The repeals are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151, which states that the Board may adopt rules necessary to administer the chapter; may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; may adopt rules to protect the public; and may adopt rules to ensure that equine dentistry is performed only by a veterinarian who is active and in good standing or by a licensed equine dental provider who is active and in good standing under the appropriate level of supervision of a veterinarian who is active and in good standing and who has established a veterinarian-client-patient relationship with the owner or other caretaker of an animal. The repeals are also proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.501, which states that the Board by rule shall develop a system of monitoring a license holder's compliance with the requirements of the Veterinary Licensing Act; §801.356, which states that the Board by rule

may establish the conditions under which a veterinarian may operate temporary limited-service veterinary clinics; §801.307, which allows the Board by rule to establish a minimum number of continuing education hours required to renew a license to practice veterinary medicine; and §801.203, which allows the Board by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the Board.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.41. Use of Prescription Drugs.

§573.42. Use of Scheduled Drugs in Training and/or Racing.

§573.43. Misuse of DEA Narcotics Registration.

§573.44. Compounding Drugs.

§573.45. Extra-Label or Off-Label Use of Drugs.

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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Loris Jones
Executive Assistant
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SUBCHAPTER F. RECORDS KEEPING

22 TAC §§573.51 - 573.54

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

The repeals are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151, which states that the Board may adopt rules necessary to administer the chapter; may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; may adopt rules to protect the public; and may adopt rules to ensure that equine dentistry is performed only by a veterinarian who is active and in good standing or by a licensed equine dental provider who is active and in good standing under the appropriate level of supervision of a veterinarian who is active and in good standing and who has established a veterinarian-client-patient relationship with the owner or other caretaker of an animal. The repeals are also proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.501, which states that the Board by rule shall develop a system of monitoring a license holder's compliance with the requirements of the Veterinary Licensing Act; §801.356, which states that the Board by rule may establish the conditions under which a veterinarian may operate temporary limited-service veterinary clinics; §801.307, which allows the Board by rule to establish a minimum number of continuing education hours required to renew a license to practice veterinary medicine; and §801.203, which allows the Board by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the Board.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.51. Rabies Control.

§573.52. Patient Record Keeping.

§573.53. Patient Records Release and Charges.

§573.54. Transfer and Disposal of Patient Records.

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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Loris Jones
Executive Assistant
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SUBCHAPTER G. OTHER PROVISIONS

22 TAC §§573.60, 573.61, 573.63 - 573.66, 573.68 - 573.77

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

The repeals are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151, which states that the Board may adopt rules necessary to administer the chapter; may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; may adopt rules to protect the public; and may adopt rules to ensure that equine dentistry is performed only by a veterinarian who is active and in good standing or by a licensed equine dental provider who is active and in good standing under the appropriate level of supervision of a veterinarian who is active and in good standing and who has established a veterinarian-client-patient relationship with the owner or other caretaker of an animal. The repeals are also proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.501, which states that the Board by rule shall develop a system of monitoring a license holder's compliance with the requirements of the Veterinary Licensing Act; §801.356, which states that the Board by rule may establish the conditions under which a veterinarian may operate temporary limited-service veterinary clinics; §801.307, which allows the Board by rule to establish a minimum number of continuing education hours required to renew a license to practice veterinary medicine; and §801.203, which allows the Board by rule to establish methods by which consumers and

service recipients are notified of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the Board.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.60. Prohibition Against Treatment of Humans.

§573.61. Minimum Security for Controlled Substances.

§573.63. Inspection of Veterinary Facilities and Records.

§573.64. Continuing Education Requirements.

§573.65. Definitions.

§573.66. Monitoring Licensee Compliance.

§573.68. Conditions Relative to License Suspension.

§573.69. Reporting of Criminal Activity.

§573.70. Operation of Temporary Limited-Service Veterinary Services.

§573.71. Employment by Nonprofit or Municipal Corporations.

§573.72. Animal Reproduction.

§573.73. Management Services Organizations in Veterinary Practice.

§573.74. Duty to Cooperate with Board.

§573.75. Notification of Licensee Addresses.

§573.76. Sterilization of Animals from Releasing Agencies.

§573.77. Default on Student Loan/Child Support Payments.

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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Loris Jones
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Texas Board of Veterinary Medical Examiners
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SUBCHAPTER A. GENERAL PROFESSIONAL ETHICS

22 TAC §§573.2 - 573.9

The new rules are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151, which states that the Board may adopt rules necessary to administer the chapter; may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; may adopt rules to protect the public; and may adopt rules to ensure that equine dentistry is performed only by a veterinarian who is active and in good standing or by a licensed equine dental provider who is active and in good standing under the appropriate level of supervision of a veterinarian who is active and in good standing and who has established a veterinarian-client-patient relationship with the owner or other caretaker of an animal. The rules are also proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.501, which states that the Board by rule shall develop a system of monitoring a license holder's compliance with the requirements of the Veterinary Licensing Act; §801.356, which states that the Board by rule may establish the conditions under which a veterinarian may operate temporary limited-service veterinary clinics; §801.307, which allows the Board by rule to establish a minimum number of continuing education hours required to renew a license to practice veterinary medicine; and §801.203, which allows the Board by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the Board.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.2. Avoidance of Encroachment on Another's Practice.
A licensee may not make any effort, direct or indirect, which in any manner is calculated to influence the sound professional judgment of another licensee. It is the right of any licensee, without fear or favor, to give proper advice to those seeking relief against substandard or neglectful veterinary or equine dentistry services, to make a complaint to the Board, or to act as a witness in a Board investigation or a contested hearing.

§573.3. Exposure of Corrupt or Dishonest Conduct.
Licensees shall expose without fear or favor before the proper tribunal or the State Board of Veterinary Medical Examiners corrupt or dishonest conduct by other licensees.

§573.4. Adherence to the Law.
No licensee shall commit any act that is in violation of the laws of the State of Texas, other states, or of the United States, if the act is connected with the licensee's professional practice, including, but not limited to, the acts enumerated in §575.50(e) of this title (relating to Criminal Convictions). A complaint, indictment, or conviction of a law violation is not necessary for the enforcement of this rule. Proof of the commission of the act while in the practice of, or under the guise of the practice of, either veterinary medicine or equine dentistry, is sufficient for action by the Board under this rule.

§573.5. Avoidance of Corruption of Others.
A licensee shall not render any service or advice directed toward the corruption of any person or persons exercising a public office or private trust, or deception, or betrayal of the public.

§573.6. Restriction of Partnerships to Members of Veterinary Profession.
In the formation of partnerships for the practice of veterinary medicine, no person shall be admitted as a partner who is not a member of the veterinary profession, duly authorized to practice, and amenable to professional discipline. No person shall be held out as a practitioner of veterinary medicine or a member of the firm who is not so admitted. In the selection and use of a firm name, no false or misleading name shall be used. Partnerships between veterinarians and members of other professions or nonprofessional persons shall not be formed or permitted if a part of the partnership employment consists of the practice of veterinary medicine.

§573.7. No Abuse of Position or Trust.
Any licensee who uses present or past position, or office of trust, deliberately to create an individual professional advantage, or to coerce, or to deceive the public shall be in violation of the rules of professional conduct. A licensee may not influence, or attempt to influence, the statement, response, or opinion of any person, licensed or unlicensed, to the Board if the Board has requested the statement or opinion.

§573.8. Loss of Accreditation.

A licensee whose accreditation or license has been revoked or suspended by a state or federal authority is subject to disciplinary action by the Board. A licensee must report any accreditation, licensure, certification, or registration revocation or suspension to the Board within 30 business days.

§573.9. Nonresident Consultants.

Veterinarians licensed in other states may enter the State of Texas, whether in person, by mail, or by electronic means, for purposes of consultation. Nonresident consultants may not establish a routine visit schedule of consultations in Texas. Consultants must, at all times, consult under the direct supervision of a Texas veterinarian.

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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Executive Assistant
Texas Board of Veterinary Medical Examiners
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SUBCHAPTER B. SUPERVISION OF PERSONNEL

22 TAC §§573.10 - 573.18

The new rules are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151, which states that the Board may adopt rules necessary to administer the chapter; may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; may adopt rules to protect the public; and may adopt rules to ensure that equine dentistry is performed only by a veterinarian who is active and in good standing or by a licensed equine dental provider who is active and in good standing under the appropriate level of supervision of a veterinarian who is active and in good standing and who has established a veterinarian-client-patient relationship with the owner or other caretaker of an animal. The rules are also proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.501, which states that the Board by rule shall develop a system of monitoring a license holder's compliance with the requirements of the Veterinary Licensing Act; §801.356, which states that the Board by rule may establish the conditions under which a veterinarian may operate temporary limited-service veterinary clinics; §801.307, which allows the Board by rule to establish a minimum number of continuing education hours required to renew a license to practice veterinary medicine; and §801.203, which allows the Board by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the Board.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.10. Supervision of Non-Licensed Persons.

(a) With appropriate supervision and after establishing a veterinarian-client-patient relationship, a veterinarian may delegate veterinary care and treatment duties to non-veterinarian employees, or to the following independent contractors:

(1) licensed equine dental providers, in accordance with subsection (h) of this section; or

(2) chiropractors, in accordance with §573.14 of this title (relating to Alternate Therapies--Chiropractic and Other Forms of Musculoskeletal Manipulation).

(b) A veterinarian shall determine when general, direct, or immediate supervision of a non-veterinarian's actions is appropriate, except where such actions of the non-veterinarian may otherwise be prohibited by law. A veterinarian shall consider both the level of training and experience of the non-veterinarian when determining the level of supervision and duties of non-veterinarians.

(c) A veterinarian is subject to discipline if he or she improperly delegates care and/or treatment duties to a non-veterinarian, or fails to properly supervise the non-veterinarian performing delegated duties.

(d) A non-veterinarian shall not perform the following health care services:

(1) surgery;

(2) invasive dental procedures not enumerated in subsection (i) of this section;

(3) diagnosis and prognosis of animal diseases and/or conditions; or

(4) prescribing drugs and appliances.

(e) Euthanasia may be performed by a veterinary technician only under the immediate supervision of a veterinarian.

(f) A non-veterinarian may administer a rabies vaccine only under the direct supervision of a veterinarian, and only after the veterinarian has properly established a veterinarian-client-patient relationship.

(g) The use of a veterinarian's signature stamp or electronic signature pad on an official health document by a non-veterinarian shall be authorized only under the direct supervision of the vaccinating veterinarian.

(h) Delegation to an RVT. When feasible, a veterinarian should delegate greater responsibility to a registered veterinary technician registered by the Texas Veterinary Medical Association (RVT) than to an unlicensed person that is not a RVT.

(1) Under the direct or immediate supervision of a veterinarian, an RVT may:

(A) suture to close existing surgical skin incisions and skin lacerations; and

(B) induce anesthesia.

(2) The procedures authorized to be performed by an RVT in paragraph (1) of this subsection may be performed by a non-veterinarian only under the immediate supervision of a veterinarian.

(i) The following treatments may be performed by a licensed equine dental provider under general supervision by a veterinarian, and by a non-licensed employee of a veterinarian under direct supervision by the veterinarian:

(1) removing sharp enamel points;

(2) removing small dental overgrowths;

(3) rostral profiling of the first cheek teeth;

(4) reducing incisors;

(5) extracting loose, deciduous teeth;

(6) removing supragingival calculus;

(7) extracting loose, mobile, or diseased teeth or dental fragments with minimal periodontal attachments by hand and without the use of an elevator; and

(8) removing erupted, non-displaced wolf teeth.

(j) Exception for Emergency Care. In an emergency situation where prompt treatment is essential for the prevention of death or alleviation of extreme suffering, a veterinarian may, after determining the nature of the emergency and the condition of the animal, issue treatment directions to a non-veterinarian by means of telephone, electronic mail or messaging, radio, or facsimile communication. The Board may take action against a veterinarian if, in the Board's sole discretion, the veterinarian uses this authorization to circumvent this rule. The veterinarian assumes full responsibility for such treatment. However, nothing in this rule requires a veterinarian to accept an animal treated under this rule as a patient under these circumstances.

(k) Exception for Care of Hospitalized Animals. A non-veterinarian may, in the absence of direct supervision, follow the oral or written treatment orders of a veterinarian who is caring for a hospitalized animal, so long as the veterinarian has examined the animal(s) and a valid veterinarian/client/patient relationship exists.

§573.11. Responsibility for Unlicensed Employees.

A veterinarian shall be responsible for any acts a non-veterinarian employee commits within the scope of the employee's employment.

§573.12. Responsibility for Licensure of Licensed Persons.

(a) A veterinarian who employs and/or supervises another veterinarian practicing veterinary medicine shall assure that the person is:

(1) actively licensed; and

(2) meets the requirements of §573.43 of this title (relating to Controlled Substances Registration) for registration with the federal Drug Enforcement Administration (DEA) and the Texas Department of Public Safety (DPS).

(b) A veterinarian who employs and/or supervises an equine dental provider shall ensure that the equine dental provider is actively licensed.

§573.13. Delegation and Supervision Relating to Official Health Documents.

(a) A veterinarian must personally sign any official health documents issued by the veterinarian, and/or any official health documents for which the veterinarian has received compensation, regardless of whether said compensation is ultimately refunded, provided, however, that rabies certificates may be authenticated by either:

(1) the veterinarian's personal signature; or

(2) the use of a signature stamp or electronic signature by a non-licensed employee under direct supervision of the veterinarian.

(b) The issuance of any pre-signed or pre-stamped official health documents by a veterinarian is prohibited.

(c) Unless otherwise prohibited by law, and except as provided in subsection (d) of this section, a veterinarian may permit a non-licensed employee under the veterinarian's direct supervision to collect samples from animals for official tests.

(d) A person approved by the Texas Animal Health Commission (TAHC) and under the general supervision of a TAHC approved veterinarian may perform testing for brucellosis at a livestock market or collect blood samples on animals to be consigned directly from the ranch to slaughter and submit them to the state/federal laboratory for brucellosis testing.

§573.14. Alternate Therapies--Chiropractic and Other Forms of Musculoskeletal Manipulation.

(a) Definition. For the purpose of this rule, animal chiropractic and other forms of musculoskeletal manipulation (MSM) are systems of therapeutic application of mechanical forces applied manually through the hands or any mechanical device to diagnose, treat, and/or alleviate impaired or altered function of related components of the musculoskeletal system of nonhuman animals. Chiropractic and other forms of MSM in nonhuman animals are considered to be alternate therapies in the practice of veterinary medicine.

(b) Treatment using chiropractic and other forms of MSM. Chiropractic and other forms of MSM may only be performed by the following.

(1) A licensed veterinarian. Chiropractic and MSM may be performed by a licensed veterinarian under the following conditions:

(A) a valid veterinarian/client/patient relationship has been established as defined in the Act;

(B) an examination has been made by the licensee to determine that chiropractic/MSM will not likely be harmful to the patient; and

(C) the licensee obtains as a part of the patient's permanent record a signed acknowledgment by the owner or other caretaker of the patient that chiropractic or MSM is considered by Texas law to be an alternate therapy.

(2) A veterinarian's employee or an independent contractor. An employee or an independent contractor may perform these procedures on an animal under the direct or general supervision of the veterinarian if the conditions in paragraph (1)(A) - (C) of this subsection have been met.

(3) An individual to whom the exceptions of the Act, §801.004, apply.

(c) Responsibility. Whether the chiropractic/MSM is performed by a veterinarian or the veterinarian's employee or an independent contractor working under the supervision of a licensee, the Board will hold the veterinarian to a level of professional judgment as would be exercised by the average Texas veterinarian who performs or recommends chiropractic/MSM treatments in his/her practice.

§573.15. Use of Ultrasound in Diagnosis or Therapy.

(a) Definitions.

(1) Ultrasound--Mechanical radiant energy with a frequency greater than 20 kilocycles per second.

(2) Ultrasonics--That part of the science of acoustics dealing with the frequency range beyond the upper limit of perception by the human ear, but usually restricted to frequencies above 500 kilocycles per second.

(3) Ultrasonic radiation--The effect of ultrasound which is injurious to tissues because of its thermal effects when absorbed by living matter.

(4) Ultrasound therapy--Controlled doses of ultrasound used therapeutically to selectively break down pathologic tissues, as in treatment of arthritis and lesions of the nervous system.

(5) Diagnostic ultrasound--Ultrasound images used as a diagnostic aid by visually displaying echoes received from irradiated tissues.

(6) Ultrasonography--The visualization of deep structures of the body by recording the reflections of pulses of ultrasonic waves directed into the tissues.

(b) Use of ultrasound for diagnosis or therapy of animals. The use of ultrasound in animals to diagnose any condition or for any therapeutic purpose is the practice of veterinary medicine and shall only be performed by a licensed veterinarian or under the general supervision of a licensed veterinarian.

(c) Use of ultrasound by persons who are not licensed veterinarians.

(1) For diagnostic purposes. A person who is not a licensed veterinarian may perform ultrasonography on an animal for diagnostic purposes only if: the person administering the ultrasound is doing so at the request of a licensed veterinarian; the veterinarian has established a veterinarian/client/patient relationship; and it is the veterinarian who uses the ultrasonography to make a diagnosis.

(2) For therapeutic purposes. A person who is not a licensed veterinarian may perform ultrasonography on an animal for therapeutic purposes only if a veterinarian has: established a veterinarian/client/patient relationship; made a diagnosis; prescribed ultrasonics as a treatment; and the person administering the ultrasound is doing so at the specific request of a licensed veterinarian.

(d) Prohibited acts. Any person who uses ultrasound on animals in a manner inconsistent with this rule shall be in violation of this rule and the Texas Veterinary Licensing Act.

§573.16. Alternate Therapies--Acupuncture.

(a) Definition. For the purpose of this rule, acupuncture is:

(1) the insertion of an acupuncture needle and the application of moxibustion to specific areas of a non-human animal's body to relieve the discomfort associated with painful disorders, to induce surgical anesthesia, and for therapeutic purposes; and

(2) the administration of thermal or electrical treatments or the recommendation of dietary guidelines, energy flow exercise, or dietary or herbal supplements in conjunction with the treatment described by paragraph (1) of this subsection. Acupuncture in non-human animals is considered to be an alternate therapy in the practice of veterinary medicine.

(b) Use of Acupuncture in the treatment of animals. Only licensed veterinarians may use acupuncture in the care and medical treatment of animals. No veterinarian may allow a non-veterinarian employee or other agent to perform acupuncture in the treatment of an animal patient.

(c) Client Consent Required. Before acupuncture may be used in the treatment of an animal, the veterinarian must obtain a signed statement from the animal's owner or caretaker acknowledging that acupuncture is an alternate therapy in veterinary medicine and approving its use in the treatment of the animal. Before signing the statement, the veterinarian shall inform the client of the conventional treatments available and their probable ability to cure the problem. The statement shall become a permanent part of the patient's record.

(d) Standard Used in Determining Appropriate Use of Acupuncture. If the Board receives a complaint against a licensee about treatment involving the use of acupuncture, investigation of the complaint may include opinions from other licensees who use acupuncture in their treatment of animals. However, veterinarians who practice acupuncture shall exercise the same degree of humane care, skill, and diligence in treating patients as are ordinarily used in the same or similar circumstances by average members of the veterinary medical profession in good standing in the locality or community, or in similar locations or communities, in which they practice.

(e) Other Board Rules Not Preempted. Nothing in this rule shall remove or limit in any way the applicability of other rules of the Board as they apply to the practice of veterinary medicine.

§573.17. Alternate Therapies--Holistic Medicine.

(a) Definition. For the purpose of this rule, holistic medicine means: the practice of veterinary medicine that believes in a blend of alternative and, if need be, conventional approaches of treatment in an effort to develop a system of complementary medicine to treat the whole patient. In practice, it incorporates less conventional methods such as herbal medicine, acupuncture, chiropractic, homeopathy, and applied kinesiology, with more conventional methods, such as modern drugs, surgery and diagnostics. Use of holistic medicine in non-human animals is considered to be an alternate therapy in the practice of veterinary medicine.

(b) Use of holistic medicine in the treatment of animals. Only licensed veterinarians may use holistic medicine in the medical treatment of animals. No veterinarian may allow a non-veterinarian employee or other agent to perform holistic medicine in the treatment of an animal patient.

(c) Client Consent Required. Before holistic medicine may be used in the treatment of an animal, the veterinarian must obtain a signed statement from the animal's owner or caretaker acknowledging that holistic medicine is an alternate therapy in veterinary medicine and approving its use in the treatment of the animal. Before signing the statement, the veterinarian shall inform the client of the conventional treatments available and their probable ability to cure the problem. The signed statement shall become a permanent part of the patient's record.

(d) Standard Used in Determining Appropriate Use of Holistic Medicine. If the Board receives a complaint against a licensee about treatment involving the use of holistic medicine, investigation of the complaint may include opinions from other licensees who use holistic medicine in their treatment of animals. However, veterinarians who practice holistic medicine shall exercise the same degree of humane care, skill, and diligence in treating patients as are ordinarily used in the same or similar circumstances by average members of the veterinary medical profession in good standing in the locality or community, or in similar localities or communities, in which they practice.

(e) Other Board Rules Not Preempted. Nothing in this rule shall remove or limit in any way the applicability of other rules of the Board as they apply to the practice of veterinary medicine.

§573.18. Alternate Therapies--Homeopathy.

(a) Definition. For the purpose of this rule, homeopathy is: a system of therapeutics in which diseases are treated by substances which are capable of producing in healthy animals symptoms like those of the disease to be treated, the substance being administered in minute doses. Use of homeopathic remedies in non-human animals is considered to be an alternate therapy in the practice of veterinary medicine.

(b) Use of Homeopathy in the Treatment of Animals. Only licensed veterinarians may use homeopathy in the medical treatment of animals. No veterinarian may allow a non-veterinarian employee or other agent to perform homeopathy in the treatment of an animal patient.

(c) Client Consent Required. Before homeopathy may be used in the treatment of an animal, the veterinarian must obtain a signed

statement from the animal's owner or caretaker acknowledging that homeopathy is an alternate therapy in veterinary medicine and approving its use in the treatment of the animal. Before signing the statement, the veterinarian shall inform the client of the conventional treatments available and their probable ability to cure the problem. The signed statement shall become a permanent part of the patient's file.

(d) Standard Used in Determining Appropriate Use of Homeopathy. If the Board receives a complaint against a licensee about treatment involving the use of homeopathy, investigation of the complaint may include opinions from other licensees who use homeopathy in their treatment of animals. However, veterinarians who practice homeopathy shall exercise the same degree of humane care, skill, and diligence in treating patients as are ordinarily used in the same or similar circumstances by average members of the veterinary medical profession in good standing in the locality or community, or in similar localities or communities, in which they practice.

(e) Other Board Rules Not Preempted. Nothing in this rule shall remove or limit in any way the applicability of other rules of the Board as they apply to the practice of veterinary medicine.

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

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SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §§573.20 - 573.29

The new rules are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151, which states that the Board may adopt rules necessary to administer the chapter; may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; may adopt rules to protect the public; and may adopt rules to ensure that equine dentistry is performed only by a veterinarian who is active and in good standing or by a licensed equine dental provider who is active and in good standing under the appropriate level of supervision of a veterinarian who is active and in good standing and who has established a veterinarian-client-patient relationship with the owner or other caretaker of an animal. The rules are also proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.501, which states that the Board by rule shall develop a system of monitoring a license holder's compliance with the requirements of the Veterinary Licensing Act; §801.356, which states that the Board by rule may establish the conditions under which a veterinarian may operate temporary limited-service veterinary clinics; §801.307, which allows the Board by rule to establish a minimum number of continuing education hours required to renew a license to practice veterinary medicine; and §801.203, which allows the Board by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the Board.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.20. Responsibility for Acceptance of Medical Care.

(a) The decision to accept an animal as a patient is at the sole discretion of a veterinarian. The veterinarian is responsible for determining the diagnosis and course of treatment for an animal that has been accepted as a patient and for advising the client as to the diagnosis and treatment to be provided.

(b) A veterinarian must inform a client when:

(1) the client has specifically requested that the veterinarian diagnose and/or treat the client's animal; and

(2) the veterinarian reasonably believes there is a likelihood or possibility that another veterinarian may perform some or all of the diagnosis and/or treatment of the patient.

(c) Once a patient/client/veterinarian relationship has been established, a veterinarian may discontinue treatment:

(1) at the request of the client;

(2) after the veterinarian substantially completes the treatment or diagnostics prescribed;

(3) upon referral to another veterinarian; or

(4) after notice to the client providing a reasonable period for the client to secure the services of another veterinarian.

(d) A veterinarian may not refuse to return a client's animal if the client requests that the veterinarian return the animal, other than a large animal under Texas Property Code §70.010, regardless of whether the client owes the veterinarian money for veterinary medical services rendered.

§573.21. Direct Responsibility to Client.

The professional services of a licensee shall not be controlled or exploited by any lay agency, personal or corporate, which intervenes between the client and the licensee. A licensee shall not allow a non-licensed person or entity to interfere or intervene with the licensee's practice; nor shall the licensee submit to such interference or intervention by a non-licensed person or entity. A licensee shall avoid all relationships which could result in interference or intervention in the licensee's practice by a non-licensed person or entity. A licensee shall be responsible for his or her own actions and is directly responsible to the client and for the care and treatment of the patient.

§573.22. Professional Standard of Care.

Licensees shall exercise the same degree of humane care, skill, and diligence in treating patients as are ordinarily used in the same or similar circumstances by average members of the veterinary medical profession in good standing in the locality or community in which they practice, or in similar communities.

§573.23. Board Certified Specialists.

(a) Standard of Care for Specialist. Specialists are held to a higher standard of care than non-specialist veterinarians, notwithstanding §573.22 of this title (relating to Professional Standard of Care).

(b) Complaints against Specialists. Board investigations of complaints alleging substandard care by a Specialist in his/her area

of specialty will include consultations with one or more Specialists licensed by the Board practicing the same specialty on the species involved in the complaint. The Board, at its sole discretion, may consult with Specialists from outside of Texas. If the Board determines an informal conference is warranted, both complainant and respondent may, at their own expense, present oral or written commentary by a Specialist practicing the same specialty on the species involved in the complaint.

§573.24. Responsibility of Veterinarian to Refer a Case.

(a) A veterinarian shall have a duty to a client to suggest a referral to a specialist, or otherwise more qualified veterinarian, in any case where the care and treatment of the animal is beyond the veterinarian's capabilities. A veterinarian's decision on whether to accept or continue care and treatment of an animal, which may require expertise beyond the veterinarian's capabilities, shall be based on the exercise of sound judgment within the prevailing standard of care for a veterinarian faced with the same or similar circumstances.

(b) Complaints Regarding Failure to Make Proper Referral. Board investigations of complaints alleging failure to properly make referrals will include evaluation of the training and experience of the veterinarian, the availability of a specialist or more qualified veterinarian, the timeliness and adequacy of information provided to the client regarding the possible need for a referral, the requests of the client, and the likelihood that an adverse result could have been prevented by a timely referral.

§573.25. Issuance of Official Health Documents Through Direct Knowledge Only.

Licensed veterinarians in this state shall not issue any official health documents for an animal without first having personally examined the individual animal and know of their own knowledge, by actual inspection and appropriate tests, that said animal meets the requirements for the issuance of the official health document. A veterinarian is deemed to have issued and to have knowledge of any official health documents issued in the veterinarian's name, written by veterinarian's employee and/or maintained in veterinarian's patient or client files. A veterinarian shall be responsible for the security and proper use of all official certificates, forms, records and reports, and shall take reasonable care to prevent the misuse thereof. A veterinarian shall immediately report to the TBVME the loss, theft or deliberate or accidental misuse of any such certificate, form, record or report.

§573.26. Avoidance of Guaranteeing Cures.

It is professionally dishonest for a licensee to guarantee a cure. A licensee must avoid bold and confident assurances to clients, especially where the licensee's employment may depend upon such assurance.

§573.27. Honesty, Integrity, and Fair Dealing.

Licensees shall conduct their practice with honesty, integrity, and fair dealing to clients in time and services rendered, and in the amount charged for services, facilities, appliances, and drugs. Licensees shall obtain informed consent from the client or the client's authorized representative prior to initiating treatment of the patient by:

(1) informing the client or the client's authorized representative, in a manner understood by the client or representative, of the diagnostic and treatment options, risk assessment, and prognosis;

(2) providing the client with an estimate of the charges for veterinary services to be rendered; and

(3) receiving the client's consent to the recommended treatment.

§573.28. Observance of Confidentiality.

(a) A veterinarian shall not violate the confidential relationship between the veterinarian and a client.

(b) Except as provided in subsection (c) of this section, a veterinarian shall not disclose any information concerning the veterinarian's care for an animal except:

(1) on written or oral authorization or other form of waiver executed by the client;

(2) on receipt by the veterinarian of an appropriate court order or subpoena; or

(3) as necessary to substantiate and collect on a debt incurred by a client for veterinary services.

(c) A veterinarian may, without authorization by the client, disclose information contained in a communicable disease certificate to a governmental entity only for purposes related to the protection of public health and safety.

§573.29. Complaint Information and Notice to Clients.

(a) A licensee shall provide an effective way to inform clients and other visitors to the premises, clinic or hospital of how to file complaints with the Board. The licensee must provide:

(1) the following specific address: Texas State Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942;

(2) the Board's telephone numbers: (512) 305-7555; fax: (512) 305-7556; and

(3) a toll-free complaint information number: 1-800-821-3205.

(b) Acceptable forms of providing the information in subsection (a) of this section may include a:

(1) written notice form, with print size of at least 14 point, prominently displayed in the area of each clinic or hospital that is most frequented by the public;

(2) brochure available in the area of each clinic or hospital that is most frequented by the public; or

(3) statement on each written bill, invoice or receipt.

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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Loris Jones
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SUBCHAPTER D. ADVERTISING, ENDORSEMENTS AND CERTIFICATES

22 TAC §§573.30, 573.32 - 573.37

The new rules are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151, which states that the Board may adopt rules necessary to administer

the chapter; may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; may adopt rules to protect the public; and may adopt rules to ensure that equine dentistry is performed only by a veterinarian who is active and in good standing or by a licensed equine dental provider who is active and in good standing under the appropriate level of supervision of a veterinarian who is active and in good standing and who has established a veterinarian-client-patient relationship with the owner or other caretaker of an animal. The rules are also proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.501, which states that the Board by rule shall develop a system of monitoring a license holder's compliance with the requirements of the Veterinary Licensing Act; §801.356, which states that the Board by rule may establish the conditions under which a veterinarian may operate temporary limited-service veterinary clinics; §801.307, which allows the Board by rule to establish a minimum number of continuing education hours required to renew a license to practice veterinary medicine; and §801.203, which allows the Board by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the Board.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.30. Advertising.

A licensee may not engage in advertising that is false, deceptive, or misleading. A false, deceptive, or misleading advertising statement or claim includes, without limitation:

(1) a prediction of future success or a guarantee that satisfaction or a cure will result from the performance of the advertised professional services;

(2) illegal transactions;

(3) a representation or implication that the announced services or facilities are superior in quality to those of other licensees which is not subject to reasonable verification by the public and/or would tend to create a false impression of the qualities of the professional services or facilities;

(4) a statement or implication that a veterinarian is a certified or recognized specialist unless the veterinarian is board certified as recognized by the American Veterinary Medical Association in such specialty;

(5) a claim that intends to create or is likely to create an inflated or unjustified expectation; or

(6) an expressed or implied material misrepresentation of fact.

§573.32. Specialty Listings.

A veterinarian holding a current certificate of special competence in a particular field of veterinary medicine issued by the respective specialty boards in veterinary medicine, recognized by the American Veterinary Medical Association, may state in reputable veterinary directories, advertising or notices mailed to veterinarians, clients, former clients, personal friends, and relatives; the yellow pages of telephone directories distributed in the geographical area or areas in which the veterinarian resides or maintains offices or had his/her primary practice; and on professional cards or letterhead that he/she is certified in a particular field in the following words: "Board Certified (e.g., Veterinary Radiology)." A veterinarian must indicate his or her specialty whenever the veterinarian indicates that he or she is a specialist.

§573.33. Display of Degree, Certificate, or Title from Approved Institutions Only.

A licensee shall not use or display any college degree, certificate, or title pertaining to veterinary medicine or equine dentistry granted by any institution not approved by the Texas State Board of Veterinary Medical Examiners.

§573.34. Authorized Degrees, Certificates, or Titles Only.

A licensee shall not use any certificate, college degree, or title to which he or she is not entitled.

§573.35. Display of License.

Each licensee, including a relief veterinarian, shall post or display at the licensee's practice location, whether mobile or fixed, his or her Board license and the most recent license renewal certificate. These documents must be displayed where they are visible to the public. A legible photocopy of the original documents is acceptable.

§573.36. Corporate and Assumed Names.

Licensees shall not use a corporate or assumed name for their practice which would be false, deceptive, or misleading to the public.

§573.37. Ban on Use of Solicitors.

A licensee shall not participate in arrangements which share the proceeds from professional services with individuals who may have been instrumental in his or her having been selected to perform the particular service.

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

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SUBCHAPTER E. PRESCRIBING AND/OR DISPENSING MEDICATION

22 TAC §§573.41 - 573.45

The new rules are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151, which states that the Board may adopt rules necessary to administer the chapter; may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; may adopt rules to protect the public; and may adopt rules to ensure that equine dentistry is performed only by a veterinarian who is active and in good standing or by a licensed equine dental provider who is active and in good standing under the appropriate level of supervision of a veterinarian who is active and in good standing and who has established a veterinarian-client-patient relationship with the owner or other caretaker of an animal. The rules are also proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.501, which states that the Board by rule shall develop a system of monitoring a license

holder's compliance with the requirements of the Veterinary Licensing Act; §801.356, which states that the Board by rule may establish the conditions under which a veterinarian may operate temporary limited-service veterinary clinics; §801.307, which allows the Board by rule to establish a minimum number of continuing education hours required to renew a license to practice veterinary medicine; and §801.203, which allows the Board by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the Board.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.41. Use of Prescription Drugs.

(a) It is unprofessional conduct for a licensed veterinarian to prescribe, administer, dispense, deliver, or order delivered any prescription drug without first having established a veterinarian/client/patient relationship and determined that such prescription drug is therapeutically indicated for the health and/or well-being of the animal(s). Prescription drugs include all controlled substances in Schedules I - V and legend drugs which bear the federal legends, recognized as such by any law of the State of Texas or of the United States.

(b) It shall be unprofessional and a violation of the rules of professional conduct for a licensed veterinarian to prescribe, provide, obtain, order, administer, possess, dispense, give, or deliver to or for any person prescription drugs that are not necessary or required for the medical care of animals, or where the use or possession of such drugs would promote addiction thereto. Prescription drugs are defined in subsection (a) of this section.

§573.42. Use of Scheduled Drugs in Training and/or Racing.

Any licensed veterinarian who prescribes, provides, obtains, orders, administers, possesses, dispenses, gives or delivers scheduled drugs to or for any animal solely for training or racing purposes and not for a medically sound reason has violated the Veterinary Licensing Act.

§573.43. Controlled Substances Registration.

(a) Subject to subsection (b) of this section, a licensed veterinarian may not prescribe, administer, dispense, deliver, or order delivered, any controlled substance unless the licensed veterinarian is currently registered with the federal Drug Enforcement Administration (DEA) and the Texas Department of Public Safety (DPS) to dispense controlled substances.

(b) The requirement for DEA registration is waived for a licensed veterinarian who is not registered with the DEA to dispense controlled if:

(1) a licensed veterinarian who is registered with the DEA to dispense controlled substances (registrant) supervises or employs the veterinarian who is not registered with the DEA to dispense controlled substances (non-registrant);

(2) the registrant has knowledge that the non-registrant is dispensing and/or administering controlled substances in the usual course of the non-registrant's duties;

(3) the registrant has given written permission for the non-registrant to dispense/administer under the registrant's license; and

(4) the registrant has actual knowledge that the non-registrant is currently registered with the DPS and holds a current DPS controlled substances certificate.

(c) A licensed veterinarian who is not registered with the DEA but is registered with the DPS to dispense controlled substances and holds a current DPS controlled substances certificate may dispense and administer controlled substances, but may not procure, purchase or issue a prescription for a controlled substance.

§573.44. Compounding Drugs.

(a) A veterinarian may only compound drugs for a specific animal or herd with which the veterinarian has established and maintained a valid veterinarian-client-patient relationship.

(b) A veterinarian may only compound drugs to treat a specific occurrence of a disease or condition, which threatens the health of the animal or will cause suffering or death if left untreated, that the veterinarian has observed and diagnosed in the particular patient for whom the compounded drugs are prescribed. The scale of compounding must not exceed the established need for specific compounded drugs for patients with which the veterinarian has established and maintained a valid veterinarian-client-patient relationship.

(c) Labeling Requirements.

(1) All compounded drugs must bear the labeling information required under §573.40 of this title (relating to Labeling of Medications Dispensed), as well as the following information:

(A) date on which the drug was compounded;

(B) name and strength of medically active ingredients;

(C) identity of treated animals;

(D) withdrawal/withholding times if needed; and

(E) condition or disease to be treated.

(2) In addition to the information listed in paragraph (1) of this subsection, compounded drugs dispensed to the client must also state a date dispensed and an expiration date, which should not exceed the length of the prescribed treatment.

(d) Limitations on Compounded Products.

(1) A veterinarian shall not compound if there is a FDA-approved, commercially available animal or human drug that, when used as labeled or in an extra-label fashion in its available dosage form and concentration, will appropriately treat the patient.

(2) A veterinarian shall only compound products made from FDA-approved commercially available animal or human drugs.

(3) A veterinarian shall not promote and/or distribute compounded drugs that are essentially similar to FDA-approved products.

(4) A veterinarian must ensure the safety and efficacy of a compounded drug, including but not limited to avoiding known drug incompatibilities and inappropriate combinations, and must use a pharmacist to perform drug compounding when the complexity of the compounding exceeds the veterinarian's knowledge, skill, facilities, or available equipment.

(e) Compounding for Food Producing Animals.

(1) For animals intended for human consumption, a veterinarian must establish an extended withdrawal interval for the compounded product sufficient to ensure food safety and may not compound from any drugs prohibited for use in food producing animals. The withdrawal period must be supported by scientific information, and the veterinarian shall note the method used to determine the withdrawal interval in the patient records.

(2) A veterinarian shall not compound if the compounded drug results in violative food residue, or any residue that may present a risk to public health.

(3) Compounding from a human drug for use in food-producing animals is not permitted if an approved animal drug can be used for compounding.

(4) Veterinarians shall ensure that procedures are in place to maintain the identity of treated animals, and shall note those procedures in the patient records.

(f) Limitations on Promotion and Sale of Compounded Drugs.

(1) A veterinarian shall not prepare for sale any compounded drugs which employ fanciful names or trade names, colorings or other additives, or that in any way imply that the compounds have some unique effectiveness or composition.

(2) A veterinarian shall not advertise, promote, display, resell , or in any other way market prepared compounded drugs.

(3) A veterinarian shall not offer compounded drugs to other state licensed veterinarians, pharmacists or other commercial entities for resale.

§573.45. Extra-Label or Off-Label Use of Drugs.

(a) Extra-label or off-label use is the actual or intended use of a drug in an animal that is not in accordance with the approved labeling, and includes, but is not limited to:

(1) compounded drugs;

(2) use in species not listed in the labeling;

(3) use for diseases or other conditions not listed in the labeling;

(4) use at dosage levels, frequencies, or routes of administration other than those stated in the labeling; and

(5) deviation from the labeled withdrawal time based on these different uses.

(b) A veterinarian must use his or her discretion in the off-label use of drugs for animals. In exercising such discretion, a veterinarian shall consider, to the extent possible:

(1) whether the off-label use of a drug meets the community standard of humane care and treatment set out in §573.22 of this title (relating to Professional Standard of Care);

(2) the established safety of the off-label usage;

(3) the inclusion of a drug in a standard veterinary formulary;

(4) analyses of off-label usage in the veterinary medical literature and in articles and commentaries written by the veterinarian's peers in the veterinary medical profession;

(5) information provided by the drug's manufacturer, vendor or the FDA as to whether off-label usage of a drug may present a risk to public health; and

(6) any other sources of pertinent information.

(c) If anticipated off-label use of a drug is not commonly accepted or used by average veterinarians in the community in which the veterinarian practices or if the off-label usage does not have an established safety record, the veterinarian shall orally or in writing inform the client that the off-label usage is not commonly accepted or used in the veterinary community and that such usage could pose a risk to the health of the animal. Any oral notification shall be recorded in the patient records.

(d) Extra-Label Drug Use in Food Producing Animals.

(1) For animals intended for human consumption, a veterinarian must establish an extended withdrawal interval sufficient to ensure food safety and may not compound from any drugs prohibited for use in food producing animals. The withdrawal period must be supported by scientific information, and the veterinarian shall note the method used to determine the withdrawal interval in the patient records.

(2) A veterinarian shall not prescribe an extra-label drug that will result in violative food residue, or any residue that may present a risk to public health.

(3) Veterinarians shall ensure that procedures are in place to maintain the identity of treated animals, and shall note those procedures in the patient records.

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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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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SUBCHAPTER F. RECORDS KEEPING

22 TAC §§573.51 - 573.55

The new rules are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151, which states that the Board may adopt rules necessary to administer the chapter; may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; may adopt rules to protect the public; and may adopt rules to ensure that equine dentistry is performed only by a veterinarian who is active and in good standing or by a licensed equine dental provider who is active and in good standing under the appropriate level of supervision of a veterinarian who is active and in good standing and who has established a veterinarian-client-patient relationship with the owner or other caretaker of an animal. The rules are also proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.501, which states that the Board by rule shall develop a system of monitoring a license holder's compliance with the requirements of the Veterinary Licensing Act; §801.356, which states that the Board by rule may establish the conditions under which a veterinarian may operate temporary limited-service veterinary clinics; §801.307, which allows the Board by rule to establish a minimum number of continuing education hours required to renew a license to practice veterinary medicine; and §801.203, which allows the Board by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the Board.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.51. Rabies Control.

(a) Only the vaccinating veterinarian shall issue official rabies vaccination certificates. Each certificate shall contain the information required by 25 TAC §169.29 (relating to Vaccination Requirement) adopted by the Department of State Health Services, including:

(1) owner's name, address and telephone number;

(2) animal identification species, sex (including neutered if applicable), approximate age (three months to 12 months, 12 months or older), size (pounds), predominant breed, and colors;

(3) vaccine used product name, manufacturer, and serial number;

(4) date vaccinated;

(5) date vaccination expires (re-vaccination due date);

(6) rabies tag number if a tag is issued; and

(7) veterinarian's signature, or electronic signature, or signature stamp and license number, in accordance with §573.10 of this title (relating to Suspension of Non-Licensed Persons).

(b) Each veterinarian that issues a rabies vaccination certificate, or the veterinary practice where the certificate was issued, shall retain a readily retrievable copy of the certificate for a period of not less than five years from the date of issuance.

(c) A veterinarian having knowledge of an animal bite to a human shall immediately report the incident to the local health authority. A veterinarian preparing an animal's body for rabies diagnosis shall comply with all requirements of 25 TAC §169.33 (relating to Submission of Specimens for Laboratory Examination) adopted by the Department of State Health Services.

(d) A veterinarian who ceases the practice of veterinary medicine shall deliver to the local health authority all duplicate rabies vaccination certificates issued by the veterinarian within the preceding five-year period. A veterinarian who sells or leases his practice to another veterinarian may transfer duplicate rabies certificates with the records of the practice which are transferred to a new owner.

§573.52. Veterinarian Patient Record Keeping.

(a) Individual records shall be maintained at the veterinarian's place of business, shall be complete, contemporaneous and legible and shall include, but are not limited to:

(1) name, address, and phone number of the client;

(2) identification of patient, including name, species, breed, age, sex, and description;

(3) patient history;

(4) dates of visits;

(5) any immunization records;

(6) weight if required for diagnosis or treatment. Weight may be estimated if actual weight is difficult to obtain;

(7) temperature if required for diagnosis or treatment except when treating a herd, flock, or a species, or an individual animal that is difficult to obtain a temperature;

(8) any laboratory analysis;

(9) any diagnostic images or written summary of results if unable to save image;

(10) differential diagnosis and/or treatment, if applicable;

(11) names, dosages, concentration, and routes of administration of each drug prescribed, administered and/or dispensed;

(12) other details necessary to substantiate or document the examination, diagnosis, and treatment provided, and/or surgical procedure performed;

(13) any signed acknowledgment required by §§573.14, 573.16, 573.17, and 573.18 of this title (relating to Alternate Therapies--Chiropractic and Other Forms of Musculoskeletal Manipulation, Alternate Therapies--Acupuncture, Alternate Therapies--Holistic Medicine, and Alternate Therapies--Homeopathy);

(14) the identity of the veterinarian who performed or supervised the procedure recorded;

(15) any amendment, supplementation, change, or correction in a patient record not made contemporaneously with the act or observation noted by indicating the time and date of the amendment, supplementation, change or correction, and clearly indicating that there has been an amendment, supplementation, change, or correction;

(16) the date and substance of any referral recommendations, with reference to the response of the client;

(17) the date and substance of any consultation concerning a case with a specialist or other more qualified veterinarian; and

(18) copies of any official health documents issued for the animal.

(b) Maintenance of Patient Records.

(1) Patient records shall be current and readily available for a minimum of five years from the anniversary date of the date of last treatment by the veterinarian.

(2) A veterinarian may destroy medical records that relate to any civil, criminal or administrative proceeding only if the veterinarian knows the proceeding has been finally resolved.

(3) Veterinarians shall retain patient records for such longer length of time than that imposed herein when mandated by other federal or state statute or regulation.

(4) Patient records are the responsibility and property of the veterinarian or veterinarians who own the veterinary practice, provided however, the client is entitled to a copy of the patient records pertaining to the client's animals.

(5) If the veterinarian discontinues his or her practice, the veterinarian may transfer ownership of records to another licensed veterinarian or group of veterinarians only if the veterinarian provides notice consistent with §573.55 of this title (relating to Transfer and Disposal of Patient Records) and the veterinarian who assumes ownership of the records shall maintain the records consistent with this chapter.

(c) When appropriate, veterinarians may substitute the words "herd", "flock" or other collective term in place of the word "patient" in subsections (a) and (b) of this section. Records to be maintained on these animals may be kept in a daily log, or the billing records, provided that the treatment information that is entered is adequate to substantiate the identification of these animals and the medical care provided. In no case does this eliminate the requirement to maintain drug records as specified by state and federal law and Board rules.

§573.53. Equine Dental Provider Patient Record Keeping.

(a) Individual records shall be complete, contemporaneous and legible and shall include, but are not limited to:

(1) name, address, and phone number of the client;

(2) identification of patient, including name, breed, age, sex, and description;

(3) patient history;

(4) dates of visits;

(5) other details necessary to substantiate or document the procedure performed; and

(6) any amendment, supplementation, change, or correction in a patient record not made contemporaneously with the act or observation noted by indicating the time and date of the amendment, supplementation, change or correction, and clearly indicating that there has been an amendment, supplementation, change, or correction.

(b) Maintenance of Patient Records.

(1) Patient records shall be current and readily available for a minimum of five years from the anniversary date of the date of last treatment by the equine dental provider.

(2) Patient records are the responsibility and property of the equine dental provider, provided however, that equine dental providers shall give copies of records to the owner or caretaker authorizing treatment of the patient at the time of treatment, and shall provide copies of records to the supervising veterinarian on request, within 15 business days of the request.

(3) An equine dental provider may destroy medical records that relate to any civil, criminal or administrative proceeding only if the equine dental provider knows the proceeding has been finally resolved.

§573.54. Patient Records Release and Charges.

(a) Release of records pursuant to request. Upon the request of the client or their authorized representative, the veterinarian shall furnish a copy of the patient records, including a copy of any radiographs requested, within 15 business days of the request, unless a longer period is reasonably required to duplicate the records.

(b) Contents of records. For purposes of this section, "patient records" shall include those records as defined in §573.52 of this title (relating to Veterinarian Patient Record Keeping).

(c) Allowable charges. The veterinarian may charge a reasonable fee for this service. A reasonable fee, shall include only the cost of:

(1) copying, including the labor and cost of supplies for copying;

(2) postage, when the individual has requested the copy or summary be mailed; and

(3) preparing a summary of the records when appropriate.

(d) Improper withholding for past due accounts. Patient records requested pursuant to a proper request for release may not be withheld from the client, the client's authorized agent, or the client's designated recipient for such records based on a past due account for care or treatment previously rendered to the patient.

§573.55. Transfer and Disposal of Patient Records.

(a) Required Notification of Discontinuance of Practice. When a veterinarian discontinues the provision of veterinary services without the continuation of their practice, he or she is responsible for ensuring that clients receive reasonable notification and are given the opportunity to obtain copies of their records or arrange for the transfer of their patient records to another veterinarian.

(b) Method of Notification.

(1) When a veterinarian discontinues the provision of veterinary services without the continuation of their practice, he or she shall provide notice to clients of when the veterinarian intends to terminate the practice or relocate, and will no longer be available to clients, and offer clients the opportunity to obtain a copy of their patient records.

(2) Notification shall be accomplished by:

(A) placing written notice in the veterinarian's office; and

(B) sending written notification to clients seen in the last three years notifying them of discontinuance of practice, or placing a notice in the local newspaper.

(c) Voluntary Surrender or Revocation of Veterinarian's License.

(1) Veterinarians who have voluntarily surrendered their licenses in lieu of disciplinary action or have had their licenses revoked by the Board must notify their clients, consistent with subsection (b) of this section, within 30 days of the effective date of the voluntary surrender or revocation.

(2) Veterinarians who have voluntarily surrendered their licenses in lieu of disciplinary action or have had their licenses revoked by the Board must obtain a custodian for their records to be approved by the Board within 30 days of the effective date of the voluntary surrender or revocation.

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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Loris Jones
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Texas Board of Veterinary Medical Examiners
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SUBCHAPTER G. OTHER PROVISIONS

22 TAC §§573.60, 573.61, 573.63 - 573.80

The new rules are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151, which states that the Board may adopt rules necessary to administer the chapter; may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; may adopt rules to protect the public; and may adopt rules to ensure that equine dentistry is performed only by a veterinarian who is active and in good standing or by a licensed equine dental provider who is active and in good standing under the appropriate level of supervision of a veterinarian who is active and in good standing and who has established a veterinarian-client-patient relationship with the owner or other caretaker of an animal. The rules are also proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.501, which states that the Board by rule shall develop a system of monitoring a license holder's compliance with the requirements of the Veterinary Licensing Act; §801.356, which states that the Board by rule may establish the conditions under which a veterinarian may operate temporary limited-service veterinary clinics; §801.307, which allows the Board by rule to establish a minimum number of continuing education hours required to renew a license to practice

veterinary medicine; and §801.203, which allows the Board by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the Board.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.60. Prohibition Against Treatment of Humans.

A veterinarian shall not provide care and treatment of humans including dispensing prescription medication for personal use by a human. A veterinarian may render first aid or emergency care to a human if such action is without expectation of compensation in response to an emergency or disaster situation.

§573.61. Minimum Security for Controlled Substances.

Veterinarians shall adhere to the following to ensure security of controlled substances:

(1) Establish adequate security to prevent unauthorized access to controlled substances.

(2) Establish adequate security to prevent the diversion of controlled substances.

(3) During the course of business activities, do not allow any individual access to controlled substances storage areas except those authorized agents required for efficient operations.

(4) Controlled substances listed in Schedules I, II, III, IV, and V shall be stored in a securely locked, substantially constructed cabinet or security cabinet.

(5) The term "substantially constructed cabinet" means the following:

(A) A structure of wood or metal so constructed as to resist any entry by simple tools of attack such as screw drivers, crow bars, tire tools, pry bars, etc. Hinges should not be mounted with bolts or screws on outside of door and the locking devices should be installed internally as in a dead bolt type or the device should be of a type that has protected mounting screws or bolts to inhibit removal. The cabinet should be permanently constructed or attached to the building structure or fixtures so as to prevent the cabinet from being physically removed from the premises. If the cabinet is a metal file cabinet type, it should be permanently attached to prevent easy removal and have an external locking bar that secures the drawer or drawers.

(B) A security cabinet or safe equivalent in construction to a Class 6 Mosler Government Sales Security Filing Cabinet or a Class 5 Mosler Government Safe.

(C) A cabinet less substantially constructed may meet security requirements provided the cabinet is located in a room or area entrance to which has been so constructed that hinge mountings inhibit removal and a limited number of employees have keys or combinations to locking device. If combination locks are utilized, the combination can be changed upon termination of employees having knowledge of the combination. A veterinarian must maintain a written list of all persons that have access to the controlled substances storage areas, including the dates on which individuals are added or deleted from the list.

§573.63. Inspection of Facilities and Records.

Licensees shall admit a representative of the Board, during regular business hours, to inspect equipment and business premises; examine and/or copy client and patient records, drug records, including, but not limited to, invoices, receipts, transfer documents, inventory logs, surgery logs; and all other associated records relating to the practice of veterinary medicine or equine dentistry.

§573.64. Continuing Education Requirements.

(a) Required Continuing Education Hours.

(1) Veterinary Licensees. Seventeen (17) hours of acceptable continuing education shall be required annually for renewal of all types of Texas veterinary licenses, except as provided in subsection (b) of this section. Veterinary licensees who successfully complete the Texas State Board Licensing Examination shall receive credit for 17 continuing education hours for the calendar year in which they were examined and licensed.

(2) Equine Dental Provider Licensees. Six (6) hours of acceptable continuing education shall be required annually for renewal of Texas equine dental provider licenses.

(3) A licensee shall earn the required hours of acceptable continuing education during the calendar year immediately preceding the licensee's application for license renewal. Should a licensee earn acceptable continuing education hours during the year in excess of the required hours, the licensee may carry over and apply the excess hours to the requirement for the next year. Licensees may carry over excess hours to the following year only, and may not carry over more hours than the licensee is required to earn in a calendar year.

(4) Hardship extensions may be granted by appeal to the Executive Director of the Board. The executive director shall only consider requests for a hardship extension from licensees who were prevented from completing the required continuing education hours due to circumstances beyond the licensee's control. A hardship extension generally will not be allowed due to financial hardship or lack of time due to a busy professional or personal schedule. Requests for a hardship extension must be received in writing and in the Board offices by no later than December 15. Should such extension be granted, twice the number of hours of continuing education required for a standard annual license renewal shall be obtained in the two-year period of time that includes the year of insufficiency and the year of extension. Licensees receiving a hardship extension shall maintain records of the of continuing education obtained and shall file copies of these records with the Board by attaching the records to the license renewal application submitted following the extension year, or by sending them to the Board separately if the licensee submits his or her renewal application electronically (on-line).

(b) Exemption from Continuing Education Requirements for Veterinary Licensees. A veterinary licensee is not required to obtain or report continuing education hours, provided that the veterinary licensee submits to the Board sufficient proof that during the preceding year the veterinary licensee was:

(1) in retired status;

(2) a veterinary intern or resident; or

(3) out-of-country on charitable, military, or special government assignments for at least nine (9) months in a year; or

(4) on inactive status. Veterinary licensees on inactive status may voluntarily acquire continuing education for purposes of reinstating his/her license to regular status.

(c) Make up Hours. The Board may require a licensee who does not complete the required hours of continuing education to make up the missed hours in later years. Hours required to be made up in a later year are in addition to the continuing education hours required to be completed in that year.

§573.65. Proof of Acceptable Continuing Education.

(a) Acceptable Continuing Education.

(1) Continuing Education hours shall be acceptable if they relate to clinical matters. For veterinary licensees, continuing education hours shall be acceptable if they relate to practice management.

(2) Acceptable continuing education hours shall be earned by:

(A) veterinary licensees attending meetings sponsored or co-sponsored by the American Veterinary Medical Association (AVMA), AVMA's affiliated state veterinary medical associations and/or their continuing education organizations, AVMA recognized specialty groups, regional veterinary medical associations, local veterinary medical associations, and AVMA-accredited veterinary medical colleges;

(B) equine dental provider licensees attending meetings sponsored or co-sponsored by the International Association of Equine Dentistry;

(C) veterinary licensees taking correspondence courses that require the licensee to take a test at the conclusion of the course and yield a certificate of completion;

(D) all licensees participating in verifiable, monitored on-line and video programs or other telecommunication discussions yield a certificate of completion and meet the following minimum standards:

(i) Inclusion of the following interactive experiences:

(I) direct, two-way verbal communication between attendees and the instructor at all times;

(II) direct, two way verbal communication between attendees at all times; and

(III) visual communication with the instructor;

(ii) The ability to document active participation by attendees through:

(I) verbal interaction and software documentation; and

(II) the use of real time on-line surveys that promote audience interaction and document the attendance and engagement of the participants;

(E) all licensees' self study, through any form of continuing education from which the licensee does not receive a certificate of completion, including reading articles in professional journals or periodicals, listening to audio tapes or CD's or viewing video tapes or similar devices that transmit a video image; or

(F) any other methods approved by the Executive Director and a Board member appointed by the Board president, by an advisory committee appointed by the Board president, or approved for veterinary licensees by the Registry of Approved Continuing Education (RACE) of the American Association of Veterinary State Boards (AAVSB).

(b) Distribution of Continuing Education Hours.

(1) Veterinary Licensees.

(A) Of the required seventeen (17) hours of continuing education for veterinary licensees, no more than five (5) hours may be derived from either:

(i) correspondence courses; or

(ii) practice management courses.

(B) Hours claimed for self study shall not exceed three (3) hours.

(C) Hours claimed for online interactive, participatory programs shall not exceed 10 hours.

(D) Notwithstanding the allowable hours provided in subparagraphs (A) - (C) of this paragraph, at least seven (7) hours must be obtained from personal attendance at live courses, seminars and meetings providing continuing education.

(2) Equine Dental Provider Licensees.

(A) None of the required six (6) hours of continuing education for equine dental provider licensees may be derived from either correspondence courses or practice management courses.

(B) Hours claimed from self study shall not exceed one (1) hour.

(C) Hours claimed from online interactive, participatory programs shall not exceed two (2) hours.

(D) Notwithstanding the allowable hours provided in subparagraphs (A) - (C) of this paragraph, at least four (4) hours must be obtained from personal attendance at live courses and seminars providing continuing education.

(c) Proof of Continuing Education.

(1) The licensee shall sign a statement on the licensee's annual license renewal form attesting to the fact that the required continuing education hours have been obtained. If the licensee renews his license electronically (on-line), the licensee shall input an affirmation that the required continuing education hours have been obtained.

(2) The licensee shall maintain records which support the signed statement or affirmation. These documents must be maintained for the last four (4) calendar years and shall be available at the practice location for inspection to Board investigators upon request.

(3) Proof of attendance at live, on-site courses may require sign-in procedures, course checklists, certificates of course completion and other measures as directed by the Board. If the licensee attends a multi-day course and the certificate of completion reflects only a total number of continuing education credits that can be earned, proof of attendance must include a pre-printed schedule, agenda, or brochure on which the licensee marks the actual courses or seminars the licensee personally attended.

(4) For proof of on-line interactive courses, the licensee must provide a certificate from the provider showing the nature of the course, date taken, and the hours given.

(5) For proof of self-study, the licensee must provide a signed statement showing details, including dates, of the articles or courses read, videos observed, or audios listened to, and hours claimed.

§573.66. Disciplinary Action for Non-Compliance with Continuing Education Requirements.

Failure to complete the required hours without obtaining a hardship extension from the executive director, failure to maintain required records, falsifying records, or intentionally misrepresenting programs for continuing education credit shall be grounds for disciplinary action by the Board.

§573.67. Continuing Education as Disciplinary Action.

(a) The Board may require a licensee who violates the Veterinary Licensing Act or the Board's Rules to participate in a program to acquire continuing education.

(b) Continuing education hours required under this subsection shall be in addition to the hours required of all licensees, and shall be:

(1) based on the seriousness of the violation; and

(2) relevant to the violation committed by the license holder.

§573.68. Monitoring Licensee Compliance.

(a) The Board shall conduct a compliance monitoring program to ensure that licensees comply with the requirements of Chapter 801, Texas Occupations Code (the Veterinary Licensing Act) and the Board's rules.

(b) The Board's compliance monitoring program shall include on-site inspections of licensees' practices and inspections by mail.

(c) After an inspection, licensees will normally be given 30 days to correct deficiencies and provide written documentation of the corrections. If no timely response is received within that time period, the inspection process will become an investigation and the Board will follow the formal investigative procedure.

(d) After an initial inspection, if the licensee does not make required corrections to noted deficiencies, investigators may recommend to the director of enforcement to open an investigation within the spirit and intent of the program. When a deficiency involves flagrant disregard of the law, including illegal practices; improper use of prescription drugs; failure to account for drugs dispensed or administered; failure to comply with controlled substance registration requirements, continuing education requirements, and sanitation; and drug diversion and/or abuse, the compliance inspection shall be terminated and the investigator will open an investigation and the violations will be referred to the director of enforcement as a complaint.

(e) When in a subsequent inspection a licensee is found to have failed to correct those deficiencies noted in the prior inspection, the investigator will advise the director of enforcement and the licensee that the licensee has continued to violate the Veterinary Licensing Act and/or Board rules.

(f) The Board may, on an unannounced basis, inspect licensees who have been ordered to perform certain acts as a result of a previous inspection to verify that the licensees performed the required acts. If the licensee is found to have refused or failed to comply with the Board order, the investigator will prepare a report documenting the failure to comply and the report will be submitted to the Board for appropriate disciplinary action.

§573.69. Conditions Relative to License Suspension.

If a Board disciplinary action is taken against a licensee that results in the suspension of a license for a specified period of time, the Board shall identify specific conditions (or prohibitions) relative to the suspension. The conditions (or prohibitions) should be clearly stated as part of the negotiated settlement or Board order. The following guidelines will be utilized when specifying the conditions of a license suspension.

(1) Licensees shall not practice nor give the appearance that they are practicing veterinary medicine or equine dentistry during the time of suspension. The Board may provide a notice of the Board's order of suspension for the licensee to post in the reception area or other place clearly visible to the public.

(2) Licensees shall not supervise other licensees, nor supervise, encourage, or allow any employee(s) who are not licensed to practice in Texas, to perform duties described as the practice of veterinary medicine or equine dentistry in the Veterinary Licensing Act, the Rules of Professional Conduct, and other policies of the Board.

(3) During the period of downtime, licensees shall notify all present and prospective employers of the Board order, including the terms, conditions, and restrictions imposed. Within 30 days of the effective date of the order and within 15 days of undertaking new employment, licensees shall cause their employers to provide written acknowledgment to the Board that they have read and understand the terms and conditions of the Board order.

(4) Licensees shall notify all veterinarians, equine dental providers, and veterinary technician employees with whom the licensee practices of the Board order and, within 30 days of the effective date of the order, licensees shall acknowledge to the Board in writing that this has been done.

(5) A sole practitioner's clinic or facilities may be used by the disciplined licensee for administrative purposes only. Examples are opening mail, referring patients, accepting payments on accounts, and general office tasks. In these instances, he/she must exercise extreme caution to not be persuaded, coerced, or otherwise drawn by anyone to practicing or even giving the appearance of practicing veterinary medicine or equine dentistry. The licensee may lease the clinic/practice to, or employ, another licensee to continue the clinic business during suspension.

(6) A disciplined veterinarian who owns/operates a clinic and employs associate veterinarians may enter the clinic or hospital for administrative purposes only, as cited in paragraph (5) of this section.

(7) Licensee shall abide by the Board's order and conform to all laws, rules, and regulations governing the practice of veterinary medicine and equine dentistry in Texas.

(8) If the Board receives information alleging that the licensee is practicing during the period of suspension (downtime), Board staff will initiate an investigation. If there is evidence to support the allegation, the licensee will be subject to further disciplinary action.

§573.70. Reporting of Criminal Activity.

(a) A licensee or an applicant for a license from the Board shall report to the Board no later than the 30th day after any indictment for, or a conviction for, any misdemeanor related to the practice of veterinary medicine or equine dentistry, or any indictment for or a conviction for a felony.

(b) On a finding by the Board that a licensee has engaged in non-drug related criminal conduct or committed a non-drug related felony or misdemeanor, other than a misdemeanor under the Uniform Act Regulating Traffic or Highways, Texas Civil Statutes, Article 6701d, or a similar misdemeanor traffic offense, the executive director shall notify the district attorney or county attorney of the county in which the licensee resides. The notice must be in writing and contain a copy of the Board's finding and any order of the Board relating to the licensee's conduct.

(c) On a finding by the Board that a licensee has engaged in drug related criminal conduct or committed a drug related felony or misdemeanor, the executive director shall notify the Narcotics Service, Texas Department of Public Safety and/or the U.S. Drug Enforcement Administration. The notice must be in writing and contain a copy of the Board's finding and any order of the Board relating to the licensee's conduct.

§573.71. Operation of Temporary Limited-Service Veterinary Services.

(a) Requirements for operation. Veterinarians operating temporary limited service clinics shall:

(1) maintain sanitary conditions at the clinic site, including, but not limited to, removal of animal solid waste and sanitizing/disinfecting of urine and solid waste sites;

(2) provide injections with sterile disposable needles and syringes;

(3) utilize a non-porous table for examining and/or injecting small animals;

(4) maintain biologics and injectable medications between temperature ranges of 35 to 45 degrees Fahrenheit;

(5) perform and complete blood and fecal examinations before dispensing relevant federal legend medications;

(6) maintain rabies vaccination records and treatment records for five years, indexed alphabetically by the client's last name and by vaccination tag numbers, if issued; and

(7) provide clients with a printed form that contains the identity of the administering veterinarian and the address of the places where the records are to be maintained.

(b) Required notification to the Board prior to operation. Before any temporary limited-service clinic may be operated, the veterinarian is required to provide notification to the Board office at least 48 hours before the clinic begins operation. Notice must include the veterinarian's full name, the specific location of where the clinic will be held, and times of operation. Notice may be by telephone call, facsimile electronic transmission, or mail. Mailed notice will be considered to have met the notification requirement if the written notice is postmarked at least five days prior to the operation of the clinic.

§573.72. Employment by Nonprofit or Municipal Corporations.

(a) A nonprofit or municipal corporation may employ or contract with a veterinarian to provide veterinary services in connection with sheltering, sterilization, vaccination, or other medical care and treatment of animals.

(b) Employment by or contractual service to a nonprofit or municipal corporation does not exempt the veterinarian from any of the provisions of the Veterinary Licensing Act or the Board's rules.

(c) Veterinarians employed by, or contracted to, nonprofit or municipal corporations shall be liable for any violations of the Act or rules occurring as a result of the practice of veterinary medicine or any veterinary services provided by the nonprofit or municipal corporation, including those occurring due to the acts or omissions of non-licensed employees of, or volunteers for, the nonprofit or municipal corporation.

§573.73. Animal Reproduction.

(a) The Board considers the following activities the practice of veterinary medicine as defined in the Veterinary Licensing Act, Texas Occupations Code, §801.002:

(1) surgical invasion of the reproductive tract of an animal, including laparoscopy and needle entry unless performed under the direct supervision of a veterinarian;

(2) obtaining, possessing or administering prescription or legend drugs for use in an animal without a valid prescription from a licensed veterinarian or in a properly labeled container dispensed by a licensed veterinarian; and

(3) a breeding soundness examination, which is defined as the assessment of an animal by a veterinarian to determine the animal's ability or potential for reproduction, and includes, but is not limited to, diagnosis by rectal palpation of reproduction structures, ultrasonography, semen collection and microscopic examination, serum/blood chemistry analysis, cytology, and biopsy of tissue.

(b) The activities described in this section do not affect those activities exempted from coverage of the Veterinary Licensing Act, Texas Occupations Code, §801.004.

§573.74. Management Services Organizations in Veterinary Practice.

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

(1) Control--the ability to order or dictate the delivery or the manner of delivery of any services or tasks. Consulting with another person regarding a service or task, or assisting in the performance of a service or task, does not constitute control.

(2) Intervene--directly altering the practice of veterinary medicine. Recommending or providing a service or supply or performing management services under this section does not constitute intervention.

(3) Management services--those services and activities relating to the operation of a veterinary practice exclusive of the practice of veterinary medicine.

(4) Management services organization--a person or entity that provides management services.

(5) Veterinary medical personnel--persons under the direct or general supervision, as defined by the Veterinary Licensing Act, Texas Occupations Code, §801.002, of a veterinarian who perform duties directly related to the practice of veterinary medicine.

(b) Management Services Contracts. A veterinarian or group of veterinarians, whether or not incorporated, may contract with a management services organization to provide management services.

(c) Prohibited Practices. A management services organization shall not control or intervene in a veterinarian's practice of veterinary medicine. Prohibited activities by a management services organization, whether or not authorized by contract, include but are not limited to:

(1) employing a veterinarian to practice veterinary medicine;

(2) determining the compensation of a veterinarian for the practice of veterinary medicine;

(3) controlling or intervening in a veterinarian's diagnosis, treatment, correction, change, manipulation, relief, or prevention of animal disease, deformity, defect, injury or other physical condition, including the prescription or administration of a drug, biologic, anesthetic, apparatus, or other therapeutic or diagnostic substance or technique;

(4) controlling or intervening in a veterinarian's selection or use of type or quality of medical supplies and pharmaceuticals to be used in the practice of veterinary medicine;

(5) determining the amount of time a veterinarian may spend with a patient;

(6) owning drugs, unless the drugs are owned in compliance with applicable Texas or federal law;

(7) owning and controlling the records of patients of the veterinarian;

(8) determining the fees to be charged by the veterinarian for the veterinarian's practice of veterinary medicine;

(9) mandating compliance with specific professional standards, protocols or practice guidelines relating to the practice of veterinary medicine;

(10) placing limitations or conditions upon communications that are clinical in nature with the veterinarian's clients;

(11) requiring a veterinarian to make referrals in violation of Texas Occupations Code §801.402(11); or

(12) penalizing a veterinarian for reporting violations of a law regulating the practice of veterinary medicine.

(d) Veterinarians, and entities in which veterinarians are the sole owner, shareholders or partners, are not prohibited from performing the activities set out in subsection (c)(1) - (10) of this section.

(e) Permitted Management Services. Permitted activities by a management services organization include but are not limited to:

(1) providing by lease, ownership or other arrangement:

(A) the facility used by the veterinarian in the practice of veterinary medicine;

(B) the medical equipment, instruments and supplies used by the veterinarian in the practice of veterinary medicine; and

(C) the business, office and similar non-medical equipment used by the veterinarian.

(2) providing for the repair, maintenance, renovation, replacement or otherwise of any facility or equipment used by the veterinarian in the practice of veterinary medicine;

(3) providing accounting, financial, payroll, bookkeeping, budget, investment, tax compliance and similar financial services to the veterinarian;

(4) providing information and information systems and services for the veterinarian so long as any patient records in these systems are clearly owned and freely accessed by the veterinarian;

(5) providing the services of billing and collection of the veterinarian's fees and charges;

(6) arranging for the collection or sale of the veterinarian's accounts receivable;

(7) providing advertising, marketing and public relations services in compliance with §§573.30 - 573.37 of this title (relating to Advertising, Endorsements and Certificates) pertaining to the practice of veterinary medicine;

(8) providing contract negotiation, drafting and similar services for the veterinarian;

(9) providing receptionist, scheduling, messaging and similar coordination services for the veterinarian;

(10) obtaining all licenses and permits necessary to operate a practice of veterinary medicine that may be obtained by a non-veterinarian, and assisting veterinarians in obtaining licenses and permits necessary to operate a practice of veterinary medicine that may be obtained only by a veterinarian, provided that the Executive Director of the Board approves the method of payment for veterinary license renewals paid by the management services organization;

(11) assisting in the recruiting, continuing education, training and legal and logistical peer review services for the veterinarian;

(12) providing insurance, purchasing and claims services for the veterinarian, and including the veterinarian and veterinary medical personnel on the same insurance policies and benefit plans as the management services organization;

(13) providing consulting, business and financial planning and business practice and other advice;

(14) establishing the price to be charged to the veterinary client for the goods and supplies provided or managed by the management services organizations;

(15) employing and controlling persons who:

(A) perform management services;

(B) are veterinarians employed by a management services organization to perform management services but not the practice of veterinary medicine; or

(C) perform management, administrative, clerical, receptionist, secretarial, bookkeeping, accounting, payroll, billing, collection, boarding, cleaning and other functions; or

(16) employing veterinary medical and other personnel, if a veterinarian present at the practice location who is in charge of veterinary medicine for that practice location at which the veterinary medical and other personnel work has the right to:

(A) control the medically related procedures, duties, and performance of the veterinary medical and other personnel; and

(B) suspend for medically related reasons the veterinary medical and other personnel unless the suspension is contrary to law, regulation or other legal requirements.

(f) Disclosure of Contracts.

(1) A veterinarian or a group of veterinarians that contract with a management services organization shall:

(A) make available for inspection by the Board at the main office of the veterinarian or group of veterinarians, pursuant to §573.66 of this title (relating to Disciplinary Action for Non-Compliance with Continuing Education Requirements), copies of the contracts with the management services organizations; and

(B) if the Board opens an investigation against a veterinarian or a group of veterinarians, make available to the Board copies of the contracts with the management services organizations.

(2) Copies of contracts produced under this subsection shall be governed by the Veterinary Licensing Act, Texas Occupations Code, §801.207.

§573.75. Duty to Cooperate with Board.

A licensee shall:

(1) cooperate fully with any Board inspection or investigation; and

(2) respond within twenty-one (21) days of receipt to requests for information regarding complaints and other requests for information from the Board, except where:

(A) the Board in contacting a licensee imposes a different response date; or

(B) the licensee is unable for good cause to meet the response date and requests a different response date.

§573.76. Notification of Licensee Addresses.

(a) Each licensee shall report to the Board the licensee's:

(1) name and license number;

(2) clinic or practice name;

(3) physical business address;

(4) mailing address;

(5) residence address;.

(6) business telephone number; and

(7) residence and/or cellular telephone number.

(b) A mailing address may be a post office box number. If a remote practice location does not have a physical business address, the licensee must provide as the physical business address sufficient directions as to how the practice location may be found.

(c) A relief veterinarian shall not be required to provide a clinic or practice name or a physical business address unless the relief veterinarian regularly conducts the largest percentage of his or her relief work at one clinic.

(d) A licensee who conducts a mobile practice with no fixed clinic location shall not be required to provide a physical business address.

(e) A licensee shall notify the Board of any change of items required under subsection (a) of this section not later than the 60th day after the change takes place.

§573.77. Sterilization of Animals from Releasing Agencies.

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

(1) Releasing agency--a public or private animal pound, shelter, or humane organization. This term does not include an individual who occasionally renders humane assistance or shelter in the individual's home to a dog or cat.

(2) Animal--a dog or cat.

(3) Microchip--a transponder that is placed under an animal's skin by an injector and can be read by a microchip scanner.

(4) Tattoo--a permanent etching formed by injecting ink into the basal layer of the epidermis of an animal.

(b) Sterilization required. A new owner of an animal released from a releasing agency must have the animal sterilized in accordance with Chapter 828, Health and Safety Code.

(c) Identification markers. An animal sterilized under this section must be identified by a microchip and/or a tattoo indicating that it has been sterilized.

(1) A new owner of an animal with a microchip shall be responsible for providing information to the data base registry of the microchip manufacturer indicating that the animal has been sterilized.

(2) A tattoo must:

(A) be placed on the inside of the animal's thigh near the abdomen or on the caudal-ventral abdomen;

(B) be imprinted with ink that is manufactured in the United States;

(C) meet the standards of the federal Food and Drug Administration for tattooing;

(D) be of a contrasting color to the predominant color of the skin in which it is tattooed; and

(E) consist of the universal symbol for male or female overlain by a slash through the circle to indicate sterilization.

§573.78. Default on Student Loan/Child Support Payments.

(a) A licensee who has defaulted on a student loan or breached a student loan repayment contract by failing to perform his or her service obligation under the contract, or any other agreement between the licensee and the administering entity, relating to payment of a student loan may be subject to disciplinary action by the Board.

(b) A licensee, who has a final order under Chapter 232 of the Texas Family Code suspending the license for failure to pay child-support and/or where the Office of the Attorney General has notified the Board to not renew the license for failure to pay child-support, may be subject to disciplinary action by the Board.

§573.79. Maintenance of Sanitary Premises.

Licensees must maintain their offices/clinics/hospitals in a clean and sanitary condition without any accumulation of trash, debris, or filth. Such premises shall be maintained in full compliance with all health requirements of the city or county in which located and in conformity with the health laws of the State of Texas; further, they shall use properly sterilized instruments and clean supplies.

§573.80. Definitions.

The following words and terms, when used in the Veterinary Licensing Act (Chapter 801, Texas Occupations Code) or the Rules of the Board (Texas Administrative Code, Title 22, Part 24, Chapters 571 - 577) shall have the following meanings, unless the context clearly indicates otherwise:

(1) Accepted livestock management practices--those practices involving animals raised or produced primarily for food, fiber, or other products for human consumption, and may include the following:

(A) branding, tattooing, ear tags or identifying marks of any kind;

(B) tail docking, except cosmetic tail docking that is performed for appearance purposes only;

(C) earmarking;

(D) routine dehorning, except cosmetic dehorning that reshapes or alters the poll area for appearance purposes;

(E) castration;

(F) non-surgical assistance with birthing;

(G) implantation with approved implant products;

(H) administration of a biologic, except where restricted by law to administration by a veterinarian, and not including deworming by use of stomach tubing;

(I) artificial insemination;

(J) shoeing and trimming hooves; and

(K) application or administration of parasiticides, except where restricted by law.

(2) Designated caretaker--a person to whom the owner of an animal has given specific authority to care for the animal and who has not been designated, by using the pretext of being a designated caretaker, to circumvent the Veterinary Licensing Act (Chapter 801, Texas Occupations Code) by engaging in any aspect of the practice of veterinary medicine (including alternate therapies). A designated caretaker who treats an animal for a condition that the animal was known or suspected of having prior to the person being named a designated caretaker, is presumed to be attempting to circumvent the Veterinary Licensing Act unless the designated caretaker is following the instruction of a veterinarian and is under the appropriate level of supervision per board rules. In this situation, the designated caretaker may present evidence to rebut the presumption.

(3) Food production animals--any mammalians, poultry, fowl, fish or other animals that are raised primarily for human food consumption.

(4) Biologic--any serum, vaccine, antitoxin, or antigen used in the prevention or treatment of disease.

(5) Pregnancy testing--the diagnosis of the physical condition of pregnancy by any method other than the gross visual observation of the animal.

(6) Invasive dentistry or invasive dental procedures--exposing of the dental pulp, or performing extractions.

(7) Consultation--the act of rendering professional advice (diagnosis and prognosis) about a specific veterinary medical case, but does not include treatment or surgery.

(8) General Supervision--a veterinarian required to generally supervise a non-veterinarian must be readily available to communicate with the person under supervision.

(9) Direct Supervision--a veterinarian required to directly supervise a non-veterinarian must be physically present on the same premises as the person under supervision.

(10) Immediate Supervision--a veterinarian required to immediately supervise a veterinarian must be within audible and visual range of both the animal patient and the person under supervision.

(11) Official Health Documents--any document(s) relating to the health, vaccination status, physical condition and/or soundness of an animal signed by a veterinarian or issued under the veterinarian's name.

(12) Specialist--a veterinarian that is a Board Certified Diplomate of a specialty organization recognized by the American Veterinary Medical Association.

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 January 12, 2012.

TRD-201200129
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: February 26, 2012
For further information, please call: (512) 305-7563

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 229. FOOD AND DRUG
SUBCHAPTER K. TEXAS FOOD ESTABLISHMENTS

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§229.162, 229.164, 229.165, 229.167, 229.171, and the repeal of §229.173, concerning the regulation of food service establishments.

BACKGROUND AND PURPOSE

The amendments and repeal are necessary to comply with Senate Bill (SB) 81, 82nd Legislature, Regular Session, 2011 amended Health and Safety Code, Chapters 431 and 437; House Bill (HB) 3065, 82nd Legislature, Regular Session, 2011 repealed Health and Safety Code, Chapter 438, Subchapter E; and HB 3012, 81st Legislature, Regular Session, 2009 amended Health and Safety Code, Chapters 437 and 438. These bills require the department to include definitions such as farmers' market and cottage food production and for foods that may be sold at food service establishments including agricultural products, potentially hazardous (time/temperature control for safety) foods, eggs, and egg products; repeal the requirement for a Heimlich Maneuver poster to be posted in food service establishments; and adopt rules concerning bare-hand contact with ready-to-eat foods.

SECTION-BY-SECTION SUMMARY

Concerning §229.162, definitions are amended or added to incorporate terminology due to the enactment of SB 81, with renumbering as needed.

New §229.162(3) defines "agricultural product" to specify food and products sold to consumers at a farmers' market.

New §229.162(20) defines "cottage food production" operation to specify what types of food production methods can be performed in a residential setting.

Concerning §229.162(30), the definition of "egg" is amended to include the shell egg of the quail species and to clarify that "egg" does not include reptilian eggs, baluts or egg products.

New §229.162(31) defines "egg product" for clarification.

New §229.162(38) defines "farmers' market" in compliance with Health and Safety Code, §437.0201.

Concerning §229.162(44), the definition of "food establishment" is amended to specify that a "farmers' market" is a food establishment and a "cottage food production operation" is not a food establishment.

Concerning §229.162(78), the definition of "potentially hazardous food" is revised to update terminology applicable to this subchapter.

Concerning §229.162(79), the definition of "poultry" is revised to include ratites and squabs.

Concerning §229.164(e)(1)(D)(iii), the amended language requires that documentation be maintained at the food establishment listing the foods and food handling activities involving bare-hand contact with ready-to-eat foods.

Concerning §229.164(e)(1)(D)(iv), this clause was formerly clause (iii) and has been renumbered and reorganized to improve the clarity and flow of the rules.

Concerning §229.164(p)(1), the term "regulatory authority" replaces the term "department." This is to conform with the terminology in §229.171(c)(1) and (2) of the rules, and to correct an error.

Concerning §229.165(f)(11)(A)(ii), "§229.164 of this title" replaces "Chapter 3." This is to conform with the Texas Administrative Code format, and to correct an error.

Concerning §229.167(c)(3), the term "cove" replaces the term "covered." This is to correct a typographical error.

Concerning §229.171(j)(6), the Figure: 25 TAC §229.171(j)(6), is amended to delete the term "Heimlich" in line 26 of the Retail Food Establishment Inspection Report because the requirement to post a Heimlich Maneuver poster has been repealed.

Concerning §229.173, the section is repealed because the statutory requirement to post a Heimlich Maneuver poster has been repealed.

The department has also made corrections and updates to citations and other references throughout the proposed rules.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of these sections. The public benefit anticipated as a result of enforcing or administering these sections is to ensure the continued protection of public health and provide to consumers food that is safe, unadulterated, and honestly presented.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by 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 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.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Ruth Hendy, Food Establishments Group, Environmental and Consumer Safety Section, Division of Regulatory Services, Department of State Health Services, Mail Code, 1987, P.O. Box 149347, Austin, Texas 78714-9347 (512) 834-6753, extension 2050, or by email to ruth.hendy@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the Food Establishments Group website (222.dshs.state.tx.us/foodestablishments). Please contact Ruth Hendy at (512) 834-6753, extension 2050, or ruth.hendy@dshs.state.tx.us if you have questions.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

25 TAC §§229.162, 229.164, 229.165, 229.167, 229.171

STATUTORY AUTHORITY

The amendments are authorized under Health and Safety Code, Chapters 431, 437 and 438, which require the Executive Commissioner to adopt rules regarding farmers' markets and to make other rule amendments; 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.

The amendments affect the Health and Safety Code, Chapters 431, 437, 438, and 1001; and Government Code, Chapter 531.

§229.162. Definitions.

The following definitions apply in the interpretation and application of this Code.

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

(3) Agricultural product--An agricultural, apicultural, horticultural, silvicultural, or viticultural, or fish or other aquatic species product, either in its natural or processed state, that has been produced, processed, or otherwise had value added for use as human food.

(4) [~~(3)~~] Approved--Acceptable to the regulatory authority based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

(5) [~~(4)~~] a_w --Water activity which is a measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol a_w.

(6) [~~(5)~~] Bed and Breakfast--

(A) Bed and Breakfast Limited means:

(i) an establishment with seven or fewer rooms for rent;

(ii) an establishment that serves breakfast to overnight guests;

(iii) the establishment is not a retail food establishment; and

(iv) the owner or manager shall successfully complete a food manager's certification course accredited by the department.

(B) Bed and Breakfast Extended means:

(i) an establishment with more than seven rooms for rent; or

(ii) an establishment that provides food service other than breakfast to overnight guests; and

(iii) the establishment must meet the specific requirements as outlined in §229.174 of this title (relating to Bed and Breakfast Extended Establishments).

(C) Bed and Breakfast Food Establishment means:

(i) an establishment that provides food service other than to its overnight guests; and

(ii) the establishment must meet the rules and regulations applicable to retail food establishments.

(7) [~~(6)~~] Beverage--A liquid for drinking, including water.

(8) [~~(7)~~] Bottled drinking water--Water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.

(9) [~~(8)~~] Casing--A tubular container for sausage products made of either natural or artificial (synthetic) material.

(10) [~~(9)~~] Certification number--A unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program.

(11) [~~(10)~~] Child care center--Any facility licensed by the regulatory authority to receive 7 [~~13~~] or more children for child care, which prepares food for on-site consumption.

(12) [~~(11)~~] CIP--Cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine except that CIP does not include the cleaning of equipment such as band saws, slicers, or mixers that are subjected to in-place manual cleaning without the use of a CIP system.

(13) [~~(12)~~] Code of Federal Regulations (CFR)--Citations in these rules to the CFR refer sequentially to the Title, Part, and Section numbers, such as 21 CFR §178.1010 refers to Title 21, Part 178, §1010. The compilation of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the federal government which:

(A) is published annually by the U.S. Government Printing Office; and

(B) contains FDA rules in 21 CFR, USDA rules in 7 CFR and 9 CFR, EPA rules in 40 CFR, and Wildlife and Fisheries rules in 50 CFR.

(14) [~~(13)~~] Commingle--

(A) To combine shellstock harvested on different days or from different growing areas as identified on the tag or label; [~~,~~] or

(B) To combine shucked shellfish from containers with different container codes or different shucking dates.

(15) [~~(14)~~] Comminuted--Reduced in size by methods including chopping, flaking, grinding, or mincing. The term includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef, and sausage; and a mixture of two or more types of meat that have been reduced in size and combined, such as sausages made from two or more meats.

(16) [~~(15)~~] Common dining area--A central location in a group residence where people gather to eat at mealtime. The term does not apply to a kitchenette or dining area located within a resident's private living quarters.

(17) [~~(16)~~] Confirmed disease outbreak--A foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative agent and epidemiological analysis implicates the food as the source of the illness.

(18) [~~(17)~~] Consumer--A person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.

(19) [~~(18)~~] Corrosion-resistant material--A material that maintains acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.

(20) Cottage Food Production Operation--An individual, operating out of the individual's home, who:

(A) produces a baked good, a canned jam or jelly, or a dried herb or herb mix for sale at the person's home;

(B) has an annual gross income of $50,000 or less from the sale of the food described by subparagraph (A) of this paragraph; and

(C) sells foods produced under subparagraph (A) of this paragraph only directly to consumers.

(21) [~~(19)~~] Critical control point--A point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

(22) [~~(20)~~] Critical item--A provision of these rules, that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental health hazard.

(23) [~~(21)~~] Critical limit--The maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

(24) [~~(22)~~] Department--The Department of State Health Services.

(25) [~~(23)~~] Disclosure--A written statement that clearly identifies the animal-derived foods which are, or can be ordered, raw, undercooked, or without otherwise being processed to eliminate pathogens in their entirety, or items that contain an ingredient that is raw, undercooked, or without otherwise being processed to eliminate pathogens.

(26) [~~(24)~~] Drinking water--

(A) "Drinking water" means water that meets 30 TAC[~~,~~] §§290.101 - 290.114, 290.117 - 290.119, 290.121 (relating to Drinking

Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems).

(B) Drinking water is traditionally known as "potable water."

(C) Drinking water includes the term "water" except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "nondrinking" water.

(27) [~~(25)~~] Dry storage area means a room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single-service items.

(28) [~~(26)~~] Easily cleanable--

(A) Easily cleanable means a characteristic of a surface that:

(i) allows effective removal of soil by normal cleaning methods;

(ii) is dependent on the material, design, construction, and installation of the surface; and

(iii) varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use.

(B) Easily cleanable includes a tiered application of the criteria that qualify the surface as easily cleanable as specified under subparagraph (A) of this paragraph to different situations in which varying degrees of cleanability are required such as:

(i) the appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining; or

(ii) the need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.

(29) [~~(27)~~] Easily movable--

(A) Portable; mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of equipment for cleaning; and

(B) Having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

(30) Egg--

(A) Egg means the shell egg of avian species such as chicken, duck, goose, guinea, quail, ratites or turkey.

(B) Egg does not include:

(i) a balut;

(ii) the egg of reptile species such as alligator; or

(iii) an egg product.

[~~(28) Egg--The shell egg of the domesticated chicken, turkey, duck, goose, or guinea.~~]

(31) Egg product--

(A) All, or a portion of, the contents found inside eggs separated from the shell and pasteurized in a food processing plant, with or without added ingredients, intended for human consumption, such as dried, frozen or liquid eggs.

(B) Egg product does not include food which contains eggs only in a relatively small proportion such as cake mixes.

(32) [~~(29)~~] Employee--The permit holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.

(33) [~~(30)~~] EPA--The U.S. Environmental Protection Agency.

(34) [~~(31)~~] Equipment--

(A) Equipment means an article that is used in the operation of a food establishment such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.

(B) Equipment does not include items used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.

(35) [~~(32)~~] Exclude--To prevent a person from working as a food employee or entering a food establishment except for those areas open to the general public.

(36) [~~(33)~~] Exotic animal--Member of a species of game not indigenous to this state including axis deer, nilga antelope, red sheep, or other cloven-hoofed ruminant animals. Exotic animals are considered livestock as defined in these rules and are amenable to inspection under [~~Texas~~] Health and Safety Code, [~~Chapter 433,~~] §433.035 (Inspection and Other Regulation of Exotic Animals in Interstate Commerce).

(37) [~~(34)~~] FDA--The U.S. Food and Drug Administration.

(38) Farmers' market--A designated location used primarily for the distribution and sale directly to consumers of food products by farmers or other producers of agricultural products.

(39) [~~(35)~~] Fish--

(A) Fish means fresh or saltwater finfish, crustaceans and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption.

(B) Fish includes an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner.

(40) [~~(36)~~] Food--A raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(41) [~~(37)~~] Foodborne disease outbreak--The occurrence of two or more cases of a similar illness resulting from the ingestion of a common food.

(42) [~~(38)~~] Food-contact surface--

(A) A surface of equipment or a utensil with which food normally comes into contact; or

(B) A surface of equipment or a utensil from which food may drain, drip, or splash:

(i) into a food; or

(ii) onto a surface normally in contact with food.

(43) [~~(39)~~] Food employee--An individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

(44) [~~(40)~~] Food establishment--

(A) Food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

(i) such as a restaurant; retail food store; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; farmers' market; vending location; conveyance used to transport people; institution; or food bank; and

(ii) that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not potentially hazardous (time/temperature control for safety) foods;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) a food processing plant including those that are located on the premises of a food establishment;

(iv) a kitchen in a private home if only food that is not potentially hazardous (time/temperature control for safety) food is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law;

(v) an area where food that is prepared as specified in clause [~~subparagraph (C)~~] (iv) of this subparagraph [~~paragraph~~] is sold or offered for human consumption;

(vi) a Bed and Breakfast Limited facility as defined in these rules; [~~or~~]

(vii) a private home that receives catered or home-delivered food; or [~~.~~]

(viii) a cottage food production operation.

(45) [~~(41)~~] Food processing plant--

(A) Food processing plant means a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer.

(B) Food processing plant does not include a food establishment as defined under paragraph (44) [~~(40)~~] of this section.

(46) [~~(42)~~] Game animal--

(A) Game animal means an animal, the products of which are food, that is not classified as cattle, sheep, swine, goat, horse, mule, or other equine in 9 CFR 301, Definitions; as poultry in 9 CFR 381, Poultry Products Inspection Regulations; or as fish as defined under paragraph (39) [~~(35)~~] of this section.

(B) "Game animal" includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat, and nonaquatic reptiles such as land snakes.

(C) "Game animal" does not include ratites such as ostrich, emu, and rhea.

(47) [~~(43)~~] General use pesticide--A pesticide that is not classified by EPA for restricted use as specified in 40 CFR §152.175.

(48) [~~(44)~~] Grade A standards--The requirements of the United States Public Health Service/FDA "Grade A Pasteurized Milk Ordinance" with which certain fluid and dry milk and milk products comply.

(49) [~~(45)~~] Group residence--A private or public housing corporation or institutional facility that provides living quarters and meals. The term includes a domicile for unrelated persons such as a retirement home, correctional facility, or a long-term care facility.

(50) [~~(46)~~] Hazard Analysis Critical Control Point (HACCP)--A systematic approach to the hazard identification, evaluation, and control of food safety hazards.

(51) [~~(47)~~] HACCP plan--A written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

(52) [~~(48)~~] Hazard--A biological, chemical, or physical property that may cause an unacceptable consumer health risk.

(53) [~~(49)~~] Hermetically sealed container--A container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

(54) [~~(50)~~] Highly susceptible population--Persons who are more likely than other people in the general population to experience foodborne disease because they are:

(A) immunocompromised; preschool age children, or older adults; and

(B) obtaining food at a facility that provides services such as custodial care, health care, or assisted living, such as a child or adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.

(55) [~~(51)~~] Imminent health hazard--A significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on:

(A) the number of potential injuries; and

(B) the nature, severity, and duration of the anticipated injury.

(56) [~~(52)~~] Injected--Manipulating a meat so that infectious or toxigenic microorganisms may be introduced from its surface to its interior through tenderizing with deep penetration or injecting the meat such as by processes which may be referred to as "injecting," "pinning," or "stitch pumping."

(57) [~~(53)~~] Juice--When used in the context of food safety, the aqueous liquid expressed or extracted from one or more fruits or vegetables, purées of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or purée. Juice includes juice

as a whole beverage, an ingredient of a beverage and a purée as an ingredient of a beverage.

(58) [~~(54)~~] Kitchenware--Food preparation and storage utensils.

(59) [~~(55)~~] Law--Applicable local, state, and federal statutes, regulations, and ordinances.

(60) [~~(56)~~] Linens--Fabric items such as cloth hampers, cloth napkins, tablecloths, wiping cloths, and work garments including cloth gloves.

(61) [~~(57)~~] Livestock--Cattle, sheep, swine, goats, horses, mules, other equine, poultry, domesticated rabbits, exotic animals, and domesticated birds. Livestock are amenable to inspection.

(62) [~~(58)~~] Meat--The flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish, poultry, exotic animals as specified in §229.164(b)(7)(A)(ii) and (iii), and wild game animals as specified in §229.164(b)(7)(B)(iii) and (iv) of this title (relating to Food) that is offered for human consumption.

(63) [~~(59)~~] mg/L--Milligrams per liter, which is the metric equivalent of parts per million (ppm).

(64) [~~(60)~~] Mobile food establishment--A vehicle mounted food establishment that is readily moveable.

(65) [~~(61)~~] Molluscan shellfish--Any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

(66) [~~(62)~~] Outfitter operation--Any operation such as trail rides or river raft trips where food is offered to patrons and which operates out of a central preparation location or food establishment.

(67) [~~(63)~~] Packaged--

(A) Packaged means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant.

(B) Packaged does not include a wrapper, carry-out box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.

(68) [~~(64)~~] Permit--The document issued by the regulatory authority that authorizes a person to operate a food establishment.

(69) [~~(65)~~] Permit holder--The entity that:

(A) is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person; and

(B) possesses a valid permit to operate a food establishment.

(70) [~~(66)~~] Person--An association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

(71) [~~(67)~~] Person in charge--The individual present at a food establishment who is responsible for the operation at the time of inspection.

(72) [~~(68)~~] Personal care items--

(A) Personal care items means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance.

(B) Personal care items include items such as medicines; first aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.

(73) [~~(69)~~] pH--The symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between 0 and 7 indicate acidity and values between 7 and 14 indicate alkalinity. The value for pure distilled water is 7, which is considered neutral.

(74) [~~(70)~~] Physical facilities--The structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

(75) [~~(71)~~] Plumbing fixture--A receptacle or device that:

(A) is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system; or

(B) discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

(76) [~~(72)~~] Plumbing system--The water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.

(77) [~~(73)~~] Poisonous or toxic materials--Substances that are not intended for ingestion and are included in four categories:

(A) cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

(B) pesticides, except sanitizers, which include substances such as insecticides and rodenticides;

(C) substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and

(D) substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

(78) [~~(74)~~] Potentially hazardous food (PHF) (Time/Temperature Control for Safety Food (TCS))--

(A) Potentially hazardous food (Time/Temperature Control for Safety Food) [~~(PHF)~~] means a food that requires time and temperature control for safety [~~(TCS)~~] to limit pathogenic microorganism [~~pathogen~~] growth or toxin production.

(B) Potentially hazardous food (Time/temperature Control for safety food) includes:

(i) an animal food that is raw or heat-treated; a plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation; and

(ii) except as specified in subparagraph (C)(iv) of this paragraph a food that because of the interaction of it's a_w pH values

is designated as Product Assessment Required (PA) in Table A or B of this clause:

(I) Table A. Interaction of pH and a_w for control of spores in food heat-treated to destroy vegetative cells and subsequently packaged.
Figure: 25 TAC §229.162(78)(B)(ii)(I)

(II) Table B. Interaction of pH and a_w for control of vegetative cells and spores in food not heat-treated or heat-treated but not packaged.
Figure: 25 TAC §229.162(78)(B)(ii)(II)

~~*[(i)* an animal food (a food of animal origin), including fresh shell eggs, that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support growth as specified under subparagraph (A) of this paragraph; and]~~

~~*[(ii)* a food whose pH/a_w interaction is designated as PHF/TCS in one of the tables listed in subparagraph (D) of this paragraph, unless a product assessment or vendor documentation acceptable to the regulatory authority is provided.]~~

(C) Potentially hazardous food (time/temperature control for safety food) does not include:

(i) an air-cooled hard-boiled egg with shell intact, or an egg with shell intact that is not hard-boiled, but has been pasteurized to destroy all viable salmonellae;

(ii) a food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution;

(iii) a food that because of its pH or a_w value, or interaction of a_w and pH values, is designated as a non-PHF/non-TCS food in Table A or B in subparagraph (B)(ii)(I) and (II) of this paragraph;

(iv) a food that is designated as PA in Table A or B in subparagraph (B)(ii)(I) and (II) of this paragraph and has undergone a Product Assessment showing that the growth or toxin formation of pathogenic microorganisms that are reasonably likely to occur in that food is precluded due to:

(I) intrinsic factors including added or natural characteristics of the food such as preservatives, antimicrobials, humectants, acidulants, or nutrients;

(II) extrinsic factors including environmental or operational factors that affect the food such as packaging, modified atmosphere such as reduced oxygen packaging, shelf life and use, or temperature range of storage and use; or

(III) a combination of intrinsic and extrinsic factors; or

(v) a food that does not support the growth or toxin formation of pathogenic microorganisms in accordance with clauses (i) - (iv) of this subparagraph even though the food may contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.

~~*[(i)* an air-cooled hard-boiled egg with shell intact, or a shell egg that is not hard-boiled, but has been treated to destroy all viable Salmonellae;]~~

~~*[(ii)* a food whose pH/a_w interaction is designated as non-PHF/non-TCS in one of the tables in subparagraph (D) of this paragraph;]~~

~~*[(iii)* a food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution;]~~

~~*[(iv)* a food for which a product assessment, including laboratory evidence, demonstrates that time and temperature control for safety is not required and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or]~~

~~*[(v)* a food that does not support the growth of microorganisms as specified under subparagraph (A) of this paragraph even though the food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.]~~

~~[(D) Potentially hazardous food does not include food that, because of pH, wateractivity (a_w) or the interaction of pH and a_w, is considered non-PHF/non-TCS in Table A or B below. Guidance for using the tables is provided in the document entitled "Using pH, a_w, or the Interaction of pH and a_w to Determine If a Food Requires Time/Temperature Control for Safety (TCS)". Copies of the guidance document may be downloaded from the following website: http://www.dshs.state.tx.us, or may be obtained from the department, 1100 West 49th Street, Austin, Texas 78756-3182.]~~

~~*[(i)* Table A.]~~
~~[Figure: 25 TAC §229.162(74)(D)(i)]~~

~~*[(ii)* Table B.]~~
~~[Figure: 25 TAC §229.162(74)(D)(ii)]~~

(79) [~~(75)~~] Poultry--

(A) [~~Poultry means:~~]

[(i)] any domesticated bird (chickens, turkeys, ducks, geese, [~~or~~] guineas, ratities, or squabs), whether live or dead, as defined in the Health and Safety Code, [~~Chapter 433,~~] §433.003; and

(B) [~~(ii)~~] any migratory waterfowl, or game bird, [~~such as~~] pheasant, partridge, quail, grouse, [~~or guinea,~~] or pigeon [~~or squab~~], whether live or dead, as defined in the Health and Safety Code, [~~Chapter 433,~~] §433.003.

~~[(B) Poultry does not include ratities.]~~

(80) [~~(76)~~] Premises--

(A) The physical facility, its contents, and the contiguous land or property under the control of the permit holder; or

(B) The physical facility, its contents, and the land or property not described under subparagraph (A) of this paragraph if its facilities and contents are under the control of the permit holder and may impact food establishment personnel, facilities, or operations, and a food establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

(81) [~~(77)~~] Primal cut--A basic major cut into which carcasses and sides of meat are separated, such as a beef round, pork loin, lamb flank, or veal breast.

(82) [~~(78)~~] Public water system has the meaning stated in 30 Texas Administrative Code (TAC), §§290.101 - 290.121 (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems).

(83) [~~(79)~~] Pushcart--A non self-propelled mobile food unit limited to serving nonpotentially hazardous food or potentially

hazardous foods requiring a limited amount of preparation as authorized by the regulatory authority. A pushcart is classified as a mobile food establishment. A pushcart does not include non self-propelled units owned and operated within a retail food store.

(84) [~~(80)~~] Ready-to-eat food--

(A) Ready-to-eat food means food that:

(i) is in a form that is edible without additional preparation to achieve food safety, as specified under §§229.164(k)(1)(A) - (C), 229.164(k)(2), or 229.164(l)(1) - (2) of this title;

(ii) is a raw or partially cooked animal food and the consumer is advised as specified under §229.164(k)(1)(D)(i) and (ii) of this title;

(iii) is prepared in accordance with a variance that is granted as specified under §229.164(k)(1)(D)(i) and (iii) of this title; and

(iv) may receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes.

(B) Ready-to-eat food includes:

(i) raw animal food that is cooked as specified under §229.164(k)(1) or §229.164(k)(2), or frozen as specified under §229.164(l)(1) - (2) of this title;

(ii) raw fruits and vegetables that are washed as specified under §229.164(f)(6) of this title;

(iii) fruits and vegetables that are cooked for hot holding, as specified under §229.164(k)(3) of this title;

(iv) all potentially hazardous food that is cooked to the temperature and time required for the specific food under §229.164(k) of this title, and cooled as specified in §229.164(o)(4) of this title;

(v) plant food for which further washing, cooking, or other processing is not required for food safety, and from which rinds, peels, husks, or shells, if naturally present are removed;

(vi) substances derived from plants such as spices, seasonings, and sugar;

(vii) a bakery item such as bread, cakes, pies, fillings, or icing for which further cooking is not required for food safety;

(viii) the following products that are produced in accordance with USDA guidelines and that have received a lethality treatment for pathogens: dry, fermented sausages, such as dry salami or pepperoni; salt-cured meat and poultry products, such as prosciutto ham, country cured ham, and Parma ham; and dried meat and poultry products, such as jerky or beef sticks; and

(ix) foods manufactured according to 21 CFR 113, Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers.

(85) [~~(81)~~] Reduced oxygen packaging--

(A) Reduced oxygen packaging means:

(i) the reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the surrounding, 21% oxygen atmosphere; and

(ii) a process as specified in subparagraph (A)(i) of this paragraph that involves a food for which Clostridium botulinum is identified as a microbiological hazard in the final packaged form.

(B) Reduced oxygen packaging includes:

(i) vacuum packaging, in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package, such as sous vide;

(ii) modified atmosphere packaging, in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes: reduction in the proportion of oxygen, total replacement of oxygen, or an increase in the proportion of other gases such as carbon dioxide or nitrogen; and

(iii) controlled atmosphere packaging, in which the atmosphere of a package of food is modified so that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, nonrespiring food, and impermeable packaging material.

(86) [~~(82)~~] Refuse--Solid waste not carried by water through the sewage system.

(87) [~~(83)~~] Regulatory authority--The local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment.

(88) [~~(84)~~] Reminder--A written statement concerning the health risk of consuming animal foods raw, undercooked, or without otherwise being processed to eliminate pathogens.

(89) [~~(85)~~] Restrict--To limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and the food employee does not work with exposed food, clean equipment, utensils, linens; and unwrapped single-service or single-use articles.

(90) [~~(86)~~] Restricted egg--Any check, dirty egg, incubator reject, inedible, leaker, or loss as defined in 9 CFR 590.

(91) [~~(87)~~] Restricted use pesticide--A pesticide product that contains the active ingredients specified in 40 CFR §152.175, Pesticides classified for restricted use, and that is limited to use by or under the direct supervision of a certified applicator.

(92) [~~(88)~~] Risk--The likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.

(93) [~~(89)~~] Roadside food vendor--A person who operates a mobile retail food store from a temporary location adjacent to a public road or highway. Food shall not be prepared or processed by a roadside food vendor. A roadside food vendor is classified as a mobile food establishment.

(94) [~~(90)~~] Safe material means:

(A) an article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food;

(B) an additive that is used as specified in Chapter 431 of the Health and Safety Code; or

(C) other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.

(95) [~~(91)~~] Sanitization--The application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

(96) [~~(92)~~] Sealed--Free of cracks or other openings that allow the entry or passage of moisture.

(97) [~~(93)~~] Service animal--An animal such as a guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.

(98) [~~(94)~~] Servicing area--An operating base location to which a mobile food establishment or transportation vehicle returns regularly for such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

(99) [~~(95)~~] Sewage--Liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

(100) [~~(96)~~] Shellfish control authority--A state, federal, foreign, tribal, or other government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce.

(101) [~~(97)~~] Shellstock--Raw, in-shell molluscan shellfish.

(102) [~~(98)~~] Shiga toxin-producing Escherichia coli--Any E. coli capable of producing Shiga toxins (also called verocytotoxins or "Shiga-like" toxins). This includes, but is not limited to, E. coli reported as serotype O157:H7, O157: NM, and O157:H-.

(103) [~~(99)~~] Shucked shellfish--Molluscan shellfish that have one or both shells removed.

(104) [~~(100)~~] Single-service articles--Tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use after which they are intended for discard.

(105) [~~(101)~~] Single-use articles--

(A) Single-use articles means utensils and bulk food containers designed and constructed to be used once and discarded.

(B) Single-use articles include items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength, and cleanability specifications under §229.165(a), (c), and (d) of this title (relating to Equipment, Utensils, and Linens) for multiuse utensils.

(106) [~~(102)~~] Slacking--The process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of -23 degrees Celsius (-10 degrees Fahrenheit) to -4 degrees Celsius (25 degrees Fahrenheit) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as spinach.

(107) [~~(103)~~] Smooth--

(A) A food-contact surface having a surface free of pits and inclusions with a cleanability equal to or exceeding that of (100 grit) number 3 stainless steel;

(B) A nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and

(C) A floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.

(108) [~~(104)~~] Table-mounted equipment--Equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf.

(109) [~~(105)~~] Tableware--Eating, drinking, and serving utensils for table use such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, and tumblers; and plates.

(110) [~~(106)~~] TCS--Time and temperature control for safety for food.

(111) [~~(107)~~] Temperature measuring device--A thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

(112) [~~(108)~~] Temporary food establishment--A food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

(113) [~~(109)~~] USDA--The U.S. Department of Agriculture.

(114) [~~(110)~~] Utensil--A food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in contact with food; temperature sensing probes of food temperature measuring devices; and probe-type price or identification tags used in contact with food.

(115) [~~(111)~~] Variance--A written document issued by the regulatory authority that authorizes a modification or waiver of one or more requirements of this title if, in the opinion of the regulatory authority, a health hazard or nuisance will not result from the modification or waiver.

(116) [~~(112)~~] Vending machine--A self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

(117) [~~(113)~~] Vending machine location--The room, enclosure, space, or area where one or more vending machines are installed and operated and includes the storage areas and areas on the premises that are used to service and maintain the vending machines.

(118) [~~(114)~~] Warewashing--The cleaning and sanitizing of utensils and food-contact surfaces of equipment.

(119) [~~(115)~~] Whole-muscle, intact beef--Whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef steaks may be cut.

§229.164. Food.

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

(e) Preventing contamination by employees.

(1) Preventing contamination from hands.

(A) - (C) (No change.)

(D) Food employees not serving a highly susceptible population may contact exposed, ready-to-eat food with their bare hands if:

(i) (No change.)

(ii) documentation is maintained at the food establishment that food employees contacting ready-to-eat foods with bare

hands utilize two or more of the following control measures to provide additional safeguards to hazards associated with bare hand contact:

(I) - (IV) (No change.)

(V) other control measures approved by the regulatory authority; [~~and~~]

(iii) documentation is maintained at the food establishment listing the foods and food-handling activities involving bare-hand contact; and [~~that corrective actions are taken when clauses (i) - (ii) of this subparagraph are not followed.~~]

(iv) documentation is maintained at the food establishment that corrective actions are taken when clauses (i) - (iii) of this subparagraph are not followed.

(2) (No change.)

(f) - (o) (No change.)

(p) Specialized processing methods.

(1) Variance requirement. A food establishment shall obtain a variance from the regulatory authority [~~department~~] as specified in §229.171(c)(1) and (2) of this title before:

(A) - (H) (No change.)

(2) (No change.)

(q) - (v) (No change.)

§229.165. Equipment, Utensils, and Linens.

(a) - (e) (No change.)

(f) Functionality of equipment.

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

(11) Vending machines, automatic shutoff.

(A) A machine vending potentially hazardous food shall have an automatic control that prevents the machine from vending food:

(i) (No change.)

(ii) if a condition specified under clause (i) of this subparagraph occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified under §229.164 of this title [~~Chapter 3~~].

(B) (No change.)

(12) - (24) (No change.)

(g) - (y) (No change.)

§229.167. Physical Facilities.

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

(c) Floors, walls, and ceilings.

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

(3) Floor and wall junctures, coved [~~covered~~], and enclosed or sealed.

(A) (No change.)

(B) The floors in food establishments in which water flush cleaning methods are used shall be provided with drains and be graded to drain, and the floor and wall junctures shall be coved [~~covered~~] and sealed.

(4) - (8) (No change.)

(d) - (p) (No change.)

§229.171. Compliance and Enforcement.

(a) - (i) (No change.)

(j) Report of findings.

(1) - (5) (No change.)

(6) Inspection reports. For the purposes of Chapter 437, [~~Texas~~] Health and Safety Code, the department adopts the Retail Food Establishment Inspection Report form as specified in the following figure:

Figure: 25 TAC §229.171(j)(6)

[~~Figure: 25 TAC §229.171(j)(6)~~]

(k) - (p) (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 January 13, 2012.

TRD-201200158
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: February 26, 2012
For further information, please call: (512) 776-6972

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25 TAC §229.173

(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 Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is authorized under Health and Safety Code, Chapters 431, 437 and 438, which require the Executive Commissioner to adopt rules regarding farmers' markets and to make other rule amendments; 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.

The repeal affects the Health and Safety Code, Chapters 431, 437, 438, and 1001; and Government Code, Chapter 531.

§229.173. Heimlich Maneuver Poster.

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

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SUBCHAPTER EE. COTTAGE FOOD PRODUCTION OPERATION

25 TAC §229.661

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §229.661 concerning cottage food production operations.

BACKGROUND AND PURPOSE

The purpose of the new rule is to implement Senate Bill (SB) 81 of the 82nd Legislature, Regular Session, 2011, that amends Health and Safety Code, Chapter 437, relating to requirements for a cottage food production operation. The Executive Commissioner of the Health and Human Services Commission is directed in SB 81 to adopt a rule requiring a cottage food production operation to label all of the foods described in Health and Safety Code, §437.001(2-b)(A) that the operation sells to consumers.

A cottage food production operation allows an individual to operate out of the individual's home, who produces a baked good, a canned jam or jelly, or a dried herb or herb mix for sale at the person's home; has an annual gross income of $50,000 or less from the sale of foods; and sells the foods produced only directly to consumers.

SECTION-BY-SECTION SUMMARY

SB 81 states that a cottage food production operation is not a food service establishment for purposes of the Health and Safety Code, Chapter 437. This rule was developed under the authority of the Health Safety Code, §437.0193, which gives the Executive Commissioner rulemaking authority. The new rule provides definitions for cottage food production operations, labeling requirements, complaint database requirements, and sales location requirements.

New definitions in Health and Safety Code, §437.001, are added to incorporate terminology due to the enactment of SB 81 in §229.661(b).

The new definition of "baked good" in §229.661(b)(1) is added to specify the types of foods and products that are allowed to be produced by a cottage food production operation.

The new definition of "cottage food production operation" in §229.661(b)(2) is added to specify what types of food production methods can be performed in a residential setting.

Concerning §229.661(b)(3), the definition of "department" is added to specify the Department of State Health Services.

The new definition of "Executive Commissioner" in §229.661(b)(4) is added to specify the Executive Commissioner of the Health and Human Services Commission.

The new §229.661(b)(5) adds the definition of "food establishment" to specify types of food service operations that are considered to be a food establishment, which must comply with the Texas Food Establishment Rules and to specify that a "cottage food production operation" is not a food establishment.

The new definition of "herbs" in §229.661(b)(6) is added to specify that the use of herbs are for culinary purposes only.

The new definition of "home" in §229.661(b)(7) is added to specify the meaning of the term home as a primary residence.

Health and Safety Code, §437.0191, exempts cottage food production operations from being a food service establishment and the definition of "potentially hazardous food" is added to clarify the types of foods that are not allowed to be produced by a cottage food production operation in §229.661(b)(8).

The new §229.661(c) is added to specify the department's responsibilities in reference to complaints as stated in Health and Safety Code, §437.0192.

The new §229.661(d) is added to specify labeling requirements for food items produced by a cottage food production operation and that the department does not inspect a cottage food production operation in compliance with Health and Safety Code, §437.0193.

The new §229.661(e) is added to specify that foods produced by a cottage food production operation is prohibited from selling through the Internet in compliance with Health and Safety Code, §437.0194.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five years that §229.661 is in effect, there will be a net loss in revenue of $4,813 due to a reduction in the collection of permit fees for retail food establishments that will become cottage food production operations, and a gain in revenue associated with permit fees issued to farmers market. There will be no other fiscal implications to the state or local governments as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with §229.661 as proposed. This is determined by interpretation of the rules that small businesses and micro-businesses are only required to label all foods produced by a cottage food production operation in order to comply with the section.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as the result of administering these sections is to ensure the public is aware that food produced by a cottage food production operation is not inspected by the department or a local health department.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by 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 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.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed new rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposed new rule may be submitted to Cheryl Wilson, Food Establishments Group, Policy, Standards and Quality Assurance Unit, Division of Regulatory Services, Environmental and Consumer Safety Section, Department of State Health Services, Mail Code 1987, P. O. Box 149347, Austin, Texas 78714-9347, (512) 834-6770, extension 2053, or by email to cheryl.wilson@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal is scheduled for February 2, 2012, from 10:00 a.m. - 12:00 p.m., at the main campus of the Department of State Health Services, 1100 West 49th Street, Room K-100, Austin, Texas 78756. Please contact Cheryl Wilson at (512) 834-6770, extension 2053, or cheryl.wilson@dshs.state.tx.us if you have questions.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed new rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The new rule is authorized under the Health and Safety Code, Chapter 437, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to §437.0193, labeling requirements for cottage food production operations; and Government Code, §531.0055(e), 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.

The new rule affects Health and Safety Code, Chapters 437 and 1001; and Government Code, Chapter 531.

§229.661. Cottage Food Production Operations.

(a) Purpose. The purpose of this section is to implement Health and Safety Code, Chapter 437, related to cottage food production operations, which requires the department to adopt rules for labeling of foods produced by cottage food production operations.

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

(1) Baked good--A food item prepared by baking the item in an oven, which includes cookies, cakes, breads, Danishes, donuts, pastries, pies, and other items that are prepared by baking. A baked good does not include a potentially hazardous food (time/ temperature control for safety foods).

(2) Cottage food production operation--An individual, operating out of the individual's home, who:

(A) produces a baked good, a canned jam or jelly, or a dried herb or herb mix for sale at the person's home;

(B) has an annual gross income of $50,000 or less from the sale of this food described by subparagraph (A) of this paragraph; and

(C) sells foods produced under subparagraph (A) of this paragraph only directly to consumers.

(3) Department--The Department of State Health Services.

(4) Executive Commissioner--The Executive Commissioner of the Health and Human Services Commission.

(5) Food establishment--

(A) Food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

(i) such as a restaurant; retail food store; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; farmers market; vending location; conveyance used to transport people; institution; or food bank; and

(ii) that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not potentially hazardous (time/temperature control for safety) foods;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) a food processing plant including those that are located on the premises of a food establishment;

(iv) a kitchen in a private home if only food that is not potentially hazardous (time/temperature control for safety) food is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law;

(v) an area where food that is prepared as specified in clause (iv) of this subparagraph is sold or offered for human consumption;

(vi) a Bed and Breakfast Limited establishment as defined in §229.162 of this title (relating to Definitions) concerning food establishments;

(vii) a private home that receives catered or home-delivered food; or

(viii) a cottage food production operation.

(6) Herbs--Herbs are from the leafy green parts of a plant (either fresh or dried) used for culinary purposes and not for medicinal uses.

(7) Home--A primary residence that contains a kitchen and appliances designed for common residential usage.

(8) Potentially hazardous food (PHF) (time/temperature control for safety food (TCS))--

(A) Potentially hazardous food (time/temperature control for safety food) means a food that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation.

(B) Potentially hazardous food (time/temperature control for safety food) includes:

(i) an animal food that is raw or heat-treated; a plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation; and

(ii) except as specified in subparagraph (C)(iv) of this paragraph, a food that because of the interaction of its a_w and pH values is designated as Product Assessment required (PA) in Table A or B of this clause.

(I) Table A. Interaction of pH and a_w for control of spores in food heat-treated to destroy vegetative cells and subsequently packaged.
Figure: 25 TAC §229.661(b)(8)(B)(ii)(I)

(II) Table B. Interaction of pH and a_w for control of vegetative cells and spores in food not heat-treated or heat-treated but not packaged.
Figure: 25 TAC §229.661(b)(8)(B)(ii)(II)

(C) Potentially hazardous food (time/temperature control for safety food) does not include:

(i) an air-cooled hard-boiled egg with shell intact, or an egg with shell intact that is not hard-boiled, but has been pasteurized to destroy all viable salmonellae;

(ii) a food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution;

(iii) a food that because of its pH or a_w value, or interaction of a_w and pH values, is designated as a non-PHF/non-TCS food in Table A or B in subparagraph (B)(ii)(I) and (II) of this paragraph;

(iv) a food that is designated as PA in Table A or B in subparagraph (B)(ii)(I) and (II) of this paragraph and has undergone a Product Assessment showing that the growth or toxin formation of pathogenic microorganisms that are reasonably likely to occur in that food is precluded due to:

(I) intrinsic factors including added or natural characteristics of the food such as preservatives, antimicrobials, humectants, acidulants, or nutrients;

(II) extrinsic factors including environmental or operational factors that affect the food such as packaging, modified atmosphere such as reduced oxygen packaging, shelf life and use, or temperature range of storage and use; or

(III) a combination of intrinsic and extrinsic factors; or

(v) a food that does not support the growth or toxin formation of pathogenic microorganisms in accordance with one of the clauses (i) - (iv) of this subparagraph even though the food may contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.

(c) Complaints. The department shall maintain a record of a complaint made by a person against a cottage food production operation.

(d) Labeling requirements for cottage food production operations. All foods prepared by a cottage food production operation must be labeled.

(1) The label information shall include:

(A) the name and physical address of the cottage food production operation;

(B) the common or usual name of the product and an adequately descriptive statement of identity;

(C) if made from two or more ingredients, a list of ingredients in descending order of predominance by net weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food;

(D) an accurate declaration of the net quantity of contents including metric measurements;

(E) allergen labeling in compliance with the Food Allergen Labeling and Consumer Protection Act of 2004, Pub. L. No. 108-282, Title II, 118. Stat. 905; and

(F) the following statement: "Made in home kitchen, food is not inspected by the Department of State Health Services or a local health department" in at least the equivalent of 11-point font and in a color that provides a clear contrast to the background.

(2) Labels must be clearly legible and printed with durable, permanent ink.

(A) Ingredient statements shall be at 1/16 of an inch or larger.

(B) Ingredients shall include components of the ingredients.

(C) Net quantity of contents shall be separated from other text on the label and must be located in the bottom third of the label.

(e) Sales by cottage food production operations through Internet prohibited. A cottage food production operation may not sell any of the foods described in these rules through the Internet. No health claims may be made on any of the advertising medium of the finished products because they are conventional foods.

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 January 13, 2012.

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-6972

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §114.7 and §114.64.

Background and Summary of the Factual Basis for the Proposed Rules

The commission proposes these revisions to implement requirements of House Bill (HB) 3272, 82nd Legislature, 2011, authored by Representatives Lon Burnam and Warren Chisum.

The 77th Legislature, 2001, enacted HB 2134, to assist low-income individuals with repairs, retrofits, or retirement of vehicles that fail emissions inspections. The commission adopted rules providing the minimum guidelines for counties to implement a low income vehicle repair assistance, retrofit, and accelerated vehicle retirement program (LIRAP) implementing HB 2134, on March 27, 2002, as published in the April 12, 2002, issue of the *Texas Register* (27 TexReg 3194). Only those counties that have implemented a vehicle inspection and maintenance (I/M) program are eligible for participation in the LIRAP. Under the LIRAP, monetary assistance is provided for emission-related repairs directly related to bringing the vehicle into compliance or for replacement assistance for a vehicle that has failed the required emissions test. Vehicle eligibility criteria, such as the vehicle having been registered for the past two years in the participating county, were developed and adopted by the commission. Emission-related repairs covered by the LIRAP are required to be performed at a Texas Department of Public Safety (DPS)-recognized emissions repair facility. Participating counties may administer the LIRAP or contract with any appropriate entity or another county to administer the program. The 2001 law and rule stated that participating counties could expend no more than 5% of the funds received from the state for administrative costs. These rules provided for a minimum of $30 and a maximum amount of $600 for emission-related repairs, retrofit equipment, and installation; and a minimum of $600 and a maximum amount of $1,000 toward the purchase price of a replacement vehicle.

The 79th Legislature, 2005, enacted HB 1611, revising three key elements of the LIRAP. The legislation allowed for the LIRAP to be administered by the counties in accordance with Texas Government Code, Chapter 783, Uniform Grant and Contract Management, and allowed for programmatic costs such as call-center management, application oversight, invoice analysis, education, outreach, and advertising to be covered by LIRAP funds. The revision allowed for program administrators to utilize additional resources to attract and increase program participation. The legislation removed the requirement that capped administrative costs at 5% of the funds provided to a county to fund the LIRAP. Finally, the legislation changed the vehicle registration eligibility requirement from two years to 12 months. The revision increased participation by making assistance available to those vehicle owners who had lived in the county for at least one year. The commission adopted rule revisions implementing HB 1611 (79th Legislature), on April 12, 2006, as published in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3575).

The 80th Legislature, 2007, enacted Senate Bill (SB) 12, revising the LIRAP requirements. The commission initiated rulemaking at the conclusion of the legislative session to implement the legislative requirements. The legislation provided enhanced eligibility and assistance guidelines, retirement and replacement guidelines, and revised LIRAP administration fund limits. The legislation limited allowable administrative cost for counties implementing LIRAP to 10% of the funds allocated by the commission and increased the LIRAP vehicle owner's income eligibility from 200% to 300% of the federal poverty level.

The legislation increased the assistance for the retirement and replacement of a vehicle from $1,000 to $3,000 for a car, current model year or up to three model years old; $3,000 for a truck, current model year or up to two model years old; and $3,500 for hybrid vehicle of current or previous model year. The legislation required that replacement vehicles must meet federal Tier 2, Bin 5 or cleaner emissions standards, have a gross vehicle weight rating of less than 10,000 pounds, and have a total purchase cost that did not exceed $25,000.

The legislation amended LIRAP definitions to include -the terms-destroy, motor vehicle, hybrid motor vehicle, qualifying motor vehicle, emissions control equipment, dealer, automobile dealership, total cost, engine, and replacement vehicle. The rulemaking further added definitions for truck and car to clarify the vehicle model types that are associated with truck and car categories.

The legislation revised and enhanced capabilities for the retirement of older vehicles. Retired vehicle requirements included that the vehicles be gasoline-powered and older than 10 years; operated and registered in the implementing county for 12 months preceding the application; and had passed the DPS safety or safety and emissions inspection within 15 months of application. Owners of the vehicles to be retired were required to have an annual income of not more than 300% of the federal poverty level.

The legislation required that participating counties provide an electronic means for distributing vehicle repair and replacement funds and that the funds be transferred to a participating dealer no later than five business days after the date the county received proof of the sale and required administrative documents. The commission was required to develop a document to confirm that a person was eligible to purchase a replacement vehicle and the amount of money available to the purchaser through the program. The purchaser was required to have the document before the person entered into negotiations with a dealer for a replacement vehicle. The legislation required the commission to develop procedures for certifying that emissions control equipment and engines of the retired vehicles were scrapped.

The legislation required that dismantlers participating in the program must be located in the State of Texas. Dismantlers were required to scrap the vehicle's emissions control equipment, power train, and engine and certify that those parts were scrapped and not resold into the marketplace. Dismantlers were also required to remove any mercury switches in accordance with state and federal law.

The legislation required automobile dealerships participating in the program to be located in the State of Texas and accept funds provided under the LIRAP as a down payment towards the purchase of a replacement vehicle.

The commission worked in partnership with the steel industry and automobile dismantlers to ensure that vehicles were scrapped and that proof of scrapping is provided to the commission. The commission adopted requirements implementing SB 12, on December 5, 2007, as published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9711).

The 82nd Legislature, enacted HB 3272, authorizing changes to the LIRAP. The legislation modifies certain guidelines and procedures for administering the LIRAP that will require revisions to existing rules and add new or amend current program definitions to include replacement vehicle, hybrid vehicle, electric vehicle, and natural gas vehicle.

The legislation requires the commission to revise the amount of replacement assistance provided to $3,500 for a replacement vehicle of the current model year or the previous three model years if the vehicle is a hybrid vehicle, electric vehicle, natural gas vehicle, or is in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 3 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, *Federal Register* (65 FR 6698).

The legislation amends criteria for replacement vehicles to require that replacement vehicles have an odometer reading of not more than 70,000 miles and a sales price of $35,000 or less, for a car, current model year or up to three model years old; a sales price of $35,000 or less, for a truck, current model year or up to two model years old; or a sales price of $45,000 or less for a hybrid vehicle, electric vehicle, natural gas vehicle or a vehicle certified to meet or exceed federal Tier 2, Bin 3 or cleaner certification of the current model year or up to three model years old.

The legislation amends the eligibility of a vehicle to be retired requiring that the vehicle be registered in a program county for at least 12 of the 15 months preceding the application.

Section by Section Discussion

Subchapter A, Definitions

§114.7, Low Income Repair Assistance, Retrofits, and Accelerated Vehicle Retirement Program Definitions

The proposed amendment to §114.7, includes adding and defining electric vehicle and natural gas vehicle, and modifying the current definition of a hybrid motor vehicle. The proposal defines electric vehicle as a motor vehicle that draws propulsion energy only from a rechargeable energy storage system, and natural gas vehicle as a motor vehicle that uses only compressed natural gas or liquefied natural gas as fuel. The proposal revises the current defined term hybrid motor vehicle to hybrid vehicle and the definition of replacement vehicle to incorporate changes to §114.64(c)(4). The proposal would also renumber the LIRAP definitions section to make adjustments for the newly proposed added definitions.

Subchapter C, Division 2, Low Income Repair Assistance, Retrofits, and Accelerated Vehicle Retirement Program

§114.64, LIRAP Requirements

The proposed amendment to §114.64(b)(3), relating to repair and retrofit assistance, would revise the length of time that a vehicle must be registered in a LIRAP program county. The current requirement states the vehicle is currently registered in and has been registered in the program county for the 12 months immediately preceding the application for assistance. The proposed revision would require that the vehicle be currently registered in and has been registered in the program county for at least 12 of the 15 months preceding the application for assistance.

The proposed amendment to §114.64(c)(4)(C), relating to accelerated vehicle retirement, would add the requirement that eligible replacement vehicles have an odometer reading of no more than 70,000 miles.

The proposed amendment to §114.64(c)(4)(D), relating to accelerated vehicle retirement, would revise the current replacement vehicle requirement that a replacement vehicle's total cost must not exceed $25,000. The proposed amendment would require that a replacement vehicle be a vehicle where the total cost does not exceed $35,000 and up to $45,000 for hybrid, electric, or natural gas vehicles, or vehicles certified as Tier 2 Bin 3 or cleaner.

The proposed amendment to §114.64(d)(1)(B)(iii), relating to compensation, would modify the current replacement vehicle compensation amount of $3,500 for a replacement hybrid vehicle of the current model year or the previous model year. The proposed amendment would make available replacement assistance of $3,500 that is currently available for hybrid vehicles to replacement hybrid, electric, natural gas, and federal Tier 2 Bin 3 or cleaner vehicles of the current model year or the previous three model years.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of administration or enforcement of the proposed rules. The proposed rules make revisions mandated by legislation to the LIRAP, and the agency will use currently available resources to implement the required revisions.

The proposed rulemaking adds the definitions of an electric vehicle and natural gas vehicle, and amends the definition of a hybrid vehicle for purposes relating to the LIRAP. The proposed rules would also change the length of time that a vehicle must be registered in a LIRAP participating county to be eligible for the program from 12 months to at least 12 of the 15 months preceding the application for participation in the program. The proposed rules would expand replacement assistance that was only available for hybrid vehicles to include hybrid, electric, natural gas, and federal Tier 2 Bin 3 or cleaner vehicles for the current model year or the previous three model years. The proposed rules would require replacement vehicles purchased through the LIRAP to have an odometer reading of not more than 70,000 miles and raise the total cost allowed of replacement vehicles to not more than $35,000 versus $25,000 under current law for replacement vehicles, and up to $45,000 for hybrid, electric, natural gas and Tier 2 Bin 3 or cleaner vehicles. The proposed rules do not change the amount of replacement assistance for a vehicle, but do allow for assistance up to $3,500 for hybrid, electric, natural gas, and Tier 2 Bin 3 or cleaner vehicles of the current model year or previous three model years.

The proposed rules are not expected to have a significant fiscal impact on the 16 counties (Brazoria, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Montgomery, Parker, Rockwall, Tarrant, Travis, and Williamson) that participate in the LIRAP. While the proposed rules increase the types

of vehicles eligible for LIRAP replacement and funding, other legislative actions have reduced the amount of available LIRAP funding. Counties and their contractors are expected to assist as many of their constituents as possible under these constraints, and the proposed rules are not expected to increase or decrease administrative costs significantly since the current review and approval processes for LIRAP applications and voucher issuance are not changed.

Public Benefits and Costs

Ms. Chamness also determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules would be the potential for reduced emissions in participating counties due to the increased options available to replace older, high-emitting vehicles. The proposed rules expand the universe of eligible vehicle owners and replacement vehicles in the LIRAP. Individuals are expected to benefit under the proposed rules since more owners could become eligible for assistance and since more types of vehicles can be considered as a replacement vehicle. Whether or not an individual is able to receive LIRAP funds to replace an older, high-emitting vehicle will depend on whether a participating county or its contractor is able to grant funding to constituents that apply for funding.

The proposed rules are not expected to have a significant fiscal impact on large or small businesses in participating LIRAP counties. The proposed rules would not change current review and approval processes for LIRAP applications and voucher issuance. Reporting and other administrative requirements would not change under the proposed rules. While the proposed rules increase the number of vehicles eligible for funding, decreases in LIRAP funds may affect vehicle repair and replacement activity in participating counties. The agency cannot estimate the fiscal impact on vehicle dealers, vehicle dismantlers, or steel mill and metal recyclers regarding limited LIRAP funding. Any fiscal impact regarding these activities will depend on how participating counties choose to address constituent demands with decreased LIRAP allocations.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Most vehicle dismantlers, in counties participating in the LIRAP are considered to be small businesses. The proposed rules do not change any administrative or reporting requirements for small businesses. Any increase or decrease in business activity regarding LIRAP funding will be due to other LIRAP constraints.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the proposed rulemaking does not meet the definition of a major environmental rule. Texas Government Code, §2001.0225 states that a major environmental rule is, 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. Furthermore, while the proposed rulemaking does not constitute a major environmental rule, even if it did, a regulatory impact analysis would not be required because the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. Specifically, the proposed rulemaking does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the proposed rulemaking is not designed to exceed any relevant standard set by federal law; 2) parts of the proposed rulemaking are directly required by state law; 3) no contract or delegation agreement covers the topic that is the subject of this proposed rulemaking; and 4) the proposed rulemaking is authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code (TWC), which are cited in the statutory authority section of this preamble.

The amendments are proposed in accordance with HB 3272, 82nd Legislature, 2011, which amended THSC, Chapter 382. The proposed rules add or revise guidelines for a voluntary grant. Because the proposed rules place no involuntary requirements on the regulated community, the proposed rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. In addition, none of these amendments place additional financial burdens on the regulated community.

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of substantial compliance as required in Texas Government Code, §2001.035. The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007 does not apply.

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

Promulgation and enforcement of the proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with the amendments to THSC, Chapter 382 as a result of HB 3272, 82nd Legislature. The rules make revisions to a voluntary program and only affect motor vehicles and equipment that are not considered to be private real property. The proposed rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), concerning rules subject to the Texas Coastal Management Program (CMP), and will therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is editorial and procedural in nature and will have no substantive effect on commission actions subject to the CMP and therefore, is consistent with CMP goals and policies. Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on February 21, 2012, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2011-062-114-EN. The comment period closes February 27, 2012. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Michael Regan, Air Quality Planning at (512) 239-2988.

SUBCHAPTER A. DEFINITIONS

30 TAC §114.7

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air. Finally, this rulemaking is proposed under THSC, §382.003, amending definitions for the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program authorized under THSC, §382.209.

The proposed amendment implements House Bill 3272, 82nd Legislature, 2011.

§114.7. Low Income Vehicle Repair Assistance, Retrofits, and Accelerated Vehicle Retirement Program Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this chapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in Subchapter C, Division 2, of this chapter (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program) have the following meanings, unless the context clearly indicates otherwise.

(1) Affected county--A county with a motor vehicle emissions inspection and maintenance program established under Transportation Code, §548.301.

(2) Automobile dealership--A business that regularly and actively buys, sells, or exchanges vehicles at an established and per-

manent location as defined under Transportation Code, §503.301. The term includes a franchised motor vehicle dealer and an independent motor vehicle dealer.

(3) Car--A motor vehicle, other than a golf cart, truck or bus, designed or used primarily for the transportation of persons. A passenger van or sports utility vehicle may be considered a car under this section.

(4) Commercial vehicle--A vehicle that is owned or leased in the regular course of business of a commercial or business entity.

(5) Destroyed--Crushed, shredded, scrapped, or otherwise dismantled to render a vehicle, vehicle's engine, or emission control components permanently and irreversibly incapable of functioning as originally intended.

(6) Dismantled--Extraction of parts, components, and accessories for use in the low income vehicle repair assistance, retrofit, and accelerated vehicle retirement program or sold as used parts.

(7) Electric vehicle--A motor vehicle that draws propulsion energy only from a rechargeable energy storage system.

(8) [~~(7)~~] Emissions control equipment--Relating to a motor vehicle that is subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements). If the vehicle is so equipped, these include: exhaust gas recirculation system, power control module, catalytic converter, oxygen sensors, evaporative purge canister, positive crankcase ventilation valve, and gas cap.

(9) [~~(8)~~] Engine--The fuel-based power source of a motor vehicle that is subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements).

(10) [~~(9)~~] Fleet vehicle--A motor vehicle operated as one of a group that consists of more than ten motor vehicles and that is owned and operated by a public or commercial entity or by a private entity other than a single household.

(11) [~~(10)~~] Hybrid [~~motor~~] vehicle--A motor vehicle that draws propulsion energy from both gasoline or conventional diesel fuel and a rechargeable energy storage system.

(12) [~~(11)~~] LIRAP--Low income vehicle repair assistance, retrofit, and accelerated vehicle retirement program.

(13) [~~(12)~~] Motor vehicle--A fully self-propelled vehicle having four wheels that has as its primary purpose the transport of a person, persons, or property on a public highway.

(14) Natural gas vehicle--A motor vehicle that uses only compressed natural gas or liquefied natural gas as fuel.

(15) [~~(13)~~] Participating county--An affected county in which the commissioners court by resolution has chosen to implement a low income vehicle repair assistance, retrofit, and accelerated vehicle retirement program authorized by Texas Health and Safety Code, §382.209.

(16) [~~(14)~~] Proof of sale--A notice of sale or transfer filed with the Texas Department of Transportation as required under Texas Transportation Code, §503.005, or if unavailable, an affidavit from the selling dealer or documents approved by the commission.

(17) [~~(15)~~] Proof of transfer--A TCEQ form that identifies the vehicle to be destroyed and tracks the transfer of the vehicle to the recycler from the participating county, automobile dealer, and dismantler.

(18) [~~(16)~~] Qualifying motor vehicle--A motor vehicle that meets the requirements for replacement in §114.64 of this title (relating to LIRAP Requirements).

(19) [~~(17)~~] Recognized emissions repair facility--An automotive repair facility as provided in 37 Texas Administrative Code §23.93, relating to Vehicle Emissions Inspection Requirements.

(20) [~~(18)~~] Recycled--Conversion of metal or other material into raw material products that have prepared grades; an existing or potential economic value; and using these raw material products in the production of new products.

(21) [~~(19)~~] Replacement vehicle--A vehicle that is in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, *Federal Register*; has a gross vehicle weight rating of less than 10,000 pounds; have an odometer reading of not more than 70,000 miles; the total cost does not exceed $35,000 [~~$25,000~~] and up to $45,000 for hybrid, electric, or natural gas vehicles, or vehicles certified as Tier 2 Bin 3 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, issue of the *Federal Register* (65 FR 6698); has passed a Department of Public Safety motor vehicle safety inspection or safety and emissions inspection within the 15-month period before the application is submitted.

(22) [~~(20)~~] Retrofit--To equip, or the equipping of, an engine or an exhaust or fuel system with new, emissions-reducing parts or equipment designed to reduce air emissions and improve air quality, after the manufacture of the original engine or exhaust or fuel system, so long as the parts or equipment allow the vehicle to meet or exceed state and federal air emissions reduction standards.

(23) [~~(21)~~] Retrofit equipment--Emissions-reducing equipment designed to reduce air emissions and improve air quality that is approved by the United States Environmental Protection Agency and is installed after the manufacture of the original engine, exhaust, or fuel system.

(24) [~~(22)~~] Total cost--The total amount money paid or to be paid for the purchase of a motor vehicle as set forth as the sales price in the form entitled "Application for Texas Certificate of Title" promulgated by the Texas Department of Transportation. In a transaction that does not involve the use of that form, the term means an amount of money that is equivalent, or substantially equivalent, to the amount that would appear as the sales price on the application for Texas Certificate of Title if that form were used.

(25) [~~(23)~~] Truck--A motor vehicle having a gross vehicle weight rating of less than 10,000 pounds and designed primarily for the transport of persons and cargo.

(26) [~~(24)~~] Vehicle--A motor vehicle subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements).

(27) [~~(25)~~] Vehicle owner--For the purposes of repair assistance or retrofit, the person who holds the Certificate of Title for the vehicle and/or the operator who is granted possession and is authorized to make repairs under a lease or purchase agreement; and for the purposes of accelerated retirement, the person who holds the Certificate of Title for the vehicle.

(28) [~~(26)~~] Vehicle retirement facility--A facility that, at a minimum, is licensed, certified, or otherwise authorized by the Texas Department of Transportation to destroy, recycle, or dismantle vehicles.

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 January 12, 2012.

TRD-201200131
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 26, 2012
For further information, please call: (512) 239-2141

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SUBCHAPTER C. VEHICLE INSPECTION AND MAINTENANCE; LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM; AND EARLY ACTION COMPACT COUNTIES

DIVISION 2. LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM

30 TAC §114.64

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC, and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air. Finally, this rulemaking is proposed under THSC, §382.210, requiring the commission to establish by rule guidelines to assist a participating county in implementing a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program.

The proposed amendment implements House Bill 3272, 82nd Legislature, 2011.

§114.64. LIRAP Requirements.

(a) Implementation. Upon receiving a written request to implement a Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) by a county commissioners court, the executive director shall authorize the implementation of a LIRAP in the requesting county. The executive director and county shall enter into a grant contract for the implementation of the LIRAP.

(1) The grant contract must provide conditions, requirements, and projected funding allowances for the implementation of the LIRAP.

(2) A participating county may contract with an entity approved by the executive director for services necessary to implement the LIRAP. A participating county or its designated entity shall demonstrate to the executive director that, at a minimum, the county or its designated entity has provided for appropriate measures for determining applicant eligibility and repair effectiveness and ensuring against fraud.

(3) The participating county shall remain the contracted entity even if the county contracts with another county or another entity approved by the executive director to administer the LIRAP.

(b) Repair and retrofit assistance. A LIRAP must provide for monetary or other compensatory assistance to eligible vehicle owners for repairs directly related to bringing certain vehicles that have failed a required emissions test into compliance with emissions requirements or for installing retrofit equipment on vehicles that have failed a required emissions test, if practically and economically feasible, in lieu of or in combination with repairs performed to bring a vehicle into compliance with emissions requirements. Vehicles under the LIRAP must be repaired or retrofitted at a recognized emissions repair facility. To determine eligibility, the participating county or its designated entity shall make applications available for LIRAP participants. The application, at a minimum, must require the vehicle owner to demonstrate that:

(1) the vehicle has failed a vehicle emissions test within 30 days of application submittal;

(2) the vehicle can be driven under its own power to the emissions inspection station or vehicle retirement facility;

(3) the vehicle is currently registered in and has been registered in the program county for at least [~~the~~] 12 of the 15 months immediately preceding the application for assistance;

(4) the vehicle has passed the safety portion of the Texas Department of Public Safety (DPS) motor vehicle safety and emissions inspection as recorded in the Vehicle Inspection Report (VIR), or provide assurance that actions will be taken to bring the vehicle into compliance with safety requirements;

(5) the vehicle owner's net family income is at or below 300% of the federal poverty level; and

(6) any other requirements of the participating county or the executive director are met.

(c) Accelerated vehicle retirement. A LIRAP must provide monetary or other compensatory assistance to eligible vehicle owners to be used toward the purchase of a replacement vehicle.

(1) To determine eligibility, the participating county or its designated entity shall make applications available for LIRAP participants. The application, at a minimum, must require the vehicle owner to demonstrate that:

(A) the vehicle meets the requirements under subsection (b)(1) - (3) and (5) of this section;

(B) the vehicle has passed a DPS motor vehicle safety or safety and emissions inspection within 15 months prior to application submittal; and

(C) any other requirements of the participating county or the executive director are met.

(2) Eligible vehicle owners of pre-1996 model year vehicles that pass the required United States Environmental Protection Agency (EPA) Start-Up Acceleration Simulation Mode (ASM) standards emissions test, but would have failed the EPA Final ASM standards emissions test, or some other criteria determined by the

commission, may be eligible for accelerated vehicle retirement and replacement compensation under this section.

(3) Notwithstanding the vehicle requirement provided under subsection (b)(1) of this section, an eligible vehicle owner of a vehicle that is gasoline powered and is at least 10 years old as determined from the current calendar year (i.e., 2010 minus 10 years equals 2000) and meets the requirements under subsection (b)(2), (3), and (5) of this section, may be eligible for accelerated vehicle retirement and compensation.

(4) Replacement vehicles must:

(A) be in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, *Federal Register* (65 FR 6698);

(B) have a gross vehicle weight rating of less than 10,000 pounds;

(C) have an odometer reading of not more than 70,000 miles;

(D) [~~(C)~~] be a vehicle, the total cost of which does not exceed $35,000 [~~$25,000~~] and up to $45,000 for hybrid, electric, or natural gas vehicles, or vehicles certified as Tier 2 Bin 3 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, issue of the *Federal Register* (65 FR 6698); and

(E) [~~(D)~~] have passed a DPS motor vehicle safety inspection or safety and emissions inspection within the 15-month period before the application is submitted.

(d) Compensation. The participating county shall determine eligibility and approve or deny the application promptly. If the requirements of subsection (b) or (c) of this section are met and based on available funding, the county shall authorize monetary or other compensations to the eligible vehicle owner.

(1) Compensations must be:

(A) no more than $600 and no less than $30 per vehicle to be used for emission-related repairs or retrofits performed at recognized emissions repair facilities, including diagnostics tests performed on the vehicle; or

(B) based on vehicle type and model year of a replacement vehicle for the accelerated retirement of a vehicle meeting the requirements under this subsection. Only one retirement compensation can be used toward one replacement vehicle annually per applicant. The maximum amount toward a replacement vehicle must not exceed:

(i) $3,000 for a replacement car of the current model year or previous three model years, except as provided by clause (iii) of this subparagraph;

(ii) $3,000 for a replacement truck of the current model year or the previous two model years, except as provided by clause (iii) of this subparagraph;

(iii) $3,500 for a replacement hybrid, electric, natural gas, and federal Tier 2 Bin 3 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, issue of the *Federal Register* (65 FR 6698) vehicle of the current model year or the three previous model years [~~year~~].

(2) Vehicle owners shall be responsible for paying the first $30 of emission-related repairs or retrofit costs that may include diagnostics tests performed on the vehicle.

(3) For accelerated vehicle retirement, provided that the compensation levels in paragraph (1)(B) of this subsection are met and minimum eligibility requirements under subsection (c) of this section are met, a participating county may set a specific level of compensation or implement a level of compensation schedule that allows flexibility. The following criteria may be used for determining the amount of financial assistance:

(A) model year of the vehicle;

(B) miles registered on the vehicle's odometer;

(C) fair market value of the vehicle;

(D) estimated cost of emission-related repairs necessary to bring the vehicle into compliance with emission standards;

(E) amount of money the vehicle owner has already spent to bring the vehicle into compliance, excluding the cost of the vehicle emissions inspection; and

(F) vehicle owner's income.

(e) Reimbursement for repairs and retrofits. A participating county shall reimburse the appropriate recognized emissions repair facility for approved repairs and retrofits within 30 calendar days of receiving an invoice that meets the requirements of the county or designated entity. Repaired or retrofitted vehicles must pass a DPS safety and emissions inspection before the recognized emissions repair facility is reimbursed. In the event that the vehicle does not pass the emissions retest after diagnosed repairs are performed, the participating county has the discretion, on a case-by-case basis, to make payment for diagnosed emissions repair work performed.

(f) Reimbursements for replacements. A participating county shall ensure that funds are transferred to a participating automobile dealership no later than 10 business days after the county receives proof of the sale, proof of transfer to a dismantler, and any administrative documents that meet the requirements of the county or designated entity. A list of all administrative documents must be included in the agreements that are entered into by the county or designated entity and the participating automobile dealerships.

(1) A participating county shall provide an electronic means for distributing replacement funds to a participating automobile dealership once all program criteria have been met. The replacement funds may be used as a down payment toward the purchase of a replacement vehicle. Participating automobile dealers shall be located in the State of Texas. Participation in the LIRAP by an automobile dealer is voluntary.

(2) Participating counties shall develop a document for confirming a person's eligibility for purchasing a replacement vehicle and for tracking such purchase.

(A) The document must include at a minimum, the full name of applicant, the vehicle identification number of the retired vehicle, expiration date of the document, the program administrator's contact information, and the amount of money available to the participating vehicle owner.

(B) The document must be presented to a participating dealer by the person seeking to purchase a replacement vehicle before entering into negotiations for a replacement vehicle.

(C) A participating dealer who relies on the document issued by the participating county has no duty to confirm the eligibility of the person purchasing a replacement vehicle in the manner provided by 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 January 12, 2012.

TRD-201200132
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 26, 2012
For further information, please call: (512) 239-2141

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CHAPTER 342. REGULATION OF CERTAIN AGGREGATE PRODUCTION OPERATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§342.1, 342.25, and 342.26.

Background and Summary of the Factual Basis for the Proposed Rules

House Bill (HB) 571 passed in the 82nd Legislature, 2011 and was codified in Texas Water Code (TWC), Chapter 28A. HB 571 was authored by Representative Dan Huberty and sponsored by Senator Tommy Williams.

The statute exempts certain aggregate production operations (APOs) from the requirements. The statute requires active APOs to register and pay a fee annually. The statute does not contain any additional technical requirements for APOs beyond those required in other applicable rules and regulations. The statute also contains requirements for the TCEQ. These include conducting an annual survey, beginning September 2012, to facilitate locating active APOs; conducting compliance investigations of each active APO once every three years; and, providing specified information on APOs as part of the annual enforcement report. Additionally, the statute gives the commission the authority to assess penalties in accordance with the TCEQ penalty policy and within the conditions outlined in the statute, and establish an annual registration fee in an amount sufficient to maintain a registry of active aggregate production operations but not to exceed $1,000. For APOs submitting a Notice of Audit in conjunction with initial registration, as outlined in TWC, §28A, Section 2(b), compliance investigations of these APOs will not begin before September 2015.

Section by Section Discussion

New §342.1, Definitions, is proposed to define terms pertinent to and defined in TWC, §28A.

New §342.25, Registration, is proposed to address requirements for the annual registration of all APOs. As stipulated in TWC, §28A, annual registration for each APO is required provided regulated activities continue. Upon cessation of regulated activities, the APO shall notify the TCEQ in writing. Registration will be facilitated by submission of required forms either electronically or via hard copy. All sites will be required to register annually. Initial registration may begin on July 1, 2012 but must be completed no later than September 1, 2012.

New §342.26, Registration Fees, is proposed to address required annual registration fees for all APOs. Each site is required to submit an annual registration fee. TWC, Chapter 28A requires the TCEQ to set fees in the amount necessary to cover the costs of administering the program, not to exceed $1,000 per year. The proposed rule states that the maximum fee shall not exceed $1,000.

The proposed rule does not specify the actual fees, but allows the TCEQ to establish fees that do not exceed the maximum fee of $1,000. Specifying the maximum fee in the rule allows the TCEQ flexibility to adjust fees as needed to support the program. Structuring the rule pertaining to the fee in this manner also allows the TCEQ to examine fee structures, such as a tiered fee structure, that may prove more desirable to stakeholders.

Stakeholder meetings were held on September 13, 2011 and December 6, 2011 to support both the development of these proposed rules and other implementation activities, including fee development. It was during these meetings that stakeholders asked TCEQ to consider a tiered fee structure, primarily to lessen the fee burden for small business. To consider a tiered fee structure, additional information from APOs is necessary.

The TCEQ has developed outreach materials that include a questionnaire related to registration fees. This questionnaire collects information about type of operation, type of material extracted, and stakeholder preferences related to fee structure. TCEQ intends to use the information from this questionnaire to develop the fees and fee structure for Fiscal Year 2013 registrations. Future fee adjustments would be supported by information submitted with the registration and stakeholder communication. In accordance with TWC, Chapter 28A and the proposed rules, individual fees assessed will not exceed $1,000 per year and total fee revenue will not exceed the costs of administering the program.

The public meeting for these proposed rules is scheduled for February 9, 2012. During that public meeting, program staff will also separately discuss and take comment on other implementation activities, including fee development. Program staff anticipates holding additional stakeholder meetings on implementation activities, including fees, as necessary to ensure that the regulated community is well informed of these new requirements and has an opportunity to provide input on program development.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, there will be fiscal implications for the agency to implement a new registration and investigation program for facilities who extract or process aggregates used for construction material. No significant fiscal implications are anticipated for other units of state or local government as a result of administration or enforcement of the proposed rules. According to TWC, §28A.001(1)(B), state agencies, including the Texas Department of Transportation, as well as cities or other units of local government that provide aggregate products for use in public works projects are not defined as APOs and would not be required to register and pay the annual application fees.

The proposed rulemaking implements TWC, §28A and would require an active APO to register annually with the TCEQ, no later than September 1, 2012. The statute requires the TCEQ to establish an annual registration fee in an amount not to exceed $1,000, and to survey the state each year to locate unregistered APOs. The statute requires each APO to be investigated every three years, but would allow entities that submit a Notice of Au-

dit to postpone the three-year investigation cycle until September 1, 2015. According to the statute however, the three-year delay does not apply to operations that begin after September 1, 2012 or for active operations that fail to register by September 1, 2012. The TCEQ will administer penalties in accordance with the TCEQ penalty policy and within the conditions outlined in TWC, §28A.102.

The implementation of TWC, §28A will require the agency to develop registration forms, review and process registration applications for each APO, and to develop a registration tracking database. Agency staff would conduct annual surveys to identify any unregistered APO, conduct investigations on a three-year cycle, and take any necessary enforcement action.

The agency would establish procedures to collect, process, and deposit registration fees. At this time, agency staff is not able to determine the actual number of APOs that would be subject to the registration requirements, but according to the best estimates available, staff assumes that there may be approximately 600 registrants.

The legislature appropriated the agency an amount not to exceed $308,349 in fiscal year 2012 and an amount not to exceed $227,019 in fiscal year 2013 out of the Water Resource Management Account 153 in order to implement the legislation. This appropriation included an additional four full-time employees. The appropriation is contingent upon fee revenues from registration fees authorized by the statute to be sufficient to generate revenue to cover the costs for administering the program including indirect costs which were estimated to be $64,000 in fiscal year 2012 and $64,000 in fiscal year 2013.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and the protection of air and water quality through the proper authorization of APOs.

The proposed rulemaking is not expected to have fiscal implications for any individuals. No significant fiscal implications are anticipated for businesses that own or operate APOs as a result of administration or enforcement of the proposed rules. APOs would be required to register annually and pay the registration fees. Failure to register may result in enforcement penalties of no less than $5,000 and no more than $10,000 for every year in which an APO operates without registration (total penalty no greater than $25,000).

Registered APOs would be investigated every three years to ensure that they are in compliance with applicable regulatory requirements including requirements related to: 1) individual water quality permits; 2) a general water quality permits; 3) applicable air quality permits; and, 4) any other regulatory requirements applicable to active APOs under the jurisdiction of the commission. This fiscal note assumes that APOs subject to the proposed registration requirements would be in compliance with all other regulatory requirements under the commission's jurisdiction.

Small Business and Micro-Business Assessment

No significant adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Small or micro-businesses who extract or process aggregates used for construction material will have to register with the commission and pay a statutorily required registration fee. It is assumed that APOs subject to the proposed registration requirements would be in compliance with all other regulatory requirements under the commission's jurisdiction. It is not known how many of the affected sites would be owned or operated by small or micro-businesses. TCEQ is considering a tier-based registration fee structure. A tier-based fee structure would avoid undue financial burden for small businesses, while recovering sufficient revenue to operate the new program.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to comply with state law and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, a "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The primary purpose of the proposed rulemaking is to implement HB 571, 82nd Legislature, by adding Chapter 342, Regulation of Certain Aggregate Production Operations. The proposed rulemaking creates a new aggregates registration and inspection program which includes the establishment of an annual registration fee. Certain aspects of this rulemaking are intended to protect the environment or reduce risks to human health from environmental exposure. However, as discussed previously in the Fiscal Note, Public Benefits and Costs, Small Business Regulatory Flexibility Analysis, and the Local Employment Impact Statement sections of this preamble, the proposed rulemaking would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor would the proposed rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. Therefore, the proposed rulemaking does not fit the Texas Government Code, §2001.0225 definition of "major environmental rule."

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because this proposal does not constitute a major environmental rule, a regulatory impact analysis is not required. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

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

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The commission has determined that the promulgation and enforcement of the rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposed rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. The proposed rules are administrative and do not impose any new regulatory requirements. The primary purpose of the proposed rules is to implement HB 571 by adding Chapter 342, Regulation of Certain Aggregate Production Operations. The proposed rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

CMP goals applicable to the proposed rules include to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas and to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

There are no CMP policies applicable to the proposed rules.

The proposed rules are consistent with the CMP goals and policies because the proposed rule does not authorize the storage, emission, or discharge of any pollutant. The proposed rules only require Aggregate Production Operations to register and pay a fee annually.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on February 9, 2012 at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Mr. Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2011-045-342-OW. The comment period closes February 27, 2012. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html*. For further information, please contact Ms. Laurie Fleet, Water Quality Assessment Section, (512) 239-5445.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §342.1

Statutory Authority

The new rule is proposed under the authority of Texas Government Code, under Texas Water Code (TWC), §5.102, General Powers; TWC, §5.103, Rules; and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to propose rulemaking necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The new rule is also proposed under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to propose rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to propose rules that differentiate among particular conditions, particular sources, and particular areas of the state. The new rule is also proposed under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.003, concerning Definitions; and THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air.

The proposed new rule implements HB 571, 82nd Legislature, 2011, by adding Chapter 342, Regulation of Certain Aggregate Production Operations.

§342.1. Definitions.

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

(1) Aggregate production operation--A site from which aggregates are being or have been removed or extracted from the earth, including the entire areas of extraction, stripped areas, haulage ramps, and the land on which the plant processing the raw materials is located, exclusive of any land owned or leased by the responsible party not being currently used in the production of aggregates. For the purposes of this chapter, the term aggregate production operation does not include:

(A) a site at which aggregates that are being removed or extracted from the earth are used or processed at the same site or at a related site under the control of the same responsible party for the primary purpose of production of cement or lightweight aggregates, or in a lime kiln;

(B) a temporary site that is being used solely to provide aggregate products for use in a public works project involving the Texas Department of Transportation, any other state agency, or a local governmental entity;

(C) an extraction area from which all raw material is extracted for use as fill or for other construction uses at the same or a contiguous site;

(D) a site at which the aggregates that are being removed or extracted from the earth are used or processed for use in the construction, modification, or expansion of a solid waste facility at the site or another location, or

(E) a site at which aggregates are being removed or extracted from the earth where the primary purpose of removal or extraction is not for commercial sale or processing of the aggregates.

(2) Aggregates--Any commonly recognized construction material originating from an aggregate production operation from which an operator extracts dimension stone, crushed and broken limestone, crushed and broken granite, crushed and broken stone not elsewhere classified, construction sand and gravel, industrial sand, dirt, soil, or caliche. For purposes of this chapter, the term aggregates does not include clay or shale mined for use in manufacturing structural clay products.

(3) Commission--The Texas Commission on Environmental Quality.

(4) Operator--Any person engaged in and responsible for the physical operation and control of the extraction of aggregates.

(5) Owner--Any person having title, wholly or partly, to the land on which an aggregate production operation exists or has existed.

(6) Regulated Activity--Any activity that is regulated by the Texas Commission on Environmental Quality.

(7) Responsible party--The operator, lessor, or owner who is responsible for the overall function and operation of an aggregate production operation.

(8) Site--One or more contiguous or adjacent properties under common control by the same responsible party.

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 January 12, 2012.

TRD-201200134

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 26, 2012
For further information, please call: (512) 239-2141

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SUBCHAPTER B. REGISTRATION AND FEES

30 TAC §342.25, §342.26

Statutory Authority

The new rules are proposed under the authority of Texas Government Code, under Texas Water Code (TWC), §5.102, General Powers; TWC, §5.103, Rules; and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to propose rulemaking necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. These new rules are also proposed under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to propose rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to propose rules that differentiate among particular conditions, particular sources, and particular areas of the state. This new rules are also proposed under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.003, concerning Definitions; and THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air.

The proposed new rules implement HB 571, 82nd Legislature, 2011, by adding Chapter 342, Regulation of Certain Aggregate Production Operations.

§342.25. Registration.

(a) The responsible party for an aggregate production operation, in operation on or before September 1, 2012, shall register each operation with the commission by September 1, 2012.

(b) The responsible party for an aggregate production operation that begins operations after September 1, 2012 shall register each operation with the commission not later than the 10th business day before the beginning date of regulated activities.

(c) An aggregate processing plant that has the same responsible party and is located at the same site from which aggregates are being or have been removed or extracted from the earth is not required to obtain a separate registration.

(d) The responsible party for an aggregate production operation shall renew the registration annually as regulated activities continue.

(e) Within 30 days after all regulated activities at an aggregate production operation have ceased, the responsible party shall submit a registration cancellation request to the commission.

(f) Applications for registration or cancellation of a registration shall be made on forms prescribed by the executive director.

§342.26. Registration Fees.

(a) Any person who submits a registration for an aggregate production operation shall remit, at the time of registration, a fee to the commission.

(b) The executive director shall determine the costs to administer this chapter and the requirements in Texas Water Code, §28A, and establish fees annually to recover the executive director's actual costs. The fees established by the executive director shall not exceed $1,000. The executive director may implement a tier-based registration fee structure.

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

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 7. PREPAID HIGHER EDUCATION TUITION PROGRAM
SUBCHAPTER K. HIGHER EDUCATION SAVINGS PLAN

34 TAC §7.101

The Comptroller of Public Accounts proposes to amend §7.101, concerning definitions. The changes are proposed to clarify the rule and to reflect current federal securities and tax law.

New paragraph (6), definition of promotional material and savings plan information, is added to clarify that certain materials exempt from lengthy disclosure requirements by federal securities regulation are likewise exempt from lengthy state disclosure requirements. For example, federal securities regulations do not require brief internet banner ads to contain lengthy disclosures so long as they link to a home page that contains the required disclosures. The proposed definition would clarify that disclosures required by state law would likewise not apply to brief internet banner ads. Items that will be exempt from lengthy state disclosure requirements will continue to be subject to other state requirements, such as the prohibition against misleading representations and the requirement that all promotion of the plan is consistent with applicable state and federal law.

The definition of special needs beneficiary is deleted to ensure that families with special needs beneficiaries may use their 529 plan savings for qualified special needs services. The current definition limits the category to beneficiaries who need additional time to complete courses or degree requirements. Some special needs beneficiaries may complete college within the typical time frame and may still require special needs services. The deletion will eliminate an unnecessary limitation.

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 clarifying the rules, insuring the rules reflect current federal securities and tax laws, and allowing certain governmental and nonprofit scholarship organizations to more easily use the program and plan. 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 proposed rule may be submitted to Linda Fernandez, Acting Director, Educational Opportunities and Investment Division, Post Office Box 13407, Austin, Texas 78711-3407, or transmitted electronically to linda.fernandez@cpa.state.tx.us.

This rule amendment is proposed under Texas Education Code, §54.702(a) and §54.708(b) which authorize the Board to adopt rules to implement the program.

The proposed amendment implements Texas Education Code, §54.708(b) and §54.713.

§7.101. Definitions.

The following words, terms, and phrases, when used in this subchapter, shall have the following meanings.

(1) Beneficiary--The designated individual whose qualified higher education expenses are expected to be paid from a savings trust account.

(2) Financial institution--A bank, trust company, savings and loan association, credit union, broker-dealer, mutual fund, insurance company, or other similar financial institution that is authorized to transact business in this state.

(3) Nonqualified withdrawal--A withdrawal from a savings trust account other than:

(A) a qualified withdrawal;

(B) a withdrawal that is made as the result of the death or disability of the beneficiary of the account; or

(C) a withdrawal that is made as a result of the receipt of a scholarship or an allowance or payment that is described in Internal Revenue Code of 1986, §135(d)(1)(B) or (C), as amended, and that the beneficiary has received, to the extent that the amount of the withdrawal does not exceed the amount of the scholarship, allowance, or payment, in accordance with federal law.

(4) Owner--The individual, trust, estate, Uniform Gift to Minors Act (UGMA) custodian or Uniform Transfer to Minors Act (UTMA) custodian, guardian, corporation, non-profit entity, or other legal entity, or any combination thereof that results from transfers by operation of law, that owns a savings trust account under a savings trust agreement between the board and that individual, trust, estate, UGMA or UTMA custodian, guardian, corporation, non-profit entity, or other legal entity, or any combination thereof.

(5) Plan manager--A financial institution that is under contract with the board to serve as a plan administrator.

(6) Promotional material, or savings plan information--Any material published or used in any written, electronic, or other public media. For the purpose of §7.102(e)(2) and (3) of this title (relating to General Provisions) the term does not include:

(A) internet banner ads that link to the home page of a savings plan;

(B) time-limited broadcast advertisements;

(C) press releases distributed only to members of the media;

(D) materials and information that is not distributed to account owners, beneficiaries, or the public; or

(E) objects that include no more than the name and logo of the plan and a brief slogan of ten words or less.

(7) [~~(6)~~] Qualified higher education expenses--Tuition, fees, books, supplies, and equipment that are required for the enrollment or attendance of a beneficiary at an eligible educational institution as defined by Internal Revenue Code of 1986, §529, as amended, and including in certain instances the following:

(A) In the case of a special needs beneficiary, "qualified higher education expenses" include expenses for special needs services that are incurred in connection with enrollment or attendance of the beneficiary at an eligible educational institution; and

(B) To the extent permitted by Internal Revenue Code of 1986, §529, as amended, beneficiaries who live off-campus and not at home may include in "qualified higher education expenses" a reasonable room and board allowance as determined by the eligible educational institution, and beneficiaries who live on campus may include in "qualified higher education expenses" the actual invoice amount that is charged for room and board, if that amount is greater than the allowance.

(8) [~~(7)~~] Qualified withdrawal--A withdrawal from a savings trust account to pay the qualified higher education expenses of the beneficiary of the account.

(9) [~~(8)~~] Savings trust account--An account that an owner establishes through the savings plan under this subchapter and Education Code, Chapter 54, Subchapter G, on behalf of a beneficiary for the purpose of applying distributions from the account toward qualified higher education expenses at eligible educational institutions.

(10) [~~(9)~~] Savings trust agreement--The agreement between the owner that establishes a savings trust account and the board, which may be amended over time.

~~[(10) Special needs beneficiary--A beneficiary who, because of a physical, mental, or emotional condition, including a learning disability, requires additional time to complete education courses or degree requirements. This definition shall be automatically amended from time to time to conform with the definition of special needs beneficiary in any proposed, temporary, or final Treasury Department regulations. The board may adopt policies and procedures by which a beneficiary's status as a special needs beneficiary will be determined.]~~

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

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TRD-201200092

Ashley Harden
General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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34 TAC §7.106

The Comptroller of Public Accounts proposes to amend §7.106, concerning plan managers. The changes are proposed to clarify the rules and to reflect current federal tax law.

Subsection (b) is amended to clarify that the Texas Trust Code does not apply to the constitutional trust fund. Subsection (d) is updated to reflect the previous delegation of a management responsibility. Subsection (f) and (g) are amended to clarify that, consistent with federal tax regulations, the plan is actively administered by the board.

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 clarifying the rules, insuring the rules reflect current federal securities and tax laws, and allowing certain governmental and nonprofit scholarship organizations to more easily use the program and plan. 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 proposed rule may be submitted to Linda Fernandez, Acting Director, Educational Opportunities and Investment Division, Post Office Box 13407, Austin, Texas 78711-3407, or transmitted electronically to linda.fernandez@cpa.state.tx.us.

This rule amendment is proposed under Texas Education Code, §54.702(a) which authorizes the Board to adopt rules to implement the program.

The proposed amendment implements Texas Education Code, §§54.615(e), 54.634, 54.702(b), and 54.703.

§7.106. Plan Managers.

(a) Access to books and records. A plan manager shall provide the comptroller with access to the books and records of the manager as the comptroller determines necessary to assess the manager's compliance with Education Code, Chapter 54, Subchapter G, this subchapter, the savings trust agreement, or the contract between the board and the manager.

(b) Savings trust accounts. A plan manager shall hold each savings trust account in trust. Notwithstanding the foregoing, the Texas Trust Code does [~~shall~~] not apply to a savings trust agreement or a savings trust account.

(c) Investments. A plan manager shall ensure that each investment by the manager is made with the judgment and care that a person of prudence, discretion, and intelligence would exercise in the management of the property of another, not in regard to speculation but in regard to the permanent disposition of funds, with consideration of the probable income as well as the probable safety of capital.

(d) Marketing of savings plan.

(1) A plan manager shall develop a strategy to market the savings plan and present the strategy to the executive director [~~board~~] for review. If the executive director [~~board~~] approves the strategy, the manager shall fully implement that strategy.

(2) A plan manager may contract with a financial institution to market the savings plan on behalf of the manager.

(e) Account services. A plan manager may contract with a financial institution to provide account services to the owner of a savings trust account that the manager administers. The institution may charge a fee or commission for those services.

(f) Investment alternatives. The plan manager, under board supervision, may formulate a variety of alternative investment strategies for savings trust accounts, so long as such strategies are consistent with the board's investment policy and with the requirements and limitations of Internal Revenue Code of 1986, §529, as amended, and the regulations thereunder. An owner is entitled to select a strategy from among such alternatives, as permitted by Internal Revenue Code of 1986, §529, as amended.

(g) Board review. From time to time, and in accordance with procedures that the board establishes, the board shall review, monitor, and audit the actions of the plan manager and financial institutions, as described in subsections (c), (d), (e), and (f) of this section [~~above,~~] and without impairment to any other right that the board may have to terminate a contract with a plan manager, may terminate the contract with a plan manager or withdraw its approval to any of the above matters, if in its judgment the board finds that continuation of that contract or the continued approval is not in the best interests of the owners and beneficiaries, so long as such action is consistent with rights and obligations of the board under the savings trust agreement.

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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Ashley Harden
General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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34 TAC §7.110

The Comptroller of Public Accounts proposes to amend §7.110, concerning replacement of beneficiary. The change is to make the rule consistent with federal tax law. The change will allow certain government and nonprofit scholarship organizations to more easily use the state's higher education savings plans to save for and distribute scholarships.

The amendment exempts certain government entities and nonprofit scholarship organizations from certain program rules that were designed to apply to individuals and other private account owners who are subject to certain IRS rules. The IRS generally limits the use of 529 plan accounts in order to prevent abuses. For example, an account owner may not change the beneficiary of an account to a nonfamily member without incurring taxes. Because government entities and nonprofit scholarship organizations are exempt from the requirement to name a beneficiary and because these entities may award scholarships to multiple beneficiaries from one account, restrictions on changing beneficiaries should not apply to these organizations.

The proposed amendment would allow certain government and nonprofit scholarship organizations to change beneficiaries, regardless of whether the new beneficiary is a member of the family of the former beneficiary.

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 clarifying the rules, insuring the rules reflect current federal securities and tax laws, and allowing certain governmental and nonprofit scholarship organizations to more easily use the program and plan. 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 proposed rule may be submitted to Linda Fernandez, Acting Director, Educational Opportunities and Investment Division, Post Office Box 13407, Austin, Texas 78711-3407, or transmitted electronically to linda.fernandez@cpa.state.tx.us.

This rule amendment is proposed under Texas Education Code, §54.702(a) which authorizes the Board to adopt rules to implement the program.

The proposed amendment implements Texas Education Code, §54.702 and §54.707.

§7.110. Replacement of Beneficiary.

(a) Criteria for being a qualified replacement beneficiary. An individual may be the qualified replacement beneficiary of a savings trust agreement if:

(1) the individual is a member of the family of the former beneficiary who satisfies the requirements of Internal Revenue Code of 1986, §529(e)(2), as amended, so that the change of beneficiary is not treated as a distribution under that law; and

(2) documentation that evidences the relationship between the individual and the former beneficiary is submitted to the plan manager that has custody of the savings trust account.

(b) Conditions for replacement of beneficiary. The owner of a savings trust agreement may replace the beneficiary of that agreement with another individual only if:

(1) the individual is a qualified replacement beneficiary as described in subsection (a) of this section; and

(2) the owner pays to the plan manager that has custody of the savings trust account any fees that are required under the board's administrative fee and service charge schedule.

(c) Notwithstanding subsections (a) and (b) of this section, an account owner that is a state or local government entity (or agency or instrumentality thereof) or an organization described in Internal Revenue Code of 1986, §501(c)(3), and exempt from taxation under §501(a) of that code as part of a scholarship program operated by such government or organization, may replace the beneficiary of a savings trust agreement regardless of whether the replacement beneficiary is a member of the family of the former beneficiary.

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 January 10, 2012.

TRD-201200094
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: February 26, 2012
For further information, please call: (512) 475-0387

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SUBCHAPTER L. PREPAID TUITION UNIT UNDERGRADUATE EDUCATION PROGRAM: TEXAS TOMORROW FUND II

34 TAC §7.143

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

The Comptroller of Public Accounts proposes the repeal of §7.143, concerning Texas save and match program. The repeal is necessary to implement amendments to the Education Code by House Bill 3708, 82nd Legislature, 2011 and will be added to Chapter 7, new Subchapter M.

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

Mr. Heleman also has determined that for each year of the first five years the repeal is in effect, it would benefit the public by facilitating the implementation of new Texas Save and Match Program rules. There would be no anticipated significant economic cost to the public. This repeal would have no significant fiscal impact on small businesses. There are no additional costs to persons who are required to comply with the repeal.

Comments on the repeal may be submitted to Linda Fernandez, Manager, Educational Opportunities and Investment Division, Post Office Box 13407, Austin, Texas 78711-3407, or transmitted electronically to linda.fernandez@cpa.state.tx.us.

The repeal is proposed under Texas Education Code, §54.752(b)(1) which authorizes the Board to adopt rules to implement the program.

The repeal implements Texas Education Code, §54.809.

§7.143. Texas Save and Match Program.

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

Filed with the Office of the Secretary of State on January 10, 2012.

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Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: February 26, 2012
For further information, please call: (512) 475-0387

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SUBCHAPTER M. TEXAS SAVE AND MATCH PROGRAM

34 TAC §§7.161 - 7.171

The Comptroller of Public Accounts proposes new §7.161, concerning purpose; §7.162, concerning definitions; §7.163, concerning Texas save and match program administration; §7.164, concerning certain exemptions for the board, program entity, and nonprofit scholarship organizations; §7.165, concerning initial eligibility for participation in program applicable to all participants; §7.166, concerning initial eligibility for participation in program applicable to awards made by the board; §7.167, concerning award process for awards made by the board; §7.168, concerning redemption of awards made by the board; §7.169, concerning limitations applicable to all participants; §7.170, concerning match account administration by plan manager; and §7.171, concerning Texas save and match trust fund; agreements between board and program entity regarding program entity funds. The new rules will come under Chapter 7, Prepaid Higher Education Tuition Program, new Subchapter M, Texas Save and Match Program.

These sections are proposed to implement amendments to the Education Code by House Bill 3708, 82nd Legislature, 2011. The Save and Match program allows the Texas Prepaid Higher Education Tuition Board (prepaid board) and the Texas Match the Promise Foundation (foundation) to provide matching grants to Texas residents who save for college using the Texas College Savings Plan®, LoneStar 529 Plan®, or Texas Tuition Promise Fund®.

Section 7.161 states the program's purpose is to increase access to higher education by encouraging families to save for higher education expenses.

Section 7.162 defines terms used throughout the new subchapter.

Section 7.163 differentiates between grant funds that will be awarded and managed by the foundation and grant funds that will be awarded and managed by the prepaid board.

Section 7.164 exempts the prepaid board, foundation, and certain nonprofit scholarship organizations from certain program rules that were designed to apply to individuals and other private account owners who are subject to certain Internal Revenue Service (IRS) rules. The IRS generally limits the use of 529 plan accounts in order to prevent abuses. For example, an account owner may not change the beneficiary of an account to a nonfamily member without federal tax consequences and may not accumulate funds in an account in excess of an amount reasonably necessary to pay for college. Because government entities and nonprofit scholarship organizations are exempt from the requirement to name a beneficiary and because these entities may award scholarships to multiple beneficiaries from one account, contribution limits and restrictions on changing beneficiaries should not apply to these organizations.

Section 7.165 limits participation in the program to residents of this state.

Section 7.166 provides additional requirements for participation that apply only to awards made by the prepaid board.

Section 7.167 provides requirements for the awards process that apply only to awards made by the prepaid board.

Section 7.168 provides requirements for the redemption of awards for college expenses that apply only to awards made by the prepaid board.

Section 7.169 describes actions and events that will result in the forfeiture of matching grant funds. This section applies to all awards made by both the prepaid board and foundation.

Section 7.170 requires the plan manager to make information about match accounts available to participants and requires the plan manager to follow certain procedures when making distributions from match accounts.

Section 7.171 requires the comptroller to present an annual budget to the board and foundation and describes how the shared trust fund created by the legislature will be managed.

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 new rules will be by implementing the provisions of the Texas Save and Match Program. The proposed new rules 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 proposed new rules may be submitted to Linda Fernandez, Acting Director, Educational Opportunities and Investment Division, Post Office Box 13407, Austin, Texas 78711-3407, or transmitted electronically to linda.fernandez@cpa.state.tx.us.

The new rules are proposed under Texas Education Code, §54.809 which authorizes the Board to adopt rules to implement the program.

The new rules implement Texas Education Code, §§54.801 - 54.809.

§7.161. Purpose.

The Texas Save and Match Program is created to increase access to higher education by encouraging families to save for higher education expenses.

§7.162. Definitions.

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

(1) Accredited out-of-state institution of higher education, career school, general academic teaching institution, private or independent institution of higher education, and two-year institution of higher education have the meanings assigned by Education Code, §54.751.

(2) Beneficiary--A beneficiary on whose behalf a purchaser enters into a prepaid tuition contract with the board under Education Code, Chapter 54, Subchapter H or for whom an account owner opens a savings trust account under Education Code, Chapter 54, Subchapter G.

(3) Board--Prepaid Higher Education Tuition Board.

(4) Fund--Texas Save and Match Trust Fund established under Education Code, §54.808.

(5) Match account--An allocation of funds or tuition units from an account, fund, or contract owned and maintained by the board or program entity that has been awarded to a participant on behalf of a designated beneficiary.

(6) Nonprofit scholarship organization--An organization described in Internal Revenue Code of 1986, §501(c)(3), and exempt from taxation under §501(a) of that code that operates a scholarship program that benefits beneficiaries who are residents of this state.

(7) Participant--A purchaser of a prepaid tuition contract or account owner of a savings trust account who has been awarded a match account under the program.

(8) Prepaid tuition contract--A contract entered into under Education Code, Chapter 54, Subchapter H or I. Prepaid tuition contract includes Texas Tuition Promise Fund® contracts or any future higher education prepaid tuition program established by the Texas Prepaid Higher Education Tuition Board under Education Code, Chapter 54, Subchapter H.

(9) Program--Texas Save and Match Program established under Education Code, §54.802.

(10) Program entity--Texas Match the Promise Foundation℠, a Texas nonprofit corporation, or any future tax-exempt charitable organization established by law to implement the program.

(11) Savings trust account--A savings trust account established under Education Code, Chapter 54, Subchapter G or I. Savings trust account includes accounts in the Texas College Savings Plan® and the LoneStar 529 Plan® or any future higher education savings plan established by the Texas Prepaid Higher Education Tuition Board under Education Code, Chapter 54, Subchapter G.

§7.163. Texas Save and Match Program Administration.

(a) The board, in cooperation with the program entity, administers the Texas Save and Match Program, under which money contributed to a savings trust account by an account owner or paid by a purchaser under a prepaid tuition contract on behalf of an eligible beneficiary may be matched with:

(1) contributions made by any person to the program entity for use in making additional savings trust account contributions for a beneficiary or in purchasing additional tuition units for a beneficiary under a prepaid tuition contract; or

(2) money appropriated by the legislature for the program or received under Education Code, §54.802(a)(7) to be used by the board to make additional savings trust account contributions for a beneficiary or to purchase additional tuition units for a beneficiary under a prepaid tuition contract.

(b) The program entity may select recipients of match accounts awarded under subsection (a)(1) of this section. The board may select recipients of match accounts awarded under subsection (a)(2) of this section.

§7.164. Certain Exemptions for the Board, Program Entity, and Nonprofit Scholarship Organizations.

(a) Notwithstanding any of the provisions of this chapter, the board, the program entity, or a nonprofit scholarship organization:

(1) is not required to name a designated beneficiary when entering into a prepaid tuition contract or opening a savings trust account;

(2) may change the designated beneficiary of a prepaid tuition contract or savings trust account to another beneficiary who is not a family member of the previous beneficiary;

(3) may purchase an unlimited number of tuition units for a prepaid tuition contract and may contribute an unlimited amount of funds to a savings trust account, provided that the board, program entity, or nonprofit scholarship organization is the purchaser of the prepaid tuition contract or account owner of the savings trust account and provided that such contributions or purchases do not result in any individual beneficiary's aggregate balance exceeding the limit in §7.103 of this title (relating to Tax Benefits and Securities Laws Exemptions); and

(4) may enter into a prepaid tuition contract during the enrollment period established for beneficiaries who are newborn infants under §7.122(6) of this title (relating to Definitions). The three-year holding period begins on the date each unit is paid in full.

(b) Notwithstanding any of the provisions of this chapter, the board or the program entity:

(1) may designate more than one beneficiary of a prepaid tuition contract by awarding or allocating a portion of tuition units to an eligible designated beneficiary, provided that the board or program entity is the purchaser of the contract; and

(2) is exempt from the $25 administrative fee imposed under §7.124(j) of this title (relating to Prepaid Tuition Units: Purchase; Assigned Value; Types; Price).

§7.165. Initial Eligibility for Participation in Program Applicable to All Participants.

To be initially eligible to participate in the program, a beneficiary, at the time a prepaid tuition contract is entered into on the beneficiary's behalf or a savings trust account is opened on the beneficiary's behalf, as applicable, must be:

(1) a resident of this state; and

(2) a dependent for purposes of Internal Revenue Code of 1986, §152, of a resident of this state.

§7.166. Initial Eligibility for Participation in Program Applicable to Awards Made by the Board.

(a) No savings trust account or prepaid tuition contract may be matched as provided in §7.163(a)(2) of this title (relating to Texas Save and Match Program Administration) unless:

(1) the participant is the account owner of a savings trust account or the purchaser of a prepaid tuition contract;

(2) the designated beneficiary is under 15 years of age; and

(3) the designated beneficiary is eligible for free or reduced-price meals under the national free or reduced-price breakfast and lunch program during the current or most recent school year.

(b) The board may accept any of the following as proof that a designated beneficiary is eligible for free or reduced price meals under the national free or reduced price breakfast and lunch program:

(1) evidence that a designated beneficiary is enrolled in the national free or reduced-price breakfast and lunch program;

(2) evidence of the participant's household size and income in a form acceptable to the board; or

(3) other evidence of eligibility for the national free or reduced price breakfast and lunch program in a form acceptable to the board.

(c) Contracts that are currently delinquent or those with a history of two or more delinquent payments are not eligible.

(d) The comptroller's office may enter into an agreement with the appropriate federal, state, or local government entities to confirm eligibility of participants or their designated beneficiaries.

(e) This section does not apply to awards made under §7.163(a)(1) of this title.

§7.167. Award Process for Awards Made by the Board.

(a) In any year in which sufficient funds are available, the board may announce the availability and amount of awards and may create a procedure for awarding match accounts.

(b) By submitting an application, a participant agrees to all the terms and conditions set forth by the board, Education Code, Chapter 54, and this subchapter.

(c) Only prepaid tuition units paid in full or college savings on deposit at the time of the application deadline are eligible for match.

(d) The board or executive director may conduct or request investigations to determine initial and continuing eligibility without obtaining additional consent from the participant when considering eligibility for an award and after an award has been made.

§7.168. Redemption of Awards Made by the Board.

(a) Distributions from match accounts will be made directly to the eligible educational institution upon proof of the beneficiary's enrollment and a valid invoice from the institution.

(b) A match account that is linked to a prepaid tuition contract may only be used to pay undergraduate tuition and required fees.

(c) A match account that is linked to a savings trust account can only be used to pay qualified higher education expenses.

§7.169. Limitations Applicable to All Participants.

(a) A match account is owned by the board or program entity until the funds or tuition units are distributed to an eligible educational institution.

(b) Funds or tuition units that are awarded or allocated to a match account, including any net earnings or losses related to that account if applicable, are forfeited and revert to the board or program entity on the occurrence of any of the following:

(1) the 10th anniversary of the date the beneficiary is projected to graduate from high school, except that time spent by the beneficiary as an active duty member of the United States armed services tolls this period;

(2) a change of beneficiary by the participant;

(3) the closing of participant's savings trust account or prepaid tuition contract resulting from a nonqualified withdrawal;

(4) a nonqualified withdrawal from participant's prepaid tuition contract that results in the sum of the participant's tuition unit balance plus all prior tuition units redeemed from participant's contract being less than the amount that had been matched;

(5) a nonqualified withdrawal from participant's savings trust account that results in the sum of the participant's savings account balance plus all prior qualified distributions from participant's savings trust account being less than the match account balance as adjusted for earnings;

(6) the successful completion by the beneficiary of an associate or bachelor's degree program;

(7) transfer of funds from the participant's account to another qualified tuition program of any state that meets the requirements of Internal Revenue Code of 1986, §529;

(8) fraud or misrepresentation by the participant;

(9) the death or permanent disability of the beneficiary (unable to attend eligible educational institution);

(10) the downgrade of participant's prepaid tuition units that were matched; or

(11) any other event the board or program entity determines would be inconsistent with the program's purposes.

(c) A participant or beneficiary whose match account is forfeited after the completion of an associate degree, and who subsequently enrolls in a bachelor's degree program, may request in writing that the board not forfeit the match account and must provide evidence in a form acceptable to the board.

(d) If a participant makes a misrepresentation in an application for a savings trust account or prepaid tuition contract, or in a match account application, the match account associated with the misrepresentation is forfeited. Misrepresentations by participants may be reported to the Comptroller's Office of Criminal Investigation and the Attorney General's Office for prosecution and to recover any distributions.

(e) Unless otherwise provided by this subchapter, use of a match account that is linked to a savings trust agreement is governed by the applicable Plan Description and Savings Trust Agreement. Unless otherwise provided by this subchapter, use of a match account that is linked to a prepaid tuition contract is governed by the applicable Plan Description and Master Agreement.

§7.170. Match Account Administration by Plan Manager.

(a) Information about the tuition units or match funds allocated or awarded to an eligible beneficiary by the board or program entity shall be made available to the participant and, to the extent possible, shall be included in the periodic statements for participant accounts.

(b) Match account tuition units may not be redeemed until the participant authorizes redemption of the participant's tuition units in writing.

(c) Distributions from a match account will be reported to the Internal Revenue Service to the extent required by federal law.

§7.171. Texas Save and Match Trust Fund; Agreements between Board and Program Entity Regarding Program Entity Funds.

The Comptroller will present an annual budget to the board and program entity for approval prior to the start of each fiscal year. Operating and marketing expenses will be paid by the board and program entity from appropriated funds or contributions on a pro-rata share based on estimated funds held in each fund at the beginning of the fiscal year. Costs for investment management or consultant services will be allocated to the board and the program entity based on funds invested.

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 January 10, 2012.

TRD-201200096
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: February 26, 2012
For further information, please call: (512) 475-0387

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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER I. WEATHERIZATION ASSISTANCE PROGRAM DEPARTMENT OF ENERGY AMERICAN RECOVERY AND REINVESTMENT ACT (WAP ARRA)

10 TAC §§5.900 - 5.905

Proposed amended §§5.900 - 5.905, published in the July 8, 2011, issue of the *Texas Register* (36 TexReg 4220), are 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 January 10, 2012.

TRD-201200088

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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 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 12. COAL MINING REGULATIONS
SUBCHAPTER G. SURFACE COAL MINING AND RECLAMATION OPERATIONS, PERMITS, AND COAL EXPLORATION PROCEDURES SYSTEMS
DIVISION 2. GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

16 TAC §12.108

The Railroad Commission of Texas (Commission) adopts amendments to §12.108, relating to Permit Fees, without changes to the version published in the November 18, 2011, issue of the *Texas Register* (36 TexReg 7748). The adopted amendments implement provisions of Senate Bill 1, 82nd Texas Legislature (Regular Session, 2011), and, specifically, Article VI, Railroad Commission Rider 9, which requires the amounts appropriated from general revenue for State fiscal years 2012 and 2013 to cover the cost of permitting and inspecting coal mining facilities. This requirement is contingent upon the Commission assessing fees sufficient to generate, during the 2012-2013 biennium, revenue to cover the general revenue appropriations.

The Commission amends subsection (b) to specify that the annual fees apply for calendar years 2011 and 2012. In paragraph (1), the Commission increases the annual fee for each acre of land within a permit area on which coal or lignite was actually removed during a calendar year from the current $130 to $154. In paragraph (2), the Commission increases the annual fee for each acre of land within a permit area covered by a reclamation bond on December 31st of each year, as shown on the map required at §12.142(2)(C) of this chapter (relating to Operation Plan: Maps and Plans), from the current $5.50 to $10.40. Finally, in paragraph (3), the Commission increases the annual fee for each permit in effect on December 31st of a year from the current $4,250 to $6,900. The Commission anticipates that annual fees at these new amounts will result in revenue of $2,652,652 in each year of the 2012-2013 biennium.

The Commission received no comments on the proposal.

The Commission adopts the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations and §134.055, which authorizes the Commission to obtain annual fees.

Statutory authority: Texas Natural Resources Code, §134.013 and §134.055.

Cross-reference to statute: Texas Natural Resources Code, §134.013 and §134.055.

Issued in Austin, Texas, on January 10, 2012.

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 January 10, 2012.

TRD-201200102
Mary Ross McDonald
Director, Pipeline Safety Division
Railroad Commission of Texas
Effective date: January 30, 2012
Proposal publication date: November 18, 2011
For further information, please call: (512) 475-1295

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts amendments to §26.74, relating to Reports on Sale of Property and Mergers, and §26.101, relating to Certificate of Convenience and Necessity Criteria, without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6838). Pursuant to House Bill 1753 of the 82nd Legislature, Regular Session in 2011 (HB 1753), the amendments increase from $100,000 to $10 million the total amount of consideration exchanged in a sale, acquisition, or lease of an operating unit or system above which a public utility in the telephone industry is required to report the transaction to the commission. Project Number 39623 is assigned to this proceeding.

The commission received no comments on the proposed amendments.

SUBCHAPTER D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

16 TAC §26.74

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically HB 1753 §1, which amended PURA §14.101(a), effective September 1, 2011, to increase the threshold above which public utilities must report to the commission.

Cross Reference to Statutes: PURA §14.001 and HB 1753 §1 (which amended PURA 14.101(a)).

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 January 13, 2012.

TRD-201200153
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: February 2, 2012
Proposal publication date: October 14, 2011
For further information, please call: (512) 936-7223

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SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION

16 TAC §26.101

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically HB 1753 §1, which amended PURA §14.101(a), effective September 1, 2011, to increase the threshold above which public utilities must report to the commission.

Cross Reference to Statutes: PURA §14.001 and HB 1753 §1 (which amended PURA 14.101(a)).

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 January 13, 2012.

TRD-201200154
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: February 2, 2012
Proposal publication date: October 14, 2011
For further information, please call: (512) 936-7223

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 57. FOR-PROFIT LEGAL SERVICE CONTRACT COMPANIES

16 TAC §57.80

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 57, §57.80, regarding the For-Profit Legal Service Contracts program as published in the September 16, 2011, issue of the *Texas Register* (36 TexReg 6091), without changes, and will not be republished. The adoption takes effect February 1, 2012.

Pursuant to the Department's annual fee review, the fees currently in place are above the amount required by the Department to cover costs. The decrease in fees would not adversely affect the administration and enforcement of the For-Profit Legal Service Contracts program. The amendment to §57.80 lowers the original and renewal registration fees for a sales representative from $30 to $20.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the *Texas Register* on September 16, 2011 (36 TexReg 6091). The 30-day public comment period closed on October 17, 2011.

The Department received four public comments regarding the proposed rule from: (1) Assurnet Insurance Agency; (2) Pre-Paid Legal Services, Inc.; (3) Legal Shield; and (4) an independent sales contractor. The comments from Pre-Paid Legal Services, Inc., Legal Shield, and the independent sales contractor supported the proposed reduction of fees. The independent sales contractor stated that lowering the fees would make the individual's business more cost efficient.

The comments from Assurnet Insurance Agency opposed the reduction of fees. This commenter expressed concerns about reducing fees for state services in light of the state's finances. This commenter also stated that the current $30 fee does not cover the costs of processing a license renewal and maintaining the license records and that the current $30 fee is not a hardship on anyone applying for a renewal.

The Department did not make any changes to the proposed fee reduction in response to these comments. The Department has conducted the fee review and concluded that the proposed original and renewal registration fees of $20 for sales representatives are sufficient to cover the costs of administering and enforcing this program. The Commission adopted the fee reduction as proposed by the Department.

The amendment is adopted under Texas Occupations Code, Chapters 51 and 953, which authorize the Commission, 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 adoption are those set forth in Texas Occupations Code, Chapters 51 and 953. No other statutes, articles, or codes are affected by the proposal.

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 January 12, 2012.

TRD-201200140
Brian Francis
Deputy Executive Director
Texas Department of Licensing and Regulation
Effective date: February 1, 2012
Proposal publication date: September 16, 2011
For further information, please call: (512) 463-5386

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CHAPTER 79. WEATHER MODIFICATION

16 TAC §79.80

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code, (TAC) Chapter 79, §79.80 regarding the Weather Modification program, as published in the September 16, 2011, issue of the *Texas Register* (36 TexReg 6102), without changes, and will not be republished. The adoption takes effect February 1, 2012.

The adoption is a result of the Department's fee review, pursuant to Texas Occupations Code, §51.202, to ensure that fees charged in a particular program are set at the appropriate amount to cover the Department's costs in operating the program. The fees currently in place are below the amount required by the Department to cover costs.

The adoption increases the weather modification original and renewal license fees from $650 to $750 and the weather modification original and renewal permit fees from $75 to $100.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed new rules were published in the*Texas Register* on September 16, 2011. The 30-day public comment period closed on October 17, 2011. The Department did not receive any public comments on the proposed rules.

The amendment is adopted under Texas Occupations Code, Chapter 51, and Texas Labor Code, Chapter 91, both of which authorize the Commission, 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 adoption 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 adoption.

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

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Brian Francis
Deputy Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-5386

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CHAPTER 82. BARBERS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 82, §§82.10, 82.20 - 82.23, 82.31, 82.40, 82.70 - 82.72, 82.80, 82.100, 82.104, 82.106, and 82.112; the repeal of §§82.75 - 82.77 and 82.120; and new rule §82.120, regarding the Barbering program as published in the October 7, 2011, issue of the *Texas Register* (36 TexReg 6602). The amendments to §§82.10, 82.20 - 82.22, 82.31, 82.40, 82.70 - 82.72, 82.100, 82.104, 82.106, and 82.112; the repeal of §§82.75 - 82.77, and 82.120 are adopted without changes to the proposed text as published in the October 7, 2011, issue of the *Texas Register* (36 TexReg 6602), and will not be republished. The amendments to §82.23 and §82.80 and new §82.120 are adopted with changes to the proposed text as published in the October 7, 2011, issue of the *Texas Register* (36 TexReg 6602) and is republished. The adoption takes effect February 1, 2012.

The amendments, repeal, and new rule are necessary to implement Senate Bill (SB) 1170, 82nd Legislature, Regular Session (2011) and changes recommended by the Advisory Board on Barbering. A summary of the proposed amendments, repeals, and new rule were included in the notice of proposed rules published in the October 7, 2011, issue of the *Texas Register* (36 TexReg 6602).

The Department drafted and distributed the proposed amendments, repeals, and new rule to persons internal and external to the agency and were published in the*Texas Register* on October 7, 2011 (36 TexReg 6602). The 30-day public comment period closed on November 7, 2011. The Department received public comment from four interested parties: McLennan Community College and three licensed barbers. On November 14, 2011, the Barber Advisory Board met to review public comments and recommend changes to the proposed rules in response to comments received. The public comments are summarized below, followed by the Department's responses.

One commenter stated that barber schools currently provide a "liquid sanitizer" for each work station and do not provide a "liquid sterilizer" as required in §82.23. The commenter suggested changing the term to accurately reflect the industry standard.

Department response: The Department agrees that the term "liquid sanitizer" more accurately reflects the industry standard and the rule, as adopted, changes the term "liquid sterilizer" to "liquid sanitizer".

The same commenter proposed requiring that schools provide at least 12 neck dusters and three styling brushes to students so they can be properly sanitized before reuse.

Department response: The Department disagrees with this comment. Section 82.72 requires barber schools to furnish one neck duster and one hair styling brush and the Department believes that the requirement is sufficient for a student kit. The Department does not believe that the volume of customers typically seen by students would necessitate the increase in these items.

The same commenter proposed requiring that all barber students have a vaccination for Hepatitis B before starting school.

Department response: The Department disagrees with this comment. Texas Occupations Code §1601.505 prohibits an owner, operator or manager of a barber shop from knowingly permitting a person with a communicable skin disease or venereal disease from working in a shop and also prohibits a person who knowingly has any of these diseases from working in a shop. The De-

partment believes that absent a legislative expansion of these prohibitions, the Department does not have the authority to require mandatory vaccination for all barber students.

The same commenter proposed changing the ratio of sinks-to-chairs in barber shops from "one sink, wash basin, or hand sanitizer for every three work stations" to "one sink for every two work stations" to conform to the current ratio required in barber schools.

Department response: The Department disagrees with this comment. Changing the ratio of sinks to work stations in barber shops would be costly for the many small business owners who would be required to either remodel or relocate their barber shops to comply with the rule change and would not result in a measurable increase in safety or sanitation.

Another commenter stated that the proposed rule reducing the barber fee from $70 to $60 and eliminating the newsletter is not a sufficient fee reduction and that the fee appears to be set at a rate higher than that required to cover administrative costs.

Department response: The Department disagrees with this comment. In arriving at the $60 figure, the Department analyzed the level of fees necessary to generate the revenue required to operate the barber program. The fee adopted is the appropriate amount in light of this consideration. In addition, §82.80 is adopted with license renewal fee reductions for the following license and certificate types expiring on or after March 15, 2012: Class A Barber, Barber Technician, Manicurist, Barber Technician/Manicurist, Barber Technician/Hair Weaving, Hair Weaving, Hair Braiding and School Permit. This will provide the Department with sufficient time to make the necessary programming adjustments to facilitate the fee reductions.

Another commenter suggested removing the rule requiring that one barber chair be available for each student in attendance on the practical floor to allow newer students to learn by observing.

Department response: The Department disagrees with this comment. Requiring one barber chair for each student does not limit the possibility for observational learning by newer students. Students always have the option of observational learning but are also guaranteed a chair when they are ready to engage in "hands on" learning.

Another commenter suggested clarifying the language of §82.72(f) because it seems to indicate that if a student cannot provide his or her own equipment the school is obligated to do so.

Department response: The Department disagrees with this comment. The Department believes that the rule is sufficiently clear for both schools and students.

The same commenter suggested that even though FDA approval is no longer required for sterilizers or sanitizers, the Department should consider requiring FDA approval anyway because such approval is not prohibited.

Department response: The Department disagrees with this comment. While the statute does not forbid a rule requiring FDA approval, to do so would frustrate the legislative intent of SB 1170 to expand industry options for sanitizing and/or sterilizing tools and implements.

One commenter suggested expanding the definition of disinfectant and provided definitions for the following terms: High Level Disinfectant, Ultraviolet Sanitizer, Antiseptic, Porosity, OSHA Blood Borne Pathogen Standard, Personal Protective Equipment, Sharps, Sharps Container And Contaminated Sharps Injury, Contaminated Waste, Universal Precautions, Texas Commission On Environmental Quality, AOAC (An Agency That Establishes Testing Criteria For Evaluating Anti-Microbial Products), FIFRA (Federal Insecticide, Fungicide and Rodenticide Act), and Terminal Sterilant.

Department Response: The Department disagrees with this comment. The Department believes that the current health and safety definitions and the adopted definitions provide sufficient standards to adequately protect the licensee and the consumer.

Also, §83.120 is adopted with change to correct two of the tables that were published in the Tables & Graphics portion of the *Texas Register.* Figure: 16 TAC §82.120(c) and Figure: 16 TAC §82.120(k).

16 TAC §§82.10, 82.20 - 82.23, 82.31, 82.40, 82.70 - 82.72, 82.80, 82.100, 82.104, 82.106, 82.112, 82.120

The amendments and new rule are adopted under Texas Occupations Code, Chapters 51, 1601, and 1603 which authorize 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. In particular, Texas Occupations Code, §51.202(a) directs the Commission to set fees in amounts reasonable and necessary to cover the costs of administering programs or activities.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 1601, and 1603. No other statutes, articles, or codes are affected by the adoption.

§82.23. Permit Requirements--Barber Schools.

(a) To be eligible for a Barber School Permit, an applicant must:

(1) submit the completed application on a department-approved form;

(2) pay the fee required under §82.80;

(3) satisfy the facility and equipment requirements of Texas Occupations Code §1601.353; and

(4) meet other applicable requirements of the Act and this chapter.

(b) In addition to the eligibility requirements of subsection (a), a private barber school must also pay any required fee under §82.40 and provide adequate proof of financial responsibility.

(c) A school must be inspected and approved by the department prior to the operation of the school.

(d) Barber schools must have and maintain the following:

(1) a building of permanent construction that must include classroom and practical areas covered in a hard-surface floor covering of tile or other suitable material and that must also include access to permanent restrooms, adequate drinking fountain and adequate lighting for each room;

(2) in municipalities with populations of more than 50,000 the building must have a minimum of 2,000 square feet of floor space. In municipalities with populations of 50,000 or less or in an unincorporated area of a county, the building must have a minimum of 1,000 square feet of floor space. Population shall be determined according to the most current decennial census compiled by the United States Census Bureau;

(3) at least 10 student work stations that include a chair that reclines, a back bar, and a wall mirror;

(4) a sink behind every two workstations;

(5) a liquid sanitizer for each workstations; and

(6) at least 10 classroom chairs and other materials necessary to teach the required subjects.

§82.80. Fees.

(a) Application Fees:

(1) Class A Barber Certificate--$60

(2) Barber Instructor License--$70

(3) Specialty License--Barber Technician, Manicurist, Barber Technician/Manicurist, Barber Technician/Hair Weaving--$30

(4) Student Permit--$35 (includes $10 law and rules book fee)

(5) Shampoo Apprentice Permit--No charge

(6) Specialty Certificate of Registration--Hair Weaving, Hair Braiding--$43

(7) Specialty Instructor License--Barber Technician, Manicurist, Barber Technician/Manicurist, Barber Technician/Hair Weaving, Hair Weaving, Hair Braiding--$70

(8) Barbershop Permit--$60

(9) Specialty Shop Permit--$50

(10) Booth Rental Permit--$50

(11) School Original Permit--$500

(12) Dual Shop--$130

(13) Mobile Shop--$60

(b) Renewal Fees:

(1) Class A Barber Certificate--$70 for certificates expiring prior to March 15, 2012; $60 for certificates expiring on or after March 15, 2012

(2) Barber Instructor License--$70

(3) Specialty License--Barber Technician, Manicurist, Barber Technician/Manicurist, Barber Technician/Hair Weaving--$40 for certificates expiring prior to March 15, 2012; $30 for certificates expiring on or after March 15, 2012

(4) Student Permit--No charge

(5) Specialty Certificate of Registration--Hair Weaving, Hair Braiding--$53 for certificates expiring prior to March 15, 2012; $43 for certificates expiring on or after March 15, 2012

(6) Specialty Instructor License--Barber Technician, Manicurist, Barber Technician/Manicurist, Barber Technician/Hair Weaving, Hair Weaving, Hair Braiding--$70

(7) Barbershop Permit--$60

(8) Specialty Shop Permit--$50

(9) Booth Rental Permit--$50

(10) School Permit--$300 for certificates expiring prior to March 15, 2012; $200 for certificates expiring on or after March 15, 2012

(11) Dual Shop--$100

(12) Mobile Shop--$60

(c) License by Reciprocity or Endorsement--$100

(d) Issuance of a revised or duplicate license, certificate or permit--$25

(e) Verification of license, permit or certificate to other states--$25

(f) Law and Rules Book Fee--$10

(g) Late renewals fees for licenses, certificates and permits issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(h) Inspection Fees (for each occurrence):

(1) Initial Inspection or Reinspection of school--$200

(2) Risk-based Inspection Fees for schools and shops--$150

(i) All fees are nonrefundable, except as otherwise provided by law or commission rule.

§82.120. Technical Requirements--Curricula.

(a) Requirement for enrollment. No person may enroll in an instructor's course in an approved barber school before receiving the appropriate license.

(b) The curriculum for the 750 hour barber instructor license must be completed in a course of not less than 20 weeks as follows:
Figure: 16 TAC §82.120(b)

(c) The curriculum for the barber instructor license with one year experience consists of 500 hours to be completed in a course of not less than 13 weeks as follows:
Figure: 16 TAC §82.120(c)

(d) The curriculum for the class A barber certificate in a private or public post-secondary barber school consists of 1,500 hours, to be completed in a course of not less than nine months, as follows:
Figure: 16 TAC §82.120(d)

(e) The curriculum for the class A barber certificate while holding a cosmetology operator license consists of 300 hours, to be completed in a course of not less than 9 weeks, as follows:
Figure: 16 TAC §82.120(e)

(f) The curriculum for the class A barber certificate in a public secondary program for high school students consists of 1,000 hours of instruction in barber courses and 500 hours of related high school courses prescribed by the commission in a vocational barber program in a public school to be completed in a course of not less than six months, with the 1,000 hours as follows:
Figure: 16 TAC §82.120(f)

(g) The curriculum for the manicurist license consists of 600 hours, to be completed in a course of not less than 16 weeks, as follows:
Figure: 16 TAC §82.120(g)

(h) The curriculum for the barber technician/manicurist license consists of 900 hours; to be completed in a course of not less than 24 weeks, as follows:
Figure: 16 TAC §82.120(h)

(i) The curriculum for the barber technician/hair weaving license consists of 600 hours to be completed in a course of not less than 16 weeks, as follows:
Figure: 16 TAC §82.120(i)

(j) The curriculum for the barber technician license consists of 300 hours, to be completed in a course of not less than 8 weeks, as follows:
Figure: 16 TAC §82.120(j)

(k) The curriculum for the hair braiding specialty certificate of registration consists of 35 hours as follows:
Figure: 16 TAC §82.120(k)

(l) The curriculum for the hair weaving specialty certificate of registration consists of 300 hours as follows:
Figure: 16 TAC §82.120(l)

(m) Field Trips

(1) Barber related field trips are permitted under the following conditions for students enrolled in the following courses and the guidelines under this subsection must be strictly followed.

(2) A student may obtain the following field trip curriculum hours:

(A) a maximum of 75 hours out of the 1,500 hour Class A Barber course;

(B) a maximum of 50 hours out of the 1,000 hour class A Barber course;

(C) a maximum of 30 hours for the Manicure course;

(D) a maximum of 20 hours for the Barber Technician course;

(E) a maximum of 45 hours for the Barber Technician/Manicurist course;

(F) a maximum of 30 hours for the Barber Technician/Hair Weaving course;

(G) a maximum of 20 hours for the Hair Weaving course;

(H) a maximum of 35 hours for the 750 hour Instructor course;

(I) a maximum of 25 hours for the 500 hour Instructor course; and

(J) a maximum of 15 hours for the Cosmetology Operator to Class A Barber course.

(3) Students must be under the supervision of a licensed instructor from the school where the student is enrolled at all times during the field trip. The instructor-student ratio required in a school is required on a field trip.

(4) Complete documentation is required, including student names, instructor names, activity, location, date, and duration of the activity.

(5) No credit may be earned for travel.

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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16 TAC §§82.75 - 82.77, 82.120

The repeals are adopted under Texas Occupations Code, Chapters 51, 1601, and 1603 which authorize 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 repeal are those set forth in Texas Occupations Code, Chapters 51, 1601, and 1603. No other statutes, articles, or codes are affected by the adoption.

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

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CHAPTER 88. POLYGRAPH EXAMINERS

16 TAC §88.80

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 88, §88.80, regarding the Polygraph Examiners program, as published in the September 16, 2011, issue of the *Texas Register* (36 TexReg 6104), without changes, and will not be republished. The adoption takes effect February 1, 2012.

Pursuant to the Department's annual fee review, the fees currently in place are above the amount required by the Department to cover costs. The decrease in fees would not adversely affect the administration and enforcement of the Polygraph Examiner program. The amendment to §88.80 proposes to lower the polygraph examiner original application fee from $500 to $400 and the polygraph examiner renewal fee from $450 to $350. The amendment also proposes to lower the internship original application fee from $150 to $50 and the internship renewal fee from $75 to $50.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the*Texas Register* on September 16, 2011. The 30-day public comment period closed on October 17, 2011.

The Department received one public comment from the Texas Association of Law Enforcement Polygraph Investigators

(TALEPI) in support of the proposed fee reductions along with a request that consideration be given to further reductions in fees to bring them more in line with the average TDLR licensing fee.

The amendment is adopted under Texas Occupations Code, Chapters 51 and 1703, 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 1703. No other statutes, articles, or codes are affected by the adoption.

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

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION
SUBCHAPTER C. ASSESSMENT OF MAINTENANCE TAXES AND FEES

28 TAC §1.414

The Commissioner of Insurance (Commissioner) adopts amendments to §1.414, concerning the 2012 assessment of maintenance taxes and fees imposed by the Texas Insurance Code. The amendments are adopted without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8157).

REASONED JUSTIFICATION. The amendments are necessary to adjust the rates of assessment for maintenance taxes and fees for 2012 on the basis of gross premium receipts for calendar year 2011 following the methodology described below. Section 1.414 includes rates of assessment to be applied to life, accident, and health insurance; motor vehicle insurance; casualty insurance and fidelity, guaranty, and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; workers' compensation self-insured groups; title insurance; health maintenance organizations (HMOs); third party administrators; nonprofit legal services corporations issuing prepaid legal services contracts; and workers' compensation certified self-insurers.

The following paragraphs provide an explanation of the methodology used to determine adopted rates of assessment for maintenance taxes and fees for 2012.

In general, the Department's 2012 revenue need (the amount that must be funded by maintenance taxes or fees, examination overhead assessments, and premium finance examination assessments) is determined by calculating the Department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2011.

To determine its total cost need, the Department combined costs from the following: (i) appropriations set out in Chapter 1355 (House Bill 1), Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) an estimate of other costs statutorily required to be paid from those two funds, such as fringe benefits and statewide allocated costs; (iii) an estimate of the cash amount necessary to finance both funds from the end of the 2012 fiscal year until the next assessment collection period in 2013; and (iv) costs associated with implementation of Senate Bill 1291, 82nd Legislature, Regular Session, effective September 1, 2011 (Senate Bill 1291), which requires the creation of an account with the Texas Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses.

To complete the calculation of revenue need, the Department reduced the total cost need by subtracting the estimated ending fund balance for fiscal year 2011 (August 31, 2011) and estimated fee revenue to be collected in fiscal year 2012. The resulting balance is the estimated revenue need that must be supported during the 2012 fiscal year by the following funding sources: the maintenance taxes or fees, exam overhead assessments, and premium finance exam assessments.

The Department determined how to allocate the revenue need to be attributed to each funding source using the following method:

For each section within the Department that provides services directly to the public or the insurance industry, the Department allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the examination assessment, or another funding source. The Department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The Department calculated a percentage for each funding source by dividing the total directly allocated to each funding source by the total of the direct cost. The Department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the Commissioner's administration, and information technology. The Department calculated the total of direct costs and administrative support costs for each funding source.

The General Appropriations Act includes appropriations to state agencies other than the Department that must be funded by Account No. 0036 and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees. The Department adds these costs to the sum of the direct costs and the administrative support costs for the appropriate funding source when possible. For instance, the Department allocates an appropriation to the Texas Department of Transportation for the crash information records system to the motor vehicle maintenance tax. The Department includes costs for other agencies that cannot be directly allocated to a funding source to the admin-

istrative support costs. For instance, the Department includes an appropriation to the Texas Facilities Commission for building support costs in administrative support costs.

The Department determines the revenue need for each maintenance tax or fee line by dividing the total costs need for each maintenance tax line by the total of the revenue needs for all maintenance taxes and assessments. The Department multiplies the calculated percentage for each line by the total revenue need for maintenance taxes and assessments. The resulting amount is the revenue need for each maintenance tax line. The Department adjusts the revenue need by subtracting the estimated amount of fee and reimbursement revenue collected for each maintenance tax or fee line from the total of the revenue need for each maintenance tax or fee line. The Department further adjusts the resulting revenue need as described below.

The costs allocated to the life, accident, and health maintenance tax exceed the amount of revenue that can be collected at the maximum rate set by statute. The Department allocates the difference between the amount estimated to be collected at the maximum rate and the costs allocated to the life, accident, and health maintenance tax to the other maintenance tax or fee lines. The Department allocates the life, accident, and health shortfall based on each of the other maintenance tax or fee lines' proportionate share of the total costs for maintenance taxes or fee. The Department uses the adjusted revenue need as the basis for calculating the maintenance tax rates.

For each line of insurance, the Department divides the adjusted revenue need by the estimated premium volume or assessment base to determine the rate of assessment for each maintenance tax or fee.

The following paragraphs provide an explanation of the methodology to develop the adopted rates for the Division of Workers' Compensation (DWC) and the Office of Injured Employee Counsel (OIEC).

The Department utilized the following methodology to develop the rates for the DWC and the OIEC. To determine the revenue need, the Department considered the following factors applicable to costs for DWC and OIEC: (i) the appropriations in the General Appropriations Act for fiscal year 2012 from Account No. 0036; (ii) estimated other costs statutorily required to be paid from Account No. 0036, such as fringe benefits and statewide allocated costs; and (iii) an estimated cash amount to finance Account No. 0036 costs from the end of the 2012 fiscal year until the next assessment collection period in 2013. The Department adds these three factors to determine the total revenue need.

The Department reduced the total revenue need by subtracting the estimated fund balance at August 31, 2011 and the DWC fee and reimbursement revenue estimate to be collected and deposited to the Account No. 0036 in fiscal year 2012. The resulting balance is the estimated revenue need from maintenance taxes. The Department calculated the maintenance tax rate by dividing the estimated revenue need by the combined estimated workers' compensation premium volume and the certified self-insurers' liabilities plus the amount of expense incurred for administration of self insurance.

The following paragraphs provide an explanation of the methodology to develop the adopted rates for the workers' compensation research and evaluation group.

To determine the revenue need, the Department considered the following factors that are applicable to the workers' compensation and research and evaluation group: (i) the appropriations in the General Appropriations Act for fiscal year 2012 from Account No. 0036 and from General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) estimated other costs statutorily required to be paid from these two funds, such as fringe benefits and statewide allocated costs; and (iii) an estimated cash amount to finance costs from these two funds from the end of the 2012 fiscal year until the next assessment collection period in 2013. The Department adds these three factors to determine the total revenue need.

The Department reduced the total revenue need by subtracting the estimated fund balance at August 31, 2011. The resulting balance is the estimated revenue need from maintenance taxes. The Department calculated the maintenance tax rate by dividing the estimated revenue need by the estimated assessment base for 2012.

The following paragraphs provide a brief summary and analysis of the reasons for the adopted amendments.

The amendment to the section heading is necessary to reflect the year for which the proposed assessment of maintenance taxes and fees is applicable. The amendments in subsections (a), (b), and (c), and relettered (f) and (h) are necessary to reflect the appropriate year for accurate application of the section.

The amendments in subsections (a) and (c) are grammatical in nature; they are necessary to revise each sentence to be written in the active voice.

The amendments in subsection (a) are necessary to reflect the addition of a new paragraph, and the amendments in relettered (h) are necessary to reflect the addition of two new subsections. Additionally, amendments are necessary to reletter subsections (d), (e), and (f) as (f), (g), and (h) to reflect addition of the two new subsections.

The amendments in subsections (a)(1) - (5), (7), (8), and (9); (c)(1) - (3); and relettered (f) are necessary to update rates to reflect the methodology the Department has developed for 2012, which is described below.

Amendments are necessary throughout the text of the section to change the percent symbol to the word "percent." This revision is necessary to update the section to follow current Department rule drafting style. An amendment inserting the word "the" before "Labor Code" in relettered subsection (f) is also necessary to follow current Department rule drafting style.

New paragraph (6) of subsection (a) and new subsections (d) and (e) are necessary to implement House Bill 7, enacted by Acts 2005, 79th Legislature, Chapter 265, effective September 1, 2005 (House Bill 7). House Bill 7 amended the Labor Code Chapter 405 to establish the Workers' Compensation Research and Evaluation Group. Section 405.003 provides that the Workers' Compensation Research and Evaluation Group's activities must be funded through the assessment of a maintenance tax collected annually from all insurance carriers and self-insurance groups that hold certificates of approval under Chapter 407A.

Amendments to relettered subsection (h) are necessary to update the address for the Comptroller to which insurers, HMOs, third party administrators, nonprofit legal services corporations issuing prepaid legal services contracts, and workers' compensation certified self-insurers can submit the maintenance taxes and fees required by §1.414.

HOW THE SECTION WILL FUNCTION. Section 1.414 provides the rates of assessment for maintenance taxes and fees for 2012 to be applied to life, accident, and health insurance; motor vehicle insurance; casualty insurance and fidelity, guaranty, and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; workers' compensation self-insured groups; title insurance; health maintenance organizations; third party administrators; nonprofit legal services corporations issuing prepaid legal services contracts; and workers' compensation certified self-insurers.

Subsection (a) establishes the calendar year 2011 rates for maintenance taxes and fees on gross premiums of insurers for the lines of insurance specified in paragraphs (1) - (9) of the subsection. Subsection (a)(1) sets the rate for motor vehicle insurance at .077 of 1.0 percent pursuant to the Insurance Code §254.002. Subsection (a)(2) sets the rate for casualty insurance and fidelity, guaranty, and surety bonds at .152 of 1.0 percent pursuant to the Insurance Code §253.002. Subsection (a)(3) sets the rate for fire insurance and allied lines, including inland marine, at .331 of 1.0 percent pursuant to the Insurance Code §252.002.

Paragraphs (4) - (8) of subsection (a) set rates for workers' compensation insurance; subsection (a)(4) sets a rate for workers' compensation insurance at .151 of 1.0 percent, pursuant to the Insurance Code §255.002. Subsection (a)(5) sets a rate for workers' compensation insurance at 1.669 percent pursuant to the Labor Code §403.003. Subsection (a)(6) sets a rate for workers' compensation insurance at .016 of 1.0 percent, pursuant to the Labor Code §405.003. Subsection (a)(7) sets a rate for workers' compensation insurance at 1.669 percent pursuant to the Labor Code §407A.301. Subsection (a)(8) sets a rate for workers' compensation insurance at .151 of 1.0 percent, pursuant to the Labor Code §407A.302. Subsection (a)(9) sets the rate for title insurance at .401 of 1.0 percent pursuant to the Insurance Code §271.004.

Subsection (b) establishes the rates for maintenance taxes and fees for life, health, and accident insurance and the gross considerations for annuity and endowment contracts, setting them at .040 of 1.0 percent pursuant to the Insurance Code §257.002.

Subsection (c) establishes the rates for maintenance taxes for calendar year 2011 for entities as specified in paragraphs (1) - (3) of the subsection. Subsection (c)(1) sets the rate for single service health maintenance organizations at $.50 per enrollee, for multi-service health maintenance organizations at $1.50 per enrollee, and for limited service health maintenance organizations at $.50 per enrollee, pursuant to the Insurance Code §258.003. Subsection (c)(2) sets the rate for third party administrators at .047 of 1.0 percent of the correctly reported gross amount of administrative or service fees pursuant to the Insurance Code §259.003. Subsection (c)(3) sets the rate for nonprofit legal services corporations at .030 of 1.0 percent of the correctly reported gross revenues pursuant to the Insurance Code §260.002.

Subsection (d) establishes the rates for maintenance taxes for certified self-insurers to support the workers' compensation research and evaluation group in calendar year 2012. Subsection (d) sets a rate of .016 of 1.0 percent of the tax base calculated, pursuant to the Labor Code §405.003, and it specifies that the maintenance tax shall be billed to the certified self-insurer by the Division of Workers' Compensation.

Subsection (e) establishes the rates for maintenance taxes for workers' compensation self-insurance groups to support the workers' compensation research and evaluation group in calendar year 2012. Subsection (e) sets a rate of .016 percent of 1.0 percent of the tax base calculated pursuant to the Labor Code §407.103(b) pursuant to the Labor Code §405.003 and §407A.301.

Subsection (f) establishes a self-insurer maintenance tax for certified self-insurers pursuant to the Labor Code §407.103 and §407.104. The rate set by subsection (f) is 1.669 percent of the tax base calculated pursuant to the Labor Code §407.103(b), and the subsection provides that it shall be billed to the certified self-insurer by the Division of Workers' Compensation.

Subsection (g) notes that the enactment of Senate Bill 14, 78th Legislature, Regular Session, relating to certain insurance rates, forms, and practices, did not affect the calculation of the maintenance tax rates or the assessment of the taxes.

Subsection (h) provides for the taxes assessed under §1.414(a), (b), (c), and (e) to be payable and due to the Comptroller of Public Accounts, P.O. Box 149356, Austin, TX 78714-9356 on March 1, 2012.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Department did not receive any comments on the published proposal.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the Insurance Code §§201.001(a)(1), (b), and (c); 201.052(a), (d), and (e); 251.001; 252.001 - 252.003; 253.001 - 253.003; 254.001 - 254.003; 255.001 - 255.003; 257.001 - 257.003; 258.002 - 258.004; 259.002 - 259.004; 260.001 - 260.003; 271.002 - 271.006; and 36.001; and the Labor Code §§403.002; 403.003; 403.005; 405.003(a) - (c); 407.103; 407.104(b); 407A.301; and 407A.302.

The Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the Commissioner or Comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) states that the Commissioner shall administer money in the Texas Department of Insurance operating account and may spend money from the account in accordance with state law, rules adopted by the Commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

The Insurance Code §201.052(a) requires the Department to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the Comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(d) says that in setting maintenance taxes for each fiscal year, the Commissioner shall ensure that the amount of taxes imposed is sufficient to fully reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the Comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(e) says that if the amount of maintenance taxes collected is not sufficient to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the Comptroller, other money in the Texas Department of Insurance operating account shall be used to reimburse the appropriate portion of the general revenue fund.

Insurance Code §251.001 directs the Commissioner to annually determine the rate of assessment of each maintenance tax imposed under Insurance Code Title 3, Subtitle C.

Insurance Code §252.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under the Insurance Code §252.003. The Insurance Code §252.001 also specifies that the tax required by the Insurance Code Chapter 252 is in addition to other taxes imposed that are not in conflict with the Insurance Code Chapter 252.

The Insurance Code §252.002 provides that the rate of assessment set by the Commissioner may not exceed 1.25 percent of the gross premiums subject to taxation under the Insurance Code §252.003. Section 252.002 also provides that the Commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under: the Insurance Code Chapters 1807, 2001 - 2006, 2171, 6001, 6002, and 6003; Chapter 5, Subchapter C; Chapter 544, Subchapter H; Chapter 1806, Subchapter D; and §403.002; the Government Code §§417.007, 417.008, and 417.009; and the Occupations Code Chapter 2154.

The Insurance Code §252.003 specifies that an insurer shall pay maintenance taxes under the Insurance Code Chapter 252 on the correctly reported gross premiums from writing insurance in Texas against loss or damage by: bombardment; civil war or commotion; cyclone; earthquake; excess or deficiency of moisture; explosion as defined by the Insurance Code §2002.006(b); fire; flood; frost, and freeze; hail, including loss by hail on farm crops; insurrection; invasion; lightning; military or usurped power; an order of a civil authority made to prevent the spread of a conflagration, epidemic, or catastrophe; rain; riot; the rising of the waters of the ocean or its tributaries; smoke or smudge; strike or lockout; tornado; vandalism or malicious mischief; volcanic eruption; water or other fluid or substance resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes, or other conduits or containers; weather or climatic conditions; windstorm; an event covered under a home warranty insurance policy; or an event covered under an inland marine insurance policy.

The Insurance Code §253.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under the Insurance Code §253.003. Section 253.001 also provides that the tax required by the Insurance Code Chapter 253 is in addition to other taxes imposed that are not in conflict with the Insurance Code Chapter 253.

The Insurance Code §253.002 provides that the rate of assessment set by the Commissioner may not exceed 0.4 percent of the gross premiums subject to taxation under the Insurance Code §253.003. Section 253.002 also provides that the Commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under the Insurance Code §253.003.

The Insurance Code §253.003 specifies that an insurer shall pay maintenance taxes under the Insurance Code Chapter 253 on the correctly reported gross premiums from writing a class of insurance specified under the Insurance Code Chapters 2008, 2251, and 2252; Chapter 5, Subchapter B; Chapter 1806, Subchapter C; Chapter 2301, Subchapter A; and Title 10, Subtitle B.

The Insurance Code §254.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under the Insurance Code §254.003. Section 254.001 also provides that the tax required by the Insurance Code Chapter 254 is in addition to other taxes imposed that are not in conflict with the Insurance Code Chapter 254.

The Insurance Code §254.002 provides that the rate of assessment set by the Commissioner may not exceed 0.2 percent of the gross premiums subject to taxation under the Insurance Code §254.003. Section 254.002 also provides that the Commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating motor vehicle insurance. Section 254.003 specifies that an insurer shall pay maintenance taxes under the Insurance Code Chapter 254 on the correctly reported gross premiums from writing motor vehicle insurance in Texas, including personal and commercial automobile insurance.

The Insurance Code §255.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under the Insurance Code §255.003, including a stock insurance company, mutual insurance company, reciprocal or interinsurance exchange and Lloyd's plan. Section 255.001 also provides that the tax required by the Insurance Code Chapter 255 is in addition to other taxes imposed that are not in conflict with the Insurance Code Chapter 255.

The Insurance Code §255.002 provides that the rate of assessment set by the Commissioner may not exceed 0.6 percent of the gross premiums subject to taxation under the Insurance Code §255.003. Section 255.002 also provides that the Commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating workers' compensation insurance.

The Insurance Code §255.003 specifies that an insurer shall pay maintenance taxes under the Insurance Code Chapter 255 on the correctly reported gross premiums from writing workers' compensation insurance in Texas, including the modified annual premium of a policyholder that purchases an optional deductible plan under the Insurance Code Chapter 2053 Subchapter E; and the section provides that the rate of assessment shall be applied to the modified annual premium before application of a deductible premium credit.

The Insurance Code §257.001(a) imposes a maintenance tax on each authorized insurer, including a group hospital service corporation, managed care organization, local mutual aid association, statewide mutual assessment company, stipulated premium company, and stock or mutual insurance company, that collects from residents of this state gross premiums or gross considerations subject to taxation under the Insurance Code §257.003. Section 257.001(a) also provides that the tax required by Chapter 257 is in addition to other taxes imposed that are not in conflict with the Insurance Code Chapter 257.

The Insurance Code §257.002 provides that the rate of assessment set by the Commissioner may not exceed 0.04 percent of the gross premiums subject to taxation under the Insurance Code §257.003. Section 257.002 also provides that the Commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating life, health, and accident insurers. Section 257.003 specifies that an insurer shall pay maintenance taxes under the Insurance Code Chapter 257 on the correctly reported gross premiums collected from writing life, health, and accident insurance in Texas; and gross considerations collected from writing annuity or endowment contracts in Texas; the section also provides that gross premiums on which an assessment is based under the Insurance Code Chapter 257 may not include premiums received from the United States for insurance contracted for by the United States in accordance with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. Section 1395c et seq.) and its subsequent amendments; or premiums paid on group health, accident, and life policies in which the group covered by the policy consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

The Insurance Code §258.002 imposes a per capita maintenance tax imposed on each authorized HMO with gross revenues subject to taxation under the Insurance Code §258.004. Section 258.002 also provides that the tax required by the Insurance Code Chapter 258 is in addition to other taxes imposed that are not in conflict with the Insurance Code Chapter 258.

The Insurance Code §258.003 provides that the rate of assessment set by the Commissioner on HMOs may not exceed $2 per enrollee. Section 258.003 also provides that the Commissioner shall annually adjust the rate of assessment of the per capita maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating HMOs. Section 258.003 also provides that rate of assessment may differ between basic health care plans, limited health care service plans, and single health care service plans and must equitably reflect any differences in regulatory resources attributable to each type of plan.

The Insurance Code §258.004 provides that an HMO shall pay per capita maintenance taxes under the Insurance Code Chapter 258 on the correctly reported gross revenues collected from issuing health maintenance certificates or contracts in Texas. Section 258.004 also provides that the amount of maintenance tax assessed may not be computed based on enrollees who as individual certificate holders or their dependents are covered by a master group policy paid for by revenues received from the United States for insurance contracted for by the United States in accordance with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. Section 1395c et seq.) and its subsequent amendments; revenues paid on group health, accident, and life certificates or contracts in which the group covered by the certificate or contract consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

The Insurance Code §259.002 imposes a maintenance tax on each authorized third party administrator with administrative or service fees subject to taxation under the Insurance Code §259.004. Section 259.002 also provides that the tax required by the Insurance Code Chapter 259 is in addition to other taxes imposed that are not in conflict with the chapter. Section 259.003 provides that the rate of assessment set by the Commissioner may not exceed one percent of the administrative or service fees subject to taxation under the Insurance Code §259.004. Section 259.003 also provides that the Commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses of regulating third party administrators.

The Insurance Code §260.001 imposes a maintenance tax on each nonprofit legal services corporation subject to the Insurance Code Chapter 961 with gross revenues subject to taxation under the Insurance Code §260.003. Section 260.001 also provides that the tax required by the Insurance Code Chapter 260 is in addition to other taxes imposed that are not in conflict with the chapter. Section 260.002 provides that the rate of assessment set by the Commissioner may not exceed one percent of the corporation's gross revenues subject to taxation under the Insurance Code §260.003. Section 260.002 also provides that the Commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating nonprofit legal services corporations. Section 260.003 provides that a nonprofit legal services corporation shall pay maintenance taxes under this chapter on the correctly reported gross revenues received from issuing prepaid legal services contracts in this state.

The Insurance Code §271.002 imposes a maintenance fee on all premiums subject to assessment under the Insurance Code §271.006. Section 271.002 also specifies that the maintenance fee is not a tax and shall be reported and paid separately from premium and retaliatory taxes. Section 271.003 specifies that the maintenance fee is included in the division of premiums and may not be separately charged to a title insurance agent. Section 271.004 provides that the Commissioner shall annually determine the rate of assessment of the title insurance maintenance fee. Section 271.004 also provides that in determining the rate of assessment, the Commissioner shall consider the requirement to reimburse the appropriate portion of the general revenue fund under the Insurance Code §201.052. Section 271.005 provides that rate of assessment set by the Commissioner may not exceed one percent of the gross premiums subject to assessment under the Insurance Code §271.006. Section 271.005 also provides that the Commissioner shall annually adjust the rate of assessment of the maintenance fee so that the fee imposed that year, together with any unexpended funds produced by the fee, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating title insurance. Section 271.006 requires an insurer to pay maintenance fees under the Insurance Code Chapter 271 on the correctly reported gross premiums from writing title insurance in Texas.

The Labor Code §403.002 imposes an annual maintenance tax on each insurance carrier to pay the costs of administering the Texas Workers Compensation Act and to support the prosecution of workers' compensation insurance fraud in Texas. The Labor Code §403.002 also provides that the assessment may not exceed an amount equal to two percent of the correctly reported gross workers' compensation insurance premiums, including the modified annual premium of a policyholder that purchases an optional deductible plan under the Insurance Code Article 5.55C. The Labor Code §403.002 also provides that the rate of assessment be applied to the modified annual premium before application of a deductible premium credit. Additionally, the Labor Code §403.002 states that a workers' compensation insurance company is taxed at the rate established under the Labor Code §403.003, and that the tax shall be collected in the manner provided for collection of other taxes on gross premiums from a workers' compensation insurance company as provided in the Insurance Code Chapter 255. Finally, the Labor Code §403.002 states that each certified self-insurer shall pay a fee and maintenance taxes as provided by the Labor Code Chapter 407, Subchapter F.

The Labor Code §403.003 requires the Commissioner of Insurance to set and certify to the Comptroller the rate of maintenance tax assessment, taking into account: (i) any expenditure projected as necessary for the division and the office of injured employee counsel to administer the Texas Workers' Compensation Act during the fiscal year for which the rate of assessment is set and reimburse the general revenue fund as provided by the Insurance Code §201.052; (ii) projected employee benefits paid from general revenues; (iii) a surplus or deficit produced by the tax in the preceding year; (iv) revenue recovered from other sources, including reappropriated receipts, grants, payments, fees, gifts, and penalties recovered under the Texas Workers' Compensation Act; and (v) expenditures projected as necessary to support the prosecution of workers' compensation insurance fraud. The Labor Code §403.003 also provides that in setting the rate of assessment, the Commissioner of Insurance may not consider revenue or expenditures related to the State Office of Risk Management, the workers' compensation research functions of the Department under the Labor Code Chapter 405, or any other revenue or expenditure excluded from consideration by law.

The Labor Code §403.005 provides that the Commissioner of Insurance shall annually adjust the rate of assessment of the maintenance tax imposed under §403.003 so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner of Insurance determines is necessary to pay the expenses of administering the Texas Workers' Compensation Act. The Labor Code §405.003(a) - (c) establishes a maintenance tax on insurance carriers and self-insurance groups to fund the workers' compensation research and evaluation group, it provides for the Department to set the rate of the maintenance tax based on the expenditures authorized and the receipts anticipated in legislative appropriations, and it provides that the tax is in addition to all other taxes imposed on insurance carriers for workers' compensation purposes.

The Labor Code §407.103 imposes a maintenance tax on each workers' compensation certified self-insurer for the administration of the Division of Workers' Compensation and the Office of Injured Employee Counsel and to support the prosecution of workers' compensation insurance fraud in Texas. The Labor Code §407.103 also provides that not more than two percent of the total tax base of all certified self-insurers, as computed under subsection (b) of the section, may be assessed for the maintenance tax established under Labor Code §407.103. The Labor Code §407.103 also provides that to determine the tax base of a certified self-insurer for purposes of the Labor Code Chapter 407, the Department shall multiply the amount of the certified self-insurer's liabilities for workers' compensation claims incurred in the previous year, including claims incurred but not reported, plus the amount of expense incurred by the certified self-insurer in the previous year for administration of self-insurance, including legal costs, by 1.02. The Labor Code §407.103 also provides that the tax liability of a certified self-insurer under the section is the tax base computed under subsection (b) of the section multiplied by the rate assessed workers' compensation insurance companies under the Labor Code §403.002 and §403.003. Finally, the Labor Code §407.103 provides that in setting the rate of maintenance tax assessment for insurance companies, the Commissioner of Insurance may not consider revenue or expenditures related to the operation of the self-insurer program under the Labor Code Chapter 407.

Section 407.104(b) provides that the Department shall compute the fee and taxes of a certified self-insurer and notify the certified self-insurer of the amounts due. Section 407.104(b) also provides that a certified self-insurer shall remit the taxes and fees to the Division of Workers' Compensation.

The Labor Code §407A.301 imposes a self-insurance group maintenance tax on each workers' compensation self-insurance group based on gross premium for the group's retention. The Labor Code §407A.301 provides that the self-insurance group maintenance tax is to pay for the administration of the Division of Workers' Compensation, the prosecution of workers' compensation insurance fraud in Texas, the research functions of the Department under Labor Code Chapter 405, and the administration of the Office of Injured Employee Counsel under Labor Code Chapter 404. The Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(1) and (2) of the section is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under the Labor Code §403.002 and §403.003. The Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(3) of the section is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under the Labor Code §405.003. Additionally, the Labor Code §407A.301 provides that the tax under the section does not apply to premium collected by the group for excess insurance. Finally, the Labor Code §407A.301 provides that the tax under the section shall be collected by the Comptroller as provided by the Insurance Code Chapter 255 and the Insurance Code §201.051.

The Labor Code §407A.302 requires each workers' compensation self-insurance group to pay the maintenance tax imposed under the Insurance Code Chapter 255, for the administrative costs incurred by the Department in implementing the Labor Code Chapter 407A. The Labor Code §407A.302 provides that the tax liability of a workers' compensation self-insurance group under the section is based on gross premium for the group's retention and does not include premium collected by the group for excess insurance. The Labor Code §407A.302 also provides that the maintenance tax assessed under the section is subject to the Insurance Code Chapter 255, and that it shall be collected by the Comptroller in the manner provided by the Insurance Code Chapter 255.

The Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of 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 January 12, 2012.

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Sara Waitt
Acting General Counsel
Texas Department of Insurance
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CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER J. EXAMINATION EXPENSES AND ASSESSMENTS

28 TAC §7.1001

The Commissioner of Insurance (Commissioner) adopts new Subchapter J, relating to Examination Expenses and Assessments, and new §7.1001, concerning assessments to cover the expenses of examining domestic and foreign insurance companies and self-insurance groups providing workers' compensation insurance. The new subchapter and section are adopted without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8164).

REASONED JUSTIFICATION. The new subchapter and section are necessary to establish the examination expenses to be levied against and collected from each domestic and foreign insurance company and each self-insurance group providing workers' compensation insurance examined during the 2012 calendar year. The new subchapter and section are also necessary to establish the rates of assessment to be levied against and collected from each domestic insurance company examined during the 2012 calendar year, based on admitted assets and gross premium receipts for the 2011 calendar year, and from each foreign insurance company examined during the 2012 calendar year, based on a percentage of the gross salary paid to an examiner for each month or part of a month during which the examination is made. The new section is based on requirements in the Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155; 843.156(h); and 36.001; and the Labor Code §407A.252(b).

The following paragraphs provide an explanation of the methodology used to determine examination overhead assessments for 2012.

In general, the Department's 2012 revenue need (the amount that must be funded by maintenance taxes or fees, examination overhead assessments, and premium finance exam assessments) is determined by calculating the Department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2011.

To determine its total cost need, the Department combined costs from the following: (i) appropriations set out in Chapter 1355 (House Bill 1), Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) an estimate of other costs statutorily required to be paid from those two funds, such as fringe benefits and statewide allocated costs; (iii) an estimate of the cash amount necessary to finance both funds from the end of the 2012 fiscal year until the next assessment collection period in 2013; and (iv) costs associated with implementation of Senate Bill 1291, 82nd Legislature, Regular Session, effective September 1, 2011 (Senate Bill 1291), which requires the creation of an account with the Texas Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses.

To complete the calculation of revenue need, the Department reduced the total cost need by subtracting the estimated ending fund balance for fiscal year 2011 (August 31, 2011) and estimated fee revenue to be collected in fiscal year 2012. The resulting balance is the estimated revenue need that must be supported during the 2012 fiscal year by the following funding sources: the maintenance taxes or fees, exam overhead assessments, and premium finance exam assessments.

The Department determined how to allocate the revenue need to be attributed to each funding source using the following method:

Each section within the Department that provides services directly to the public or the insurance industry allocated the costs for providing those direct services on a percentage basis to each funding source. The Department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The Department calculated a percentage for each funding source by dividing the total directly allocated to each funding source by the total of the direct cost. The Department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the Commissioner's administration, and information technology. The Department calculated the total of direct costs and administrative support costs for each funding source.

The Department then subtracted the fiscal year 2012 estimated amount of examination direct billing revenue from the amount of the total costs for the examination funding source. The resulting balance is the amount of the examination revenue need for the purpose of calculating the examination overhead assessment rates.

For 2012, it was also necessary for the Department to add to the revenue need the costs associated with implementing Rider 19, page I-26, Chapter 1355 (House Bill 1) of the General Appropriations Act. This rider authorized the Comptroller of Public Accounts to reimburse the General Revenue Fund from Account No. 0036 for up to $10,000,000 for the cost of insurance premium tax credits for examination fees and overhead assessments.

To calculate the assessment rates, the Department allocated 50 percent of the revenue need to admitted assets and 50 percent to gross premium receipts. The Department divided the revenue

need for gross premium receipts by the total estimated gross premium receipts for calendar year 2011 to determine the proposed rate of assessment for gross premium receipts. The Department divided the revenue need for admitted assets by the total estimated admitted assets for calendar year 2011 to determine the adopted rate of assessment for admitted assets.

The following paragraphs provide a brief summary and analysis of the reasons for the adopted section.

Section 7.1001(a) is necessary to provide that, for purposes of the section, the term "insurance company" includes an HMO as defined in the Insurance Code §843.002.

Section 7.1001(b) is necessary to establish the examination expenses and assessments applicable to an insurer not organized under the laws of Texas (foreign insurance company). Section 7.1001(b)(1) is necessary to require a foreign insurance company to reimburse the Department for the salary and examination expenses of each examiner participating in an examination of the insurance company, describes how to calculate the part of an examiner's salary included in the examination fee, and provides that expenses assessed shall be those actually incurred by the examiner to the extent permitted by law. Section 7.1001(b)(2) is necessary to require a foreign insurance company to pay an additional assessment of 34 percent of the gross salary the Department pays to each examiner for each month or partial month of the examination to cover the examiner's longevity pay; state contributions to retirement, social security, and the state-paid portion of insurance premiums; and vacation and sick leave accruals, pursuant to the Insurance Code §401.155. Section 7.1001(b)(3) is necessary to provide that a foreign insurance company shall pay the reimbursements and payments required by the subsection to the Department as specified in each itemized bill the Department provides to the foreign insurance company.

Section 7.1001(c) is necessary to establish the examination expenses and assessments applicable to a domestic insurance company. Section 7.1001(c)(1) is necessary to require a domestic insurance company to pay the actual salaries and expenses of the examiners allocable to an examination of the company, it describes how to calculate the part of an examiner's salary included in the examination fee, and it provides that expenses assessed shall be those actually incurred by the examiner to the extent permitted by law.

Section 7.1012(c)(2) is necessary to establish the rates for the overhead assessment applicable to a domestic insurance company. Section 7.1001(c)(2)(A) is necessary to provide that the overhead assessment applicable to a domestic insurance company includes .00561 of 1.0 percent of the admitted assets of the company as of December 31, 2011, upon taking into consideration the annual admitted assets that are not attributable to 90 percent of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)). Section 7.1001(c)(2)(B) is necessary to provide that the overhead assessment applicable to a domestic insurance company includes .02064 of 1.0 percent of the gross premium receipts of the company for the year 2011, upon taking into consideration the annual premium receipts that are not attributable to 90 percent of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)).

Section 7.1001(c)(3) is necessary to provide that if the overhead assessment required under proposed §7.1001(c)(2)(A) and (B) produces an overhead assessment of less than a $25 total, a domestic insurance company shall pay a minimum overhead assessment of $25.

Section 7.1001(c)(4) is necessary to provide that the Department will base the overhead assessments on the assets and premium receipts reported in a domestic insurance company's annual statement. Section 7.1001(c)(5) is necessary to provide that for the purpose of applying paragraph (2)(B) of the subsection, the term "gross premium receipts" does not include insurance premiums for insurance contracted for by a state or federal government entity to provide welfare benefits to designated welfare recipients or contracted for in accordance with or in furtherance of the Human Resources Code, Title 2, or the federal Social Security Act (42 U.S.C. Section 301 et seq.)

Section 7.1001(d) is necessary to establish the examination expenses applicable to a workers' compensation self-insurance group. The subsection requires a workers' compensation self-insurance group to pay the actual salaries and expenses of the examiners allocable to an examination of the company. It also describes how to calculate the part of an examiner's salary included in the examination fee and provides that expenses assessed shall be those actually incurred by the examiner to the extent permitted by law.

Section 7.1001(e) is necessary to require a domestic insurance company to pay the overhead assessment required under §7.1001(c) to the Texas Department of Insurance not later than 30 days from the invoice date.

HOW THE SECTION WILL FUNCTION. Section 7.1001(a) provides that, for purposes of the section, the term "insurance company" includes an HMO as defined in the Insurance Code §843.002.

Section 7.1001(b) establishes the examination expenses and assessments applicable to an insurer not organized under the laws of Texas (foreign insurance company). Section 7.1001(b)(1) requires a foreign insurance company to reimburse the Department for the salary and examination expenses of each examiner participating in an examination of the insurance company, describes how to calculate the part of an examiner's salary included in the examination fee, and provides that expenses assessed shall be those actually incurred by the examiner to the extent permitted by law. Section 7.1001(b)(2) requires a foreign insurance company to pay an additional assessment of 34 percent of the gross salary the department pays to each examiner for each month or partial month of the examination to cover the examiner's longevity pay; state contributions to retirement, social security, and the state paid portion of insurance premiums; and vacation and sick leave accruals, pursuant to the Insurance Code §401.155. Section 7.1001(b)(3) provides that a foreign insurance company shall pay the reimbursements and payments required by the subsection to the Department as specified in each itemized bill the Department provides to the foreign insurance company.

Section 7.1001(c) establishes the examination expenses and assessments applicable to a domestic insurance company. Section 7.1001(c)(1) requires a domestic insurance company to pay the actual salaries and expenses of the examiners allocable to an examination of the company, it describes how to calculate the part of an examiner's salary included in the examination fee, and it provides that expenses assessed shall be those actually incurred by the examiner to the extent permitted by law. Section 7.1012(c)(2) establishes the rates for the overhead assessment applicable to a domestic insurance company. Section

7.1001(c)(2)(A) provides that the overhead assessment applicable to a domestic insurance company includes .00561 of 1.0 percent of the admitted assets of the company as of December 31, 2011, upon taking into consideration the annual admitted assets that are not attributable to 90 percent of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)). Section 7.1001(c)(2)(B) provides that the overhead assessment applicable to a domestic insurance company includes .02064 of 1.0 percent of the gross premium receipts of the company for the year 2011, upon taking into consideration the annual premium receipts that are not attributable to 90 percent of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)). Section 7.1001(c)(3) provides that if the overhead assessment required under §7.1001(c)(2)(A) and (B) produces an overhead assessment of less than a $25 total, a domestic insurance company shall pay a minimum overhead assessment of $25.

Section 7.1001(c)(4) provides that the Department will base the overhead assessments on the assets and premium receipts reported in a domestic insurance company's annual statement. Section 7.1001(c)(5) provides that for the purpose of applying paragraph (2)(B) of the subsection, the term "gross premium receipts" does not include insurance premiums for insurance contracted for by a state or federal government entity to provide welfare benefits to designated welfare recipients or contracted for in accordance with or in furtherance of the Human Resources Code, Title 2, or the federal Social Security Act (42 U.S.C. Section 301 et seq.)

Section 7.1001(d) establishes the examination expenses applicable to a workers' compensation self-insurance group. The subsection requires a workers' compensation self-insurance group to pay the actual salaries and expenses of the examiners allocable to an examination of the company, and it describes how to calculate the part of an examiner's salary included in the examination fee, and it provides that expenses assessed shall be those actually incurred by the examiner to the extent permitted by law.

Section 7.1001(e) requires a domestic insurance company to pay the overhead assessment required under §7.1001(c) to the Texas Department of Insurance not later than 30 days from the invoice date.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Department did not receive any comments on the published proposal.

STATUTORY AUTHORITY. The new section is adopted under the Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155; 843.156(h); and 36.001; and the Labor Code §407A.252(b).

The Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the Commissioner or Comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) states that the Commissioner shall administer money in the Texas Department of Insurance operating account and may spend money from the account in accordance with state law, rules adopted by the Commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

The Insurance Code §401.151 provides that a domestic insurer examined by the Department or under the Department's authority shall pay the expenses of the examination in an amount the Commissioner certifies as just and reasonable.

The Insurance Code §401.151 also provides that the Department shall collect an assessment at the time of the examination to cover all expenses attributable directly to that examination, including the salaries and expenses of department employees and expenses described by the Insurance Code §803.007. Section 401.151 also requires that the Department impose an annual assessment on domestic insurers in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of Texas relating to the examination of insurers. Additionally, Section 401.151 states that in determining the amount of assessment, the Department consider the insurer's annual premium receipts or admitted assets, or both, that are not attributable to 90 percent of pension plan contracts as defined by Section 818(a), Internal Revenue Code of 1986; or the total amount of the insurer's insurance in force.

The Insurance Code §401.152 provides that an insurer not organized under the laws of Texas shall reimburse the department for the salary and expenses of each examiner participating in an examination of the insurer and for other Department expenses that are properly allocable to the Department's participation in the examination. Section 401.152 also requires an insurer to pay the expenses under the section directly to the Department on presentation of an itemized written statement from the Commissioner. Additionally, §401.152 provides that the Commissioner shall determine the salary of an examiner participating in an examination of an insurer's books or records located in another state based on the salary rate recommended by the National Association of Insurance Commissioners or the examiner's regular salary rate.

The Insurance Code §401.155 requires the Department to impose additional assessments against insurers on a pro rata basis as necessary to cover all expenses and disbursements required by law and comply with the Insurance Code Chapter 401, Subchapter D, and §§401.103, 401.104, 401.105, and 401.106.

The Insurance Code §843.156(h) provides that the Insurance Code Chapter 401, Subchapter D applies to an HMO, except to the extent that the Commissioner determines that the nature of the examination of an HMO renders the applicability of those provisions clearly inappropriate.

The Labor Code §407A.252(b) provides that the Commissioner of Insurance may recover the expenses of an examination of a workers' compensation self-insurance group under the Insurance Code Article 1.16 (which was recodified as the Insurance Code §§401.151, 401.152, 401.155, and 401.156 by House Bill 2017, 79th Legislature Regular Session (2005)), to the extent the maintenance tax under the Labor Code §407A.302 does not cover those expenses.

The Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of Texas.

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 January 12, 2012.

TRD-201200138
Sara Waitt
Acting General Counsel
Texas Department of Insurance
Effective date: February 1, 2012
Proposal publication date: December 2, 2011
For further information, please call: (512) 463-6327

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CHAPTER 25. INSURANCE PREMIUM FINANCE

SUBCHAPTER E. EXAMINATIONS AND ANNUAL REPORTS

28 TAC §25.88

The Commissioner of Insurance (Commissioner) adopts amendments to §25.88, concerning an assessment which will be used to cover the general administrative expenses of the Department's regulation of insurance premium finance companies. The Department adopts the amendments with one change to the proposed text published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8168).

REASONED JUSTIFICATION. The amendments are necessary to adjust the rate of assessment to ensure that there are sufficient funds to meet the expenses of performing the Department's statutory responsibilities for examining, investigating, and regulating insurance premium finance companies. Under §25.88, the Department levies a rate of assessment to cover the Department's general administrative expenses for fiscal year 2012 and collects the assessment from each insurance premium finance company on the basis of a percentage of the company's total loan dollar volume for the 2011 calendar year.

The Department has made one change to the proposed language in the text of the rule as adopted. This change is a minor editorial correction to delete a comma in the first sentence of proposed §25.88 following the words "under the Insurance Code Chapter 651." The comma was removed because inclusion of it in this location is not grammatically correct. This change made to the proposed text does not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

The following paragraphs provide an explanation of the methodology used to determine examination overhead assessments for 2012.

In general, the Department's 2012 revenue need (the amount that must be funded by maintenance taxes or fees, examination overhead assessments, and premium finance exam assessments) is determined by calculating the Department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2011.

To determine its total cost need, the Department combined costs from the following: (i) appropriations set out in Chapter 1355 (H.B. 1), Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) an estimate of other costs statutorily required to be paid from those two funds, such as fringe benefits and statewide allocated costs; (iii) an estimate of the cash amount necessary to finance both funds from the end of the 2012 fiscal year until the next assessment collection period in 2013; and (iv) costs associated with implementation of Senate Bill 1291, 82nd Legislature, Regular Session, effective September 1, 2011 (SB 1291), which requires the creation of an account with the Texas Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses.

To complete the calculation of revenue need, the Department reduced the total cost need by subtracting the estimated ending fund balance for fiscal year 2011 (August 31, 2011) and estimated fee revenue to be collected in fiscal year 2012. The resulting balance is the estimated revenue need that must be supported during the 2012 fiscal year by the following funding sources: the maintenance taxes or fees, exam overhead assessments, and premium finance exam assessments.

The Department determined how to allocate the revenue need to be attributed to each funding source using the following method:

For each section within the Department that provides services directly to the public or the insurance industry, the Department allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the examination assessment, or another funding source. The Department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The Department calculated a percentage for each funding source by dividing the total directly allocated to each funding source by the total of the direct cost. The Department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the Commissioner's administration, and information technology. The Department calculated the total of direct costs and administrative support costs for each funding source.

The Department subtracted the fiscal year 2012 estimated amount of premium finance fee revenue from the amount of the total costs for the premium finance funding source. The resulting balance was the amount of premium finance revenue need for the purpose of calculating the premium finance assessment rate. The Department divided the revenue need by the estimated loan dollar volume to determine the adopted rate of assessment for premium finance.

The following paragraphs provide a brief summary and analysis of the reasons for the adopted amendments.

An adopted amendment in the first sentence of the section is necessary to update the reference to the year in the section to 2012. Another adopted amendment in the first sentence of the section is necessary to remove an unnecessary comma.

An adopted amendment in the second sentence of the section is necessary to change the sentence from passive to active voice. A second adopted amendment in the second sentence of the section is necessary to update the address to which insurance premium finance companies should send payment under the section.

An adopted amendment in paragraph (1) of the section is necessary to change the wording in the sentence in paragraph (1) from passive to active voice. A second adopted amendment in paragraph (1) is necessary to update the rate of assessment to the level necessary for 2012. Additionally, an adopted amendment in paragraph (1) is necessary to update a reference to the year from which data is used to "2011."

Finally, an adopted amendment in paragraph (2) of the section is necessary to revise the wording to reflect the wording change proposed in paragraph (1).

HOW THE SECTION WILL FUNCTION. Under §25.88, the Department levies a rate of assessment to cover the Department's general administrative expenses for fiscal year 2012 and collects the assessment from each insurance premium finance company on the basis of a percentage of the company's total loan dollar volume for the 2011 calendar year.

The first sentence of §25.88 as amended specifies that on or before April 1, 2012, each insurance premium finance company holding a license issued by the Department under the Insurance Code Chapter 651 shall pay an assessment to cover the general administrative expenses attributable to the regulation of insurance premium finance companies. The second sentence of §25.88 provides an amended address to which insurance premium finance companies shall send payment. The third sentence of §25.88 indicates that the assessment to general administrative expenses shall be computed as indicated in the section.

Paragraph (1) of §25.88 as amended provides that the amount of the assessment under the section is .01011 of 1.0 percent of the total loan dollar volume of the applicable insurance premium finance company for calendar year 2011.

Paragraph (2) of §25.88 as amended provides that if the amount of the assessment required by §25.88(1) is less than $250, the amount of the assessment shall be $250.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Department did not receive any comments on the published proposal.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the Insurance Code §§201.001(a)(1), (b), and (c); 651.003, 651.006(a); and 36.001.

The Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the Commissioner or Comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) states that the Commissioner shall administer money in the Texas Department of Insurance operating account and may spend money from the account in accordance with state law, rules adopted by the Commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

The Insurance Code §651.003 authorizes the Commissioner to adopt and enforce rules necessary to administer the Insurance Code Chapter 651.

The Insurance Code §651.006(a) requires each insurance premium finance company licensed by the Department to pay an amount imposed by the Department to cover the direct and indirect costs of examinations and investigations and a proportionate share of general administrative expenses attributable to regulation of insurance premium finance companies.

The Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§25.88. General Administrative Expense Assessment.

On or before April 1, 2012, each insurance premium finance company holding a license issued by the department under the Insurance Code Chapter 651 shall pay an assessment to cover the general administrative expenses attributable to the regulation of insurance premium finance companies. An insurance premium finance company shall send payment to the Texas Department of Insurance, Financial, TPA/Premium Finance, Mail Code 999, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78701-9104. The assessment to cover general administrative expenses shall be computed and paid as follows.

(1) The amount of the assessment is .01011 of 1.0 percent of the total loan dollar volume of the company for calendar year 2011.

(2) If the amount of the assessment required by paragraph (1) of this section is less than $250, the amount of the assessment shall be $250.

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 January 12, 2012.

TRD-201200139
Sara Waitt
Acting General Counsel
Texas Department of Insurance
Effective date: February 1, 2012
Proposal publication date: December 2, 2011
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 106. PERMITS BY RULE
SUBCHAPTER O. OIL AND GAS

30 TAC §106.352

The Texas Commission on Environmental Quality (TCEQ or commission) adopts an amendment to §106.352 *without change* to the proposed text as published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5630) and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

On January 26, 2011, the commission adopted a new permit by rule (PBR), §106.352, published in the February 18, 2011 issue of the *Texas Register* (36 TexReg 943) which extensively modified requirements for oil and gas facilities. This section had been under executive director review since 2006 to ensure that its conditions reflected current technology and were protec-

tive of human health. The commission also determined that increased exploration, production, and transport of oil and natural gas in closer proximity to population concentrations warranted the new PBR. In order to fully develop its administration of the new section, the commission limited application of the newly promulgated subsections (a) - (k) to the Barnett Shale region of north central Texas which is composed of the following counties: Archer, Bosque, Clay, Comanche, Cooke, Coryell, Dallas, Denton, Eastland, Ellis, Erath, Hill, Hood, Jack, Johnson, Montague, Palo Pinto, Parker, Shackelford, Stephens, Somervell, Tarrant, and Wise. This amendment makes no substantive changes to subsections (a) - (k).

Subsection (l) of the newly adopted PBR applies to oil and gas facilities in those counties of Texas outside the Barnett Shale region. Subsection (l) consists of the language and conditions that existed in §106.352 prior to the January 26, 2011, adoption. However, a paragraph of that language, which required oil and gas facilities handling sour gas to be located at least one-quarter mile from receptors was mistakenly omitted, and this amendment restores that paragraph.

Section Discussion

The commission is adding §106.352(l)(3) which states that any facility handling sour gas shall be located at least one-quarter mile from any recreational area or residence or other structure not occupied or used solely by the owner or operator of the facility or the owner of the property upon which the facility is located. The subsequent paragraphs of subsection (l) would be re-numbered. This is not a new requirement but a restoration of the requirement that has existed in §106.352 since 1986 to the January 26, 2011 adoption. The intent of this requirement is to provide separation between wells producing hydrogen sulfide emission and structures and areas generally occupied by humans.

Additionally, the commission is making a non-substantive change to correct a reference in Table 7: Sampling and Demonstrations of Compliance, located in §106.352(m). The erroneous reference to Table 9 in the portion of the table addressing engines, periodic evaluation has been corrected to refer to Table 6.

Final Draft Regulatory Impact Analysis

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

A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rule restores a paragraph to §106.352 that was mistakenly omitted. This rule is not anticipated to add any significant additional costs to affected individuals or businesses beyond what is already required to comply with these federal standards, on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Additionally, the rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The adopted rule implements requirements of the Federal Clean Air Act. The amendment is based on federal requirements for a permitting program and is necessary for federal approval of the Texas State Implementation Plan. The adopted rule does not exceed a requirement of a delegation agreement or a contract between state and federal government if this rulemaking is adopted. The amendment was not developed solely under the general powers of the agency, but is authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble, including THSC, §382.05196. In addition, Senate Bill 1134, Section 3 of the 82nd Legislature, 2011, as codified in THSC, §382.051963, specifically permits the commission to amend this PBR to require the distance limitation for sour sites without the necessity of completing a regulatory impact assessment. Therefore, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission completed a takings impact analysis for the adopted rulemaking action under the Texas Government Code, §2007.043. The primary purpose of this adopted rulemaking action, as discussed elsewhere in this preamble, is to restore a paragraph mistakenly omitted from §106.352. The adopted rule will not create any additional burden on private real property. The adopted rule will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adopted rule also will not affect private real property in a manner that restricts of limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

policies in accordance with the rules of the Coastal Coordination Council and determined that the action is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). The adopted amendment will benefit the environment by ensuring that oil and gas facilities producing hydrogen sulfide emissions are located a minimum distance from receptors. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal areas (31 TAC §501.32). Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 106 is an applicable requirement under 30 TAC Chapter 122. Owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, include any changes made using the amended Chapter 106 requirements into their operating permit.

Public Comment

The commission held a public hearing on October 3, 2011 at 2:00 p.m. in Building E, Room 201S at the commission's central office located at 12100 Park 35 Circle and no comments were submitted. The comment period closed on October 3, 2011. The commission received written comments from the Texas Oil and Gas Association (TxOGA).

Response to Comments

TxOGA expressed appreciation for the restoration of the one-quarter mile distance limit for sites that handle sour gas and stated that it was its understanding that this change applies only to oil and gas facilities outside the Barnett Shale region.

The commission thanks TxOGA for its support of this rulemaking and confirms that the addition of §106.352(l)(3) regarding the distance limitation for sites handling sour gas is limited to oil and gas facilities located outside of the Barnett Shale region.

TxOGA also stated that it did not object to the correction of a reference in Table 7 of §106.352(m) provided that the change was not substantive.

The commission confirms that this is a non-substantive change.

TxOGA also stated that it would object to any changes resulting from other comments made in reference this rulemaking. Additionally, TxOGA stated that Senate Bill 1134 from the 82nd Legislature, 2011, precluded any changes to §106.352 unless accompanied by the requisite regulatory impact analysis and air monitoring data.

No other comments were received on this rulemaking consequently there will be no additional changes resulting from comments. Also, the commission will not make changes that would conflict with the requirements of Senate Bill 1134. However, the commission may make non-substantive corrections to typographical errors or formatting changes necessary for this rulemaking.

STATUTORY AUTHORITY

The amended section is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities; and §382.057, concerning Exemption, which authorizes exemptions from permitting.

The amended section implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05196, and 382.057. This amended section also implements Texas Health and Safety Code, §382.051963, as adopted by the 82nd Legislature, 2011.

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

Filed with the Office of the Secretary of State on January 13, 2012.

TRD-201200150
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Texas Commission on Environmental Quality
Effective date: February 2, 2012
Proposal publication date: September 2, 2011
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CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§336.1, 336.2, 336.103, 336.105, 336.210, 336.305, 336.309, 336.331, 336.359, and 336.405. The commission also adopts new §336.351 and §336.357.

Sections 336.2, 336.351, 336.357, and 336.359 are adopted *with changes* to the proposed text as published in the August 5, 2011, issue of the *Texas Register* (36 TexReg 4920). Sections 336.1, 336.103, 336.105, 336.210, 336.305, 336.309, 336.331 and 336.405 are adopted *without changes* to the proposed text and will not be republished.

The sections will be submitted to the United States Nuclear Regulatory Commission (NRC) as revisions to the commission's radiation control rules.

Background and Summary of the Factual Basis for the Adopted Rules

The changes to this chapter will revise the commission's radiation control rules to ensure compatibility with regulations promulgated by the NRC. Compatibility of the commission's rules with the federal program is necessary to preserve the status of Texas as an Agreement State under Title 10 Code of Federal Regulations (CFR) Part 150 and under the "Articles of Agreement between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended." Rules which are designated by NRC as compatibility items must be adopted by an Agreement State within three years of the effective date of the NRC rules, in most cases. Specific changes to the rules that involve incorporation of NRC rules are explained in the Section by Section Discussion of this preamble. These rules along with their *Federal Register* publication dates and effective dates are listed as follows:

Requirements for Expanded Definition of Byproduct Material (72 FR 55864, effective November 30, 2007)

The federal Energy Policy Act of 2005 expanded the Atomic Energy Act of 1954 definition of "byproduct material" to include any discrete source of radium-226, any material made radioactive by use of a particle accelerator, and discrete source material that the NRC determines would pose a similar threat to public health, safety or the common defense and security as radium-226, that are extracted or converted after extraction for use for a commercial, medical or research activity. The expansion of this definition placed the added materials under the NRC's regulatory authority. The federal Energy Policy Act of 2005 directed the NRC to issue regulations to implement the new definition of byproduct material. The NRC published its adopted regulations in the *Federal Register* on October 1, 2007 (72 FR 55864). The NRC explained that the new categories of byproduct material are not considered to be low-level radioactive waste. The first category of new material that is now classified as byproduct material is any discrete source of radium-226 that is produced, extracted, or converted after extraction before, on or after August 8, 2005 for use for a commercial, medical, or research activity. Radium is a chemically reactive, silvery white radioactive metallic element with an atomic number of 88 and symbol of Ra. Radium-226, the most abundant and most stable isotope of radium, emits alpha particles and gamma radiation and decays into radon gas. Because of radium's properties, especially its ability to stimulate luminescence, industries used radium in the early twentieth century in various consumer products, such as glow-in-the-dark watch and clock faces and other instruments that were made to be visible at night. Most of these uses were discontinued for health and safety reasons. In more recent times, radium sources were used in industrial radiography, industrial smoke detectors, or industrial gauges that measure properties such as moisture and density. In the NRC's rules, only "discrete" sources of radium-226 are covered under the new definition. The NRC explains that discrete sources are radionuclides that have been processed so that the concentration within the material has been purposely increased for use for commercial, medical, or research activities. The NRC determined that Energy Policy Act of 2005 gave the NRC authority over discrete sources of radium-226 but not over diffuse sources of radium-226, such as radium-226 as it occurs in nature or over other processes where radium-226 may be unintentionally concentrated. Scale from pipes, fly ash from coal power plants, phosphate fertilizers, or residuals from the treatment of water to meet drinking water standards are not considered to be discrete sources of radium-226 and therefore are not covered under the NRC's new definition of byproduct material. Although certain byproduct materials were added to the NRC's regulatory authority, the materials were already subject to state licensing requirements. The State of Texas and the commission already regulated discrete and diffuse sources of radium-226 as naturally-occurring radioactive material waste prior to the Energy Policy Act of 2005 definitional changes. Consequently, the commission's implementation of the NRC's rules does not change the state requirements for how discrete sources of radium-226 may be disposed. The second category of new byproduct material under the NRC regulation is any material that has been made radioactive by use of a particle accelerator and is produced, extracted, or converted after extraction before, on, or after August 8, 2005 for use for a commercial, medical, or research activity. A particle accelerator is a device that imparts kinetic energy to subatomic particles by increasing their speed through electromagnetic interactions. Particle accelerators are used to produce radioactive material by directing a beam of high-speed particles at a target composed of a specifically selected element, which is usually not radioactive. Usually the nuclide produced is radioactive and is created for the use of its radiological properties. The NRC explains that the majority of accelerator-produced radioactive material is created for use in medicine. Prior to the NRC's regulations, the commission rule in §336.1(g) included accelerator-produced radioactive material within the term "low-level radioactive waste." Because the Energy Policy Act and the NRC regulations now define materials that are made radioactive by use of a particle accelerator as byproduct material and that the newly added material is not considered to be low-level radioactive waste, the commission must revise current §336.1(g) and regulate accelerator produced radioactive material as byproduct and not as low-level radioactive waste to maintain compatibility with the NRC requirements. The third category of new byproduct material is any discrete source of naturally occurring radioactive material, other than source material, that the NRC determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security and before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity. In its October 1, 2007 publication of adopted rules, the NRC announced that it was not adding any new discrete sources of naturally occurring radioactive material under this classification. To date, the NRC has not added a new category of radioactive material to be classified as byproduct under this provision. The commission adopts a definition to add this category of byproduct material to maintain compatibility with NRC requirements but there are no types of radioactive material that will be classified as byproduct material under this provision at this time.

National Source Tracking System (71 FR 65685, effective February 6, 2007)

After the terrorist attacks in the United States on September 11, 2001, the NRC conducted a comprehensive review of nuclear material security requirements with particular focus of radioactive material of concern, including cobalt-60, cesium-137, iridium-192, and americium-241, as well as other radionuclides with the potential to be used in a radiological dispersal device

or a radiological exposure device in the absence of proper security and control measures. The NRC's adopted rules created a national tracking system of sealed sources to provide greater source accountability and increased controls by licensees. The NRC rules require licensees to report information on the manufacture, transfer, receipt, disassembly, and disposal of nationally tracked sealed sources. A sealed source consists of radioactive material that is sealed in a capsule or is closely bonded to a non-radioactive substrate to prevent leakage or escape of the radioactive material. A nationally tracked sealed source is a sealed source containing a quantity of radioactive material equal to or greater than the Category 2 levels listed in the new Appendix E to 10 CFR Part 20. The commission adopts requirements of the National Source Tracking System in NRC regulations to maintain compatibility as an Agreement State program.

Occupational Dose Records, Labeling Containers, and the Total Effective Dose Equivalent (72 FR 68043 effective February 15, 2008)

The NRC implemented a regulatory review to reduce unnecessary regulatory burden on NRC and Agreement State licensees without affecting the level of protection for either the health and safety of workers and the public or for the environment. The NRC revised the requirements regarding the information that a licensee must make available to workers. A licensee must provide an annual report to each individual monitored of the dose received in that monitoring year if the individual's occupational dose report exceeds 1 millisievert (100 millirem) or to any individual that requests the report. A licensee is not required to provide unsolicited annual dose reports to those individuals whose annual dose does not exceed these limits. Also, the NRC's final rules revise the definition of "total effective dose equivalent" to mean the sum of the effective dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures). The revised definition will allow licensees to substitute effective dose equivalent for deep-dose equivalent for external exposures. Another aspect of the NRC rulemaking is to remove provisions in 10 CFR §20.2104(a)(2) that require licensees to attempt to obtain the records of cumulative occupational radiation dose for each worker requiring monitoring because previous NRC rule changes removed requirements using cumulative lifetime dose under 10 CFR Part 20 except for cases involving planned special exposures. The previous NRC revisions make it unnecessary for licensees to attempt to obtain lifetime exposures for workers who are not participating in a planned special exposure. The NRC explains that the rule does not affect the level of protection for either the health and safety of workers and the public or for the environment because the requirements to determine an individual's occupational radiation dose received during the current year or cumulative radiation dose prior to permitting a planned special exposure are not changed. The commission adopts conforming changes in the rules to maintain compatibility with the NRC regulations.

NRC Order Imposing Increased Controls, EA-05-090 (71 FR 72128, published December 1, 2005)

In response to efforts to assess security risks posed by uncontrolled sources, the NRC issued an order on November 14, 2005 to impose requirements for the control of high-risk radioactive materials to prevent inadvertent and intentional unauthorized access, primarily due to the potential health and safety hazards posed by the uncontrolled material. The order identifies certain radionuclides of concern and establishes control measures for licensees to secure those materials. As part of the order, each Agreement State is required to issue legally binding requirements to put essentially identical measures in place for licensees under state regulatory jurisdiction. Because the NRC order was effective immediately for security concerns, the commission has already imposed the requirements of the NRC order on licensees and now adopts rules to implement the controls required by the NRC order.

The rulemaking also amends the fees charged for facilities regulated under Chapter 336, Subchapter L. The adopted fees shall recover for the state the actual expenses arising from the regulatory activities associated with licenses for commercial disposal of by-product material. This is consistent with other cost recovery rules already adopted by the commission. The rulemaking also amends the annual license fees to fund the Radiation and Perpetual Care Account.

Section by Section Discussion

Subchapter A, General Provisions

The commission adopts the amendment to §336.1 by removing §336.1(g). Accelerator-produced radioactive material is now regulated as byproduct material and not included as low-level radioactive waste in accordance with the NRC rulemaking *Requirements for Expanded Definition of Byproduct Material* (72 FR 55864, effective November 30, 2007).

The commission adopts the amendment to §336.2 to make it compatible with 10 CFR Part 20. The definitions of "Accelerator-produced radioactive material" and "Byproduct material" are adopted for consistency with 10 CFR §20.1003. A new definition of "Discrete source" is adopted for consistency with 10 CFR §20.1003. These definitions are adopted to implement the NRC rulemaking *Requirements for Expanded Definition of Byproduct Material* (72 FR 55864, effective November 30, 2007). The definition of "Low-level radioactive waste" is adopted to update the agency name of the "Texas Department of Health" to the "Texas Department of State Health Services." The definition of "Low-level radioactive waste" is adopted to exclude the new classes of byproduct material in adopted §336.2(16)(C) - (E) and to implement the NRC rulemaking *Requirements for Expanded Definition of Byproduct Material* (72 FR 55864, effective November 30, 2007). A new definition of "Nationally tracked source" is adopted to implement the NRC rulemaking *National Source Tracking System* (71 FR 65685, effective February 6, 2007). The definition of "Naturally occurring radioactive material (NORM) waste" is adopted to update the agency name of the "Texas Department of Health" to the "Texas Department of State Health Services." A new definition of "Particle accelerator" is adopted for consistency with 10 CFR §20.1003. This definition is adopted to implement the NRC rulemaking *Requirements for Expanded Definition of Byproduct Material* (72 FR 55864, effective November 30, 2007). In response to comment, the definition of "particle accelerator" is revised to use the exact language used by the NRC in defining "particle accelerator." The definition of "Total effective dose equivalent (TEDE)" is adopted for consistency with 10 CFR §20.1003. This definition is adopted to implement the NRC rulemaking *Occupational Dose Records, Labeling Containers, and the Total Effective Dose Equivalent* (72 FR 68043, effective February 15, 2008). A new definition of "Waste" is adopted for consistency with 10 CFR §20.1003 and §61.2. This definition is adopted to implement the NRC rulemaking *Requirements for Expanded Definition of Byproduct Material* (72 FR 55864, effective November 30, 2007).

Congress enacted the Energy Policy Act of 2005 which expanded the definition of "byproduct material" under Section 11(e) of the Atomic Energy Act. The NRC adopted rules in 2007 to implement the new definition. Consistent with the expanded federal definition, "byproduct material" is adopted to include: any discrete source of radium-226 that is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity; any material that has been made radioactive by use of a particle accelerator and is produced, extracted, or converted for use for a commercial, medical, or research activity; and any discrete source of naturally occurring radioactive material, other than source material, that is extracted or converted after extraction for use in a commercial, medical, or research activity and that the NRC, in consultation with the Administrator of the United States Environmental Protection Agency (EPA), the United States Secretary of Energy, the United States Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security. The commission notes that the expanded definition of byproduct material in Subchapter A does not expand or change the types of material licensed for disposal under Chapter 336, Subchapter L. Chapter 336, Subchapter L, relating to the licensing of source material and by-product material disposal facilities, addresses the requirements for the disposal of by-product material as defined in that subchapter and is limited to byproduct material as defined in the Atomic Energy Act, Section 11(e)(2) and §336.2(16)(B) as the tailings and waste produced by or resulting from the extraction or concentration of uranium or thorium from ore primarily for its source material content. Except for the reclassification of accelerator produced radioactive materials as byproduct material discussed in the proposed amendment to §336.1, the definitions in §336.2 are adopted to maintain compatibility with federal regulations and do not change existing requirements for disposal of radioactive material under Chapter 336. A licensee that was authorized to store and process naturally occurring radioactive materials under Chapter 336, Subchapter M would be authorized to accept the same material now classified as byproduct material under the revised definitions.

Subchapter B, Radioactive Substance Fees

The commission adopts amended §336.103 to reflect current procedures and provide clarification for invoicing and payment of annual fees for commercial facilities regulated under Chapter 336, Subchapter H. The adopted amendment to §336.103(c) clarifies that the commission will invoice quarterly for reimbursement of actual costs incurred from regulatory activities associated with the license. The current practice of quarterly invoicing for actual expenses allows the commission's staff to plan and budget regulatory activities efficiently and avoids problems that a single yearly invoice would create across fiscal years and biennial appropriations cycles. Cost recovery for expenses related to radioactive material licensing activities is authorized in state statute. Texas Health and Safety Code (THSC), §401.412(d) provides the commission may assess and collect an annual fee for each license and registration and for each application in an amount sufficient to recover its reasonable costs to administer its authority.

The commission adopts amended §336.105 to revise application fees charged for commercial facilities regulated under Chapter 336, Subchapter L. The adopted fees shall recover for the state the actual expenses arising from the regulatory activities associated with licenses for commercial disposal of by-product material. Cost recovery for expenses related to radioactive material licenses are authorized in state statute. THSC, §401.301(g) provides the commission may assess and collect additional fees from the applicant to recover the costs the commission incurs for administrative review, technical review, and hearings on the application. THSC, §401.412(d) provides the commission may assess and collect an annual fee for each license and registration and for each application in an amount sufficient to recover its reasonable costs to administer its authority.

The commission adopts amended §336.105(a)(4) for applications for new, amended, or renewal of commercial by-product material disposal licenses issued under Chapter 336, Subchapter L. The adopted amendment adds §336.105(a)(4)(A) to require a supplemental fee to recover the actual costs incurred by the commission for review of the application and any hearings associated with an application for commercial by-product material disposal. The adopted amendment also adds §336.105(a)(4)(B) to provide that the executive director invoice for reimbursement of the amount of the costs incurred quarterly. Agency practice of quarterly invoicing for actual expenses allows the commission's staff to plan and budget regulatory activities efficiently and avoids problems that a single yearly invoice would create across fiscal years and biennial appropriations cycles. Payment shall be made within 30 days following the date of the invoice. The adopted amendment implements THSC, §401.301(g) to provide for cost recovery for commercial by-product material disposal license applications.

The commission adopts amended §336.105(b)(4) for annual fees for commercial by-product material disposal licenses issued under Chapter 336, Subchapter L. Currently the $60,929.50 annual fee specified in §336.105(b)(4) is not sufficient to cover the costs incurred by the commission for expenses arising from the regulatory activities associated with commercial by-product material disposal licensing. The adopted amendment adds §336.105(b)(4)(A) to require a supplemental license fee sufficient to recover the actual costs incurred by the commission. This fee shall recover for the state the actual expenses arising from the regulatory activities associated with the license in accordance with THSC, §401.412(d). The adopted amendment also adds §336.105(b)(4)(B) to provide that the executive director shall invoice for the amount of the costs incurred quarterly. Licensees paying the fee on a quarterly basis would not be subject to the October 31 payment deadline in §336.107. Agency practice of quarterly invoicing for actual expenses allows the commission's staff to plan and budget regulatory activities efficiently and avoids problems that a single yearly invoice would create across fiscal years and biennial appropriations cycles. Payment shall be made within 30 days following the date of the invoice. The adopted amendment implements THSC, §401.412(d) to provide for cost recovery for annual fees associated with commercial by-product material disposal licenses.

The commission adopts amended §336.105(h) to add a citation to §336.103 and to clarify the requirements for payment of fees. The adopted amendment implements THSC, §401.301 to fund the perpetual care account. Licenses issued under Subchapter H will be required to pay the annual fee when necessary. Currently, no licensees will be assessed with this fee since the perpetual care account is sufficiently funded under the limitations imposed in THSC, §401.301(e).

Subchapter C, General Licensing Requirements

The commission adopts amended §336.210 to add radium-226 in alphabetical order to the Release Fractions Table in §336.210(e). This amendment is adopted for consistency with 10 CFR §30.72 and to implement the NRC rulemaking *Requirements for Expanded Definition of Byproduct Material* (72 FR 55864, effective November 30, 2007). This adopted amendment adds radium-226 to the list of radioactive material that must be considered in the emergency planning provided in radioactive materials license applications.

Subchapter D, Standards for Protection Against Radiation

The commission adopts amended §336.305(c) to revise the method used to demonstrate compliance with the occupational dose limits. This amendment is adopted for consistency with 10 CFR §20.2008 and to implement the NRC rulemaking *Occupational Dose Records, Labeling Containers, and the Total Effective Dose Equivalent* (72 FR 68043 and 72233, effective February 15, 2008). The adopted amendment provides that when external exposure is determined by measurement with an external personal monitoring device, the deep-dose equivalent must be used in place of the effective dose equivalent, unless the effective dose equivalent is determined by a dosimetry method approved by the executive director.

The commission adopts amended §336.309(a) to revise the requirements for determining prior occupational dose. The adopted rule removes the requirement to attempt to obtain records of lifetime cumulative occupational radiation dose. Section 336.309(f) is adopted to require the licensee to retain dose records until the executive director terminates each pertinent license requiring this record. This amendment is adopted for consistency with 10 CFR §20.2104 and to implement the NRC rulemaking *Occupational Dose Records, Labeling Containers, and the Total Effective Dose Equivalent* (72 FR 68043 and 72233, effective February 15, 2008).

The commission adopts amended §336.331 to update the agency name of the "Texas Department of Health" to the "Texas Department of State Health Services." The commission adopts §336.331(i) to require shipping manifests for disposal of byproduct material as defined in proposed §336.2(16)(C) - (E). This amendment is adopted for consistency with 10 CFR §20.2006 and to implement the NRC rulemaking *Requirements for Expanded Definition of Byproduct Material* (72 FR 55864, effective November 30, 2007).

The commission adopts new §336.351 to implement the requirements of the National Source Tracking System. The National Source Tracking System is the NRC's program for accounting for certain sealed sources by requiring licensees to report information on the manufacture, transfer, receipt, disassembly, and disposal of nationally tracked sealed sources. New §336.351 is adopted for consistency with 10 CFR §20.2207 and to implement the NRC rulemaking *National Source Tracking System* (71 FR 65685, effective February 6, 2007). In response to comment, §336.351(a), (a)(6), and (a)(7) are revised to correct a clerical error for cross-references to paragraphs (1) - (5) instead of paragraphs (1) - (6). In response to comment, §336.351(a)(2) is revised to remove the sentence stating that certain domestic transactions where the source remains in possession of the licensee are not subject to reporting requirements because this type of possession of sources is not under TCEQ's jurisdiction.

The commission adopts new §336.357 to implement the requirements in NRC's Order Imposing Increased Controls, EA-05-090. New §336.357 is adopted for consistency with 10 CFR §20.1801, and to implement the NRC's Order Imposing Increased Controls, EA-05-090 (71 FR 65685, published December 1, 2005). The adopted rule adds requirements for the control and access of certain radioactive materials possessed by a licensee to implement the security measures required by the NRC's order and are consistent with the Texas Department of State Health Services requirements in 25 TAC §289.252(ii). In response to comment, §336.357(3)(D) and §336.357(4)(E) are revised to require reporting of actual or attempted theft, sabotage, or diversion of radioactive material or missing or stolen shipments of radioactive material to the Texas emergency operations contact rather than the NRC contact. Section 336.357(6) has been revised to include reference to paragraph (4). In response to comment, §336.357(9) is revised to authorize inspection by the executive director of the TCEQ rather than referring generally to the "agency."

The commission adopts amended §336.359. The figure in §336.359(d) is revised to include the elements "Nitrogen" and "Oxygen." This amendment is adopted for consistency with 10 CFR Part 20, Appendix B and to implement the NRC rulemaking *Requirements for Expanded Definition of Byproduct Material* (72 FR 55864, effective November 30, 2007). In response to comment, the superscript "1" has been included to indicate a footnote and within the text of the footnote, the word "material" was inserted after "airborne."

Subchapter E, Notices, Instructions, and Reports to Workers and Inspections

The commission adopts amended §336.405 to update requirements for notifications to workers. Section 336.405(b) is adopted to require a licensee to provide an annual report to an individual if their occupational dose exceeds 1 millisieverts (100 millirem) or the individual requests his or her annual dose report. This amendment is adopted for consistency with 10 CFR §19.13 and to implement the NRC rulemaking *Occupational Dose Records, Labeling Containers, and the Total Effective Dose Equivalent* (72 FR 68043 and 72233, effective February 15, 2008).

Final Draft Regulatory Impact Analysis

The commission adopts the rulemaking under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rules in Chapter 336 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because there are no significant requirements imposed on radioactive material licensees. The commission adopts these rules for purpose of maintaining consistency with NRC regulations by providing new and revised definitions; revising occupational dose, exposure and reporting requirements; and providing reporting requirements for national tracked sources. The rules also revise fee requirements to implement THSC, §401.301(g) to authorize the assessment of additional application fees to recover the commission's cost for administrative and technical review and hearings for a license application.

Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The rulemaking does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor adopt a rule solely under the general powers of the agency.

The Texas Radiation Control Act, THSC, Chapter 401, authorizes the commission to regulate commercial radioactive waste processing and the disposal of most radioactive material in Texas. THSC, §§401.051, 401.103, and 401.104 authorize the commission to adopt rules for the control of sources or radiation and the licensing of the disposal of radioactive materials. In addition, the state of Texas is an "Agreement State," authorized by the NRC to administer a radiation control program under the Atomic Energy Act. NRC requirements must be implemented by the commission to preserve the status as an Agreement State. These rules do not exceed the standards set by federal law. The rulemaking implements changes in NRC definitions, NRC occupational dose requirements, NRC security requirements, and NRC requirements for reporting of national tracked sources.

These rules do not exceed an express requirement of state law. The Texas Radiation Control Act, THSC, Chapter 401, establishes general requirements for the licensing and disposal of radioactive materials. The Texas Radiation Control Act in THSC, §401.001 specifically establishes the policy to maintain compatibility with federal standards and regulatory programs.

The commission has also determined that these rules do not exceed a requirement of a delegation agreement or contract between the state and an agency of the federal government. The State of Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC's requirements for the regulation of radioactive materials and is adequate to protect health and safety. The commission determined that these rules do not exceed the NRC's requirements nor exceed the requirements for retaining status as an Agreement State.

The commission also determined that these rules are adopted under specific authority of the Texas Radiation Control Act, THSC, Chapter 401. THSC, §§401.051, 401.103, and 401.104 authorize the commission to adopt rules for the control of sources or radiation and the licensing of the disposal of radioactive materials.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. Comments were not received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated these rules and performed a preliminary assessment of whether the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment is that Texas Government Code, Chapter 2007 does not apply to these rules because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The State of Texas has received authorization as an Agreement State from the NRC to administer a radiation control program under the Atomic Energy Act. The Atomic Energy Act requires the NRC to find that the state's program is compatible with NRC requirements for the regulation of radioactive materials and is protective of health and safety. This rulemaking will provide consistency with federal regulations.

Nevertheless, the commission further evaluated these rules and performed a preliminary assessment of whether these rules constitute a taking under Texas Government Code, Chapter 2007. The following is a summary of that evaluation and preliminary assessment. The primary purpose of these rules is to implement changes to federal requirements for the regulation and licensing of radioactive material. The rules would substantially advance this purpose by implementing new federal definitions of by-product material; revising occupational dose, exposure, and reporting requirements; providing security controls; and providing reporting requirements for national tracked sources.

Promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking of private real property. The rules do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the rules. The rules primarily implement requirements in federal law relating to revised definitions; revised occupational dose, exposure, and reporting requirements; added security requirements; and reporting requirements for national tracked sources. The rules do not affect private real property.

Consistency with the Coastal Management Program

The commission reviewed this rulemaking action and determined that the rules are neither identified in, nor will they affect, any action/authorization identified in Coastal Coordination Act Implementation Rules in 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP). Therefore, the rulemaking action is not subject to the CMP.

The commission invited public comment regarding the consistency with the CMP during the public comment period. Comments were not received on the CMP.

Public Comment

The commission held a public hearing on August 30, 2011. The comment period closed on September 6, 2011. The commission received comments from the NRC, the Office of Public Interest Council (OPIC) of the TCEQ, the Uranium Committee of the Texas Mining and Reclamation Association (TMRA), and Waste Control Specialists, LLC (WCS).

Response to Comments

NRC commented that the regulation in §336.351(a) refers to the wrong paragraphs for the transaction reports. The language should be revised to "as specified in paragraphs (1) - (5) of this subsection" and not paragraphs (1) - (6).

The proposed rule had a clerical error referring to the incorrect paragraphs in §336.351(a). The commission agrees with this

comment and has amended §336.351(a) to refer to paragraphs (1) - (5) in response to this comment.

NRC commented that the regulation in §336.351(a)(6) refers to the wrong paragraphs for the transaction reports. The language should be revised to "reports discussed in paragraphs (1) - (5) of this subsection" and not paragraphs (1) - (6).

The proposed rule had a clerical error referring to the incorrect paragraphs in §336.351(a)(6). The commission agrees with this comment and has amended §336.351(a)(6) to refer to paragraphs (1) - (5) in response to this comment.

NRC commented that the regulation in §336.351(a)(7) refers to the wrong paragraphs for the transaction reports. The language should be revised to "reports identified by paragraphs (1) - (5) of this subsection" and not paragraphs (1) - (6).

The proposed rule had a clerical error referring to the incorrect paragraphs in §336.351(a)(7). The commission agrees with this comment and has amended §336.351(a)(7) to refer to paragraphs (1) - (5) in response to this comment.

NRC commented that the Texas regulations in §336.357(2) do not contain condition 1.c. from the NRC's Increased Controls (IC) Orders. The Texas regulations repeat the text from §336.357(3)(E). Texas needs to add IC 1.c. in order to meet Compatibility Category B designation assigned to the provision.

In order to provide the NRC sufficient time to review the commission's rule revisions, staff provided the NRC an earlier version of the proposed rule revisions. Section 336.357(2)(D) was revised prior to publication in the *Texas Register* to include this provision from the NRC's IC Order and is identical with NRC condition IC 1.c. No change was made in response to this comment.

NRC commented that the Texas regulations in §336.357(2) do not contain paragraph (2)(E) which should contain condition 1.d. from the IC Orders. Texas needs to add IC 1.d. in order to meet Compatibility Category B designation assigned to the provision.

In order to provide the NRC sufficient time to review the commission's rule revisions, staff provided the NRC an earlier version of the proposed rule revisions. Paragraph (2)(E) was inadvertently omitted from the version provided to the NRC. Section 336.357(2)(E) was revised prior to publication in the *Texas Register* to include this provision from the NRC's IC Order and is identical with NRC condition IC 1.d. No change was made in response to this comment.

NRC commented that the Texas regulations in §336.357(3)(D) have the licensee notifying the NRC Operations Center after initiating response to actual or attempted theft, sabotage, or diversion of the material. The licensee should call the Texas equivalent to the NRC Operations Center. Texas needs to revise the regulations so the calls go to Texas instead of the NRC in order to meet Compatibility Category B designation assigned to the provision.

The commission agrees with this comment and has amended §336.357(3)(D) in response to this comment. Actual or attempted theft, sabotage, or diversion of radioactive material or devices should be reported to the Office of Compliance and Enforcement 24-hour Emergency Response at 800-832-8224.

NRC commented that the Texas regulations in §336.357(4)(E) have the licensee notifying the NRC Operations Center if a shipment is determined to be lost, stolen, or missing. The licensee should call the Texas equivalent to the NRC Operations Center.

The commission agrees with this comment and has amended §336.357(4)(E) in response to this comment. A lost, stolen, or missing shipment of licensed material shall immediately be reported to the Office of Compliance and Enforcement 24-hour Emergency Response at 800-832-8224.

NRC commented that the Texas regulations in §336.357(5)(A) have the licensee notify the NRC Office of Nuclear Material Safety and Safeguards if it plans to ship a category 1 shipment for the first time. While this is consistent with the IC Order, the responsibility for this activity no longer resides with the Office of Nuclear Material Safety and Safeguards. The notification should now go to the NRC Director, Office of Federal and State Materials and Environmental Management Programs.

The commission agrees with this comment and has amended §336.357(5)(A) in response to this comment.

NRC commented that the Texas regulations in §336.357(6) do not include the reference to IC 3.a. which is the Texas equivalent to paragraph (4.) The wording should be ". . . requirements of paragraphs (4) and (5) of this . . ." or ". . . requirements of paragraphs (4) and (5)(A) and (B) of this . . .."

The commission agrees with this comment and has amended §336.357(6) in response to this comment.

NRC commented that the Texas regulations in §336.357(9)(B) refer to paragraph (2)(E) which does not exist. However, once Texas adds IC condition 1.c. and 1.d., the reference would be correct, assuming that 1.d. becomes (2)(E).

In order to provide the NRC sufficient time to review the commission's rule revisions, staff provided the NRC an earlier version of the proposed rule revisions. Section 336.357(2)(E) was inadvertently omitted in the draft rule sent to NRC for review, but was added later and published with the proposal. The cross-references are now inconsistent with the NRC's IC Order. No change was made in response to this comment.

NRC commented that Texas did not include the footnote citation "1" on the term Submersion under Nitrogen and Oxygen entries in §336.359(d). Footnote 1 on Submersion is incomplete and the word "material" needs to be inserted after "airborne" at the end of the footnote.

The superscript "1" was inadvertently omitted at proposal in §336.359(d) and the text of the footnote omitted the word "material." The commission agrees with this comment and has amended §336.359(d) in response to this comment.

OPIC commented that the definition of byproduct material at §336.2(16)(A) should reflect the language used in the federal regulation by adding the term "yielded."

The commission respectfully does not agree with this comment. Section 336.2(16)(A) was not proposed for change and the current language mirrors state statute in THSC, §401.003(3)(A). This definition has been determined to be compatible by NRC. No change was made in response to this comment.

OPIC commented that the definition of byproduct material at §336.2(16)(D) should have a comma instead of a semi-colon after the word "accelerator."

The commission agrees with this comment and has amended §336.2(16)(D) in response to this comment.

OPIC commented that the definition of particle accelerator at §336.2(92) should reflect the language used in the federal regu-

lation by using the phrase "discharging the resultant particulate" rather than "designed to discharge the resultant particulate."

The commission agrees with this comment and has amended §336.2(92) to use the phrase "discharging the resultant particulate" in response to this comment.

OPIC requested clarification if the dosimetry method referenced in §336.305(c) requires NRC approval.

NRC ceded its authority to the TCEQ under the Agreement State program and reviews TCEQ rules for compatibility with federal regulations. NRC approval is not required for the dosimetry method referenced in §336.305(c). No change was made in response to this comment.

OPIC commented that specific requirements for the shipping manifest referenced in §336.331(i) and contained in 10 CFR Part 20, Appendix G should be incorporated into the commission rule.

The commission respectfully does not agree with this comment. The NRC shipping manifest is incorporated by reference in commission rules. No change was made in response to this comment.

OPIC commented that the cross-reference to "paragraphs (1) - (6) of this subsection" in §336.351(a), (a)(6) and (a)(7) should read "paragraphs (1) - (5) of this subsection" throughout.

The commission agrees with this comment and has amended §336.351(a), (a)(6), and (7) in response to this comment.

OPIC commented that proposed §336.351(a)(2) includes an exemption for domestic transactions in which the nationally tracked source remains in the possession of the licensee. OPIC is unable to determine the source of this exemption in the federal regulations and asked the commission to identify the basis for this exemption.

The language proposed in §336.351(a)(2) was based on similar language adopted by the Texas Department of State Health Services to implement the NRC National Source Tracking System. However, upon reflection, the licenses authorized by the TCEQ do not regulate the possession, use, and transport of sources at various sites throughout the state under the control of the same licensee. Therefore, the provision is not applicable to TCEQ requirements. The sentence, "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" has been removed from the adopted rule in §336.351(a)(2).

OPIC commented the numbering scheme for §336.357 should be revised to move the introduction to subsection (a), with corresponding paragraphs (1) and (2). Proposed paragraphs (1) and (2) flow from the language of the proposed introduction: "Licensees . . . shall: (1) control access . . .." However, proposed paragraphs (3) - (11) do not flow from the proposed introduction: "Licensees . . . shall: (3) Each licensee shall have a documented program . . .." Proposed paragraphs (3) - (11) will become subsections (b) - (j) and the numbering will adjust accordingly.

The commission respectfully does not agree with this comment. The numbering sequence for §336.357 is consistent with Texas Register formatting requirements. No change was made in response to this comment.

OPIC commented that the phrase "of concern" should be deleted in §336.357(1) and should read: "control access at all times to radioactive material in quantities of concern and devices containing such radioactive material (devices) in accordance . . .."

The commission agrees with this comment and has amended §336.357(1) to remove the phrase "of concern" in response to this comment.

OPIC commented that §336.357(2) needs to add language mirroring IC 1.c. and 1.d. (see 10 CFR 72130 (Attachment B)). Cross-references throughout the section will need to be adjusted accordingly.

The commission respectfully does not agree with this comment. Section 336.357(2)(D) is identical with NRC condition IC 1.c. Section 336.357(2)(E) is identical with NRC condition IC 1.d. No change was made in response to this comment.

OPIC commented that the modifier "in use or in storage" in the first sentence of §336.357(3) should be removed. This limitation is not in the federal regulation and is either redundant or unnecessarily limits the subsections applicability.

The commission respectfully does not agree with this comment. The language in §336.357(3) is consistent with NRC condition IC 2. which addresses the control of licensed material in use or storage. No change was made in response to this comment.

OPIC commented to add a comma between "Safeguards" and "United States" in the first sentence in §336.357(5)(A).

The commission agrees with this comment and has amended §336.357(5)(A) to include a comma in response to this comment.

OPIC suggests to either remove "for inspection by the agency" or clarify whether the term "agency" refers to the commission or NRC or both in §336.357(9).

The commission agrees with this comment and has amended §336.357(9) in response to this comment. Specifically, the term "agency" has been changed to "executive director" to clarify this requirement is within the jurisdiction of the TCEQ.

OPIC commented §336.359(d) should be amended for consistency with the federal regulation. Specifically, the table should include a footnote 1 on the term "Submersion" as it relates to Nitrogen and Oxygen. Footnote 1 on should read: "'Submersion' means that values given are for submersion in a hemispherical semi-infinite cloud of airborne material."

The commission agrees with this comment and has amended §336.359(d) in response to this comment.

OPIC commented that the rule package inconsistently includes the name of cross-referenced rules in §336.405(b) and (c)(1)(A). The name of the rule section, e.g. "(relating to Records of Individual Monitoring Results)", is included in some sections and removed in others. This inconsistency may appear elsewhere in the proposal.

The commission respectfully does not agree with this comment. The section titles cross-referenced in §336.405(b) are correct as written. According to Texas Register formatting requirements, the cross-referenced section titles do not need to be repeated within the same section. No change was made in response to this comment.

TMRA commented that the proposed revisions to Chapter 336, and specifically the proposed language added to §336.105(a)(4) and (b)(4) do not apply to the activities engaged in by uranium mining companies and operators. TMRA asks for confirmation of this understanding.

The revisions of rules in Subchapters A, C, D, and E of Chapter 336 generally apply to all licensees and persons regulated by the TCEQ, including licensees authorized to recover uranium under Subchapter L of Chapter 336. The specific revisions in §336.105(a)(4) and (b)(4) for recovery of commission costs in excess of the application fee or annual fee only apply to commercial by-product disposal licenses issued under Subchapter L of Chapter 336. No change was made in response to this comment.

WCS commented that §336.103 and §336.105 should be amended to establish the amount of the annual fee by rule. WCS stated that an annual amount established in the rules is consistent with WCS's interpretation of statutory provisions in THSC, Chapter 401. WCS stated that an annual fee amount is necessary for their business planning. WCS commented that the commission should be required to prove additional costs exceeding the set annual fee amount.

The commission notes that establishing the amount for the annual fee assessed for a license issued under Subchapter H of Chapter 336 was beyond the scope of this rulemaking. The objective of this rulemaking was to revise these rules to implement the agency's practice to require quarterly payment of the annual fee to recover the commission's expenses in administering the license. The commission may consider future rulemaking to establish a specific amount for the fee as suggested in the comment.

The commission is tasked with difficulties in implementing the statutory requirements that the annual fee be set in rule *and* be sufficient to recover the commission's costs. The current requirement has been in effect in the commission's rules since January 2004. The cost recovery provision in the rules was implemented to avoid generating too much or too little from a set fee. This provides complete program funding and ensures the licensee does not pay more than the actual cost to review. Because the facility licensed under Subchapter H has not been operational, the commission has not been able to anticipate routine activities at the site on which to budget anticipated costs. The commission has incurred costs for the review of the construction of the site, review of pre-operational license requirements, and review of amendment applications since the initial license was issued. These costs of the commission are based on decisions and activities under the licensee's control. The commission does expect that once the facility becomes operational, the activities at the site may become more routine and the commission can be in a better position to anticipate and plan for its costs for administering the license. Thus, the commission may be able to revisit this issue in the near future.

The annual fee of $69,929.50 for a license that authorizes the commercial disposal of by-product material is established in §336.105(b)(4) and the cost recovery provisions in §336.105(b)(4)(A) and (B) apply only if the annual fee is not sufficient to recover the costs incurred by the commission.

WCS commented that all payments under §336.103 and §336.105 should be annual, not quarterly.

Texas Water Code, §5.701(a)(1) provides that "Notwithstanding other provisions, the commission by rule may establish due dates, schedules, and procedures for assessment, collection, and remittance of fees due the commission to ensure the cost-effective administration of revenue collection and cash management programs." The revisions to §336.103 and §336.105 implement the commission's current practice of quarterly invoicing for actual expenses. The current practice of quarterly invoicing for actual expenses allows the commission's staff to plan and budget regulatory activities efficiently and avoids problems that a single yearly invoice would create across fiscal years and biennial appropriations cycles. Quarterly payment of the annual fee also avoids program funding gaps should the licensee remit a late annual payment as has previously occurred. The collection of quarterly payment of the annual licensing fee is also consistent with the commission's collection of five percent of the license holder's gross receipts on a quarterly basis under §336.103(f). Should the commission experience lower and more predictable costs in administering the license, the commission may be amenable to revising the rules in the future to establish a yearly payment of the annual fee. No change was made in response to this comment.

WCS commented that §336.105(g) can be deleted from the rule as all of the fees subject to the subsection have expired.

The commission did not propose changes to §336.105(g) and does intend to delete this provision that reconciled the Texas Department of State Health Service's practice of biennial licensing fees with the commission's annual licensing fees when regulatory programs were transferred from the Texas Department of State Health Service to TCEQ. The commission will consider removing this provision in a future rulemaking.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §336.1, §336.2

Statutory Authority

The amendments are adopted under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.201, which provides authority to the commission to regulate the disposal of low-level radioactive waste; §401.301, which authorizes the commission to set fees by rule; and §401.412, which provides authority to the commission to regulate licenses for the disposal of radioactive substances. The adopted amendments are also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the water code and other laws of the state.

The adopted amendments implement THSC, Chapter 401, including §§401.011, 401.051, 401.057, 401.059, 401.103, 401.104, 401.151, 401.201, 401.301, and 401.412.

§336.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, or as described in Chapter 3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Additional definitions used only in a certain subchapter will be found in that subchapter.

(1) Absorbed dose--The energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the rad and the gray (Gy).

(2) Accelerator-produced radioactive material--Any material made radioactive by a particle accelerator.

(3) Activity--The rate of disintegration (transformation) or decay of radioactive material. The units of activity are the curie (Ci) and the becquerel (Bq).

(4) Adult--An individual 18 or more years of age.

(5) Agreement state--Any state with which the United States Nuclear Regulatory Commission (NRC) or the Atomic Energy Commission has entered into an effective agreement under the Atomic Energy Act of 1954, §274b, as amended through October 24, 1992 (Public Law 102-486).

(6) Airborne radioactive material--Any radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(7) Airborne radioactivity area--A room, enclosure, or area in which airborne radioactive materials, composed wholly or partly of licensed material, exist in concentrations:

(A) in excess of the derived air concentrations (DACs) specified in §336.359, Appendix B, Table I, Column 1, of this title (relating to Appendix B. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage); or

(B) to a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6% of the ALI or 12 DAC-hours.

(8) 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.

(9) 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 the "reference man" that would result in a committed effective dose equivalent of 5 rems (0.05 sievert) or a committed dose equivalent of 50 rems (0.5 sievert) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2, of §336.359, Appendix B, of this title.

(10) As low as is reasonably achievable (ALARA)--Making every reasonable effort to maintain exposures to radiation as far below the dose limits in this chapter as is practical, consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of ionizing radiation and licensed radioactive materials in the public interest.

(11) 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.

(12) 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.

(13) Background radiation--Radiation from cosmic sources; non-technologically enhanced naturally-occurring radioactive material, including radon (except as a decay product of source or special nuclear material) and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include radiation from radioactive materials regulated by the commission, Texas Department of State Health Services, NRC, or an Agreement State.

(14) Becquerel (Bq)--See §336.4 of this title (relating to Units of Radioactivity).

(15) Bioassay--The determination of kinds, quantities, or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body. For purposes of the rules in this chapter, "radiobioassay" is an equivalent term.

(16) Byproduct material--

(A) A radioactive material, other than special nuclear material, that is produced in or made radioactive by exposure to radiation incident to the process of producing or using special nuclear material;

(B) The tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes, and other tailings having similar radiological characteristics. Underground ore bodies depleted by these solution extraction processes do not constitute "byproduct material" within this definition;

(C) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity;

(D) Any material that has been made radioactive by use of a particle accelerator, and is produced, extracted, or converted for use for a commercial, medical, or research activity; and

(E) Any discrete source of naturally occurring radioactive material, other than source material, that is extracted or converted after extraction for use in a commercial, medical, or research activity and that the NRC, in consultation with the Administrator of the United States Environmental Protection Agency (EPA), the United States Secretary of Energy, the United States Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security.

(17) CFR--Code of Federal Regulations.

(18) 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 applies to a range of clearance half-times: for Class D (Days) of less than ten days, for Class W (Weeks) from 10 to 100 days, and for Class Y (Years) of greater than 100 days. For purposes of the rules in this chapter, "lung class" and "inhalation class" are equivalent terms.

(19) Collective dose--The sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(20) Committed dose equivalent ($H_{T,50}$) (CDE)--The dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

(21) Committed effective dose equivalent ($H_{E,50}$) (CEDE)--The sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues.

(22) Compact--The Texas Low-Level Radioactive Waste Disposal Compact established under Texas Health and Safety Code, §403.006 and Texas Low-Level Radioactive Waste Disposal Compact Consent Act, Public Law Number 105-236 (1998).

(23) Compact waste--Low-level radioactive waste that:

(A) is generated in a host state or a party state; or

(B) is not generated in a host state or a party state, but has been approved for importation to this state by the compact commission under §3.05 of the compact established under Texas Health and Safety Code, §403.006.

(24) Compact waste disposal facility--The low-level radioactive waste land disposal facility licensed by the commission under Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) for the disposal of compact waste.

(25) Constraint (dose constraint)--A value above which specified licensee actions are required.

(26) Critical group--The group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

(27) Curie (Ci)--See §336.4 of this title.

(28) 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 withdraws the declaration in writing or is no longer pregnant.

(29) Decommission--To remove (as a facility) safely from service and reduce residual radioactivity to a level that permits:

(A) release of the property for unrestricted use and termination of license; or

(B) release of the property under restricted conditions and termination of the license.

(30) Deep-dose equivalent (H_d) (which applies to external whole-body exposure)--The dose equivalent at a tissue depth of one centimeter (1,000 milligrams/square centimeter).

(31) 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.

(32) Depleted uranium--The source material uranium in which the isotope uranium-235 is less than 0.711%, by weight, of the total uranium present. Depleted uranium does not include special nuclear material.

(33) Derived air concentration (DAC)--The concentration of a given radionuclide in air which, if breathed by the "reference man" for a working year of 2,000 hours under conditions of light work (inhalation rate of 1.2 cubic meters of air/hour), results in an intake of one ALI. DAC values are given in Table I, Column 3, of §336.359, Appendix B, of this title.

(34) 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 shall take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 5 rems (0.05 sievert).

(35) Discrete source--A radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

(36) Disposal--With regard to low-level radioactive waste, the isolation or removal of low-level radioactive waste from mankind and mankind's environment without intent to retrieve that low-level radioactive waste later.

(37) 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 (SCBA).

(38) Distinguishable from background--The detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

(39) Dose--A generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of the rules in this chapter, "radiation dose" is an equivalent term.

(40) Dose equivalent (H_T)--The product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (Sv).

(41) Dose limits--The permissible upper bounds of radiation doses established in accordance with the rules in this chapter. For purposes of the rules in this chapter, "limits" is an equivalent term.

(42) Dosimetry processor--An individual or organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

(43) Effective dose equivalent (H_E)--The sum of the products of the dose equivalent to each organ or tissue (H_T) and the weighting factor (w_T) applicable to each of the body organs or tissues that are irradiated.

(44) Embryo/fetus--The developing human organism from conception until the time of birth.

(45) Entrance or access point--Any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed radioactive materials. This includes portals of sufficient size to permit human access, irrespective of their intended use.

(46) Exposure--Being exposed to ionizing radiation or to radioactive material.

(47) Exposure rate--The exposure per unit of time.

(48) External dose--That portion of the dose equivalent received from any source of radiation outside the body.

(49) Extremity--Hand, elbow, arm below the elbow, foot, knee, and leg below the knee. The arm above the elbow and the leg above the knee are considered part of the whole body.

(50) Federal facility waste--Low-level radioactive waste that is the responsibility of the federal government under the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 United States Code, §2021b - 2021j). Excluded from this definition is low-level radioactive waste that is classified as greater than Class C in §336.362 of this title (relating to Appendix E. Classification and Characteristics of Low-Level Radioactive Waste).

(51) Federal facility waste disposal facility--A low-level radioactive waste land disposal facility for the disposal of federal facility waste licensed under Subchapters H and J of this chapter.

(52) 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.

(53) 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.

(54) Fit test--The use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

(55) General license--An authorization granted by an agency under its rules which is effective without the filing of an application with that agency or the issuance of a licensing document to the particular person.

(56) Generally applicable environmental radiation standards--Standards issued by the EPA under the authority of the Atomic Energy Act of 1954, as amended through October 4, 1996, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(57) Gray (Gy)--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(58) Hazardous waste--Hazardous waste as defined in §335.1 of this title (relating to Definitions).

(59) Helmet--A rigid respiratory inlet covering that also provides head protection against impact and penetration.

(60) High radiation area--An area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 millisievert) in one hour at 30 centimeters from the radiation source or 30 centimeters from any surface that the radiation penetrates.

(61) Hood--A respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

(62) Host state--A party state in which a compact facility is located or is being developed. The State of Texas is the host state under the Texas Low-Level Radioactive Waste Disposal Compact, §2.01, established under Texas Health and Safety Code, §403.006.

(63) Individual--Any human being.

(64) Individual monitoring--The assessment of:

(A) dose equivalent by the use of individual monitoring devices; or

(B) committed effective dose equivalent by bioassay or by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours; or

(C) dose equivalent by the use of survey data.

(65) Individual monitoring devices--Devices designed to be worn by a single individual for the assessment of dose equivalent such as film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

(66) Inhalation class--See "Class."

(67) Inspection--An official examination and/or observation including, but not limited to, records, tests, surveys, and monitoring to determine compliance with the Texas Radiation Control Act (TRCA) and rules, orders, and license conditions of the commission.

(68) Internal dose--That portion of the dose equivalent received from radioactive material taken into the body.

(69) Land disposal facility--The land, buildings and structures, and equipment which are intended to be used for the disposal of low-level radioactive wastes into the subsurface of the land. For purposes of this chapter, a "geologic repository" as defined in 10 CFR §60.2 as amended through October 27, 1988 (53 FR 43421) (relating to Definitions - high-level radioactive wastes in geologic repositories) is not considered a "land disposal facility."

(70) Lens dose equivalent (LDE)--The external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm^2).

(71) License--See "Specific license."

(72) Licensed material--Radioactive material received, possessed, used, processed, transferred, or disposed of under a license issued by the commission.

(73) Licensee--Any person who holds a license issued by the commission in accordance with the Texas Health and Safety Code, Chapter 401 (Radioactive Materials and Other Sources of Radiation) and the rules in this chapter. For purposes of the rules in this chapter, "radioactive material licensee" is an equivalent term. Unless stated otherwise, "licensee" as used in the rules of this chapter means the holder of a "specific license."

(74) Licensing state--Any state with rules equivalent to the Suggested State Regulations for Control of Radiation relating to, and having an effective program for, the regulatory control of naturally occurring or accelerator-produced radioactive material (NARM) and which has been designated as such by the Conference of Radiation Control Program Directors, Inc.

(75) Loose-fitting facepiece--A respiratory inlet covering that is designed to form a partial seal with the face.

(76) Lost or missing licensed radioactive material--Licensed material whose location is unknown. This definition includes material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

(77) Low-level radioactive waste--

(A) Except as provided by subparagraph (B) of this paragraph, low-level radioactive waste means radioactive material that:

(i) is discarded or unwanted and is not exempt by a Texas Department of State Health Services rule adopted under the Texas Health and Safety Code, §401.106;

(ii) is waste, as that term is defined by 10 CFR §61.2; and

(iii) is subject to:

(I) concentration limits established under this chapter; and

(II) disposal criteria established under this chapter.

(B) Low-level radioactive waste does not include:

(i) high-level radioactive waste defined by 10 CFR §60.2;

(ii) spent nuclear fuel as defined by 10 CFR §72.3;

(iii) transuranic waste as defined in this section;

(iv) byproduct material as defined by paragraph (16)(B) - (E) of this section;

(v) naturally occurring radioactive material (NORM) waste; or

(vi) oil and gas NORM waste.

(C) When used in this section, the references to 10 CFR sections mean those CFR sections as they existed on September 1, 1999, as required by Texas Health and Safety Code, §401.005.

(78) Lung class--See "Class."

(79) Member of the public--Any individual except when that individual is receiving an occupational dose.

(80) Minor--An individual less than 18 years of age.

(81) Mixed waste--A combination of hazardous waste, as defined in §335.1 of this title (relating to Definitions) and low-level radioactive waste. The term includes compact waste and federal facility waste containing hazardous waste.

(82) Monitoring--The measurement of radiation levels, radioactive material concentrations, surface area activities, or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of the rules in this chapter, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

(83) 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 §336.351 of this title (relating to Reports of Transactions Involving Nationally Tracked Sources). 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.

(84) Naturally occurring or accelerator-produced radioactive material (NARM)--Any naturally occurring or accelerator-produced radioactive material except source material or special nuclear material.

(85) Naturally occurring radioactive material (NORM) waste--Solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material, and byproduct material, that:

(A) in its natural physical state spontaneously emits radiation;

(B) is discarded or unwanted; and

(C) is not exempt under rules of the Texas Department of State Health Services adopted under Texas Health and Safety Code, §401.106.

(86) Near-surface disposal facility--A land disposal facility in which low-level radioactive waste is disposed of in or within the upper 30 meters of the earth's surface.

(87) 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.

(88) 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 the rules in this chapter, "deterministic effect" is an equivalent term.

(89) Occupational dose--The dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation and/or to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or other person. Occupational dose does not include dose received from background radiation, as a patient from medical practices, from voluntary participation in medical research programs, or as a member of the public.

(90) Oil and gas naturally occurring radioactive material (NORM) waste--Naturally occurring radioactive material (NORM) waste that constitutes, is contained in, or has contaminated oil and gas waste as that term is defined in the Texas Natural Resources Code, §91.1011.

(91) On-site--The same or geographically contiguous property that may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way that the property owner controls and to which the public does not have access, is also considered on-site property.

(92) Particle accelerator--Any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and discharging the resultant particulate or other associated radiation at energies usually in excess of 1 million electron volts (MeV).

(93) Party state--Any state that has become a party to the compact in accordance with Article VII of the Texas Low-Level Radioactive Waste Disposal Compact, established under Texas Health and Safety Code, §403.006.

(94) Perpetual care account--The radiation and perpetual care account as defined in this section.

(95) Personnel monitoring equipment--See "Individual monitoring devices."

(96) Planned special exposure--An infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

(97) Positive pressure respirator--A respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

(98) Powered air-purifying respirator (PAPR)--An air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

(99) 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.

(100) Principal activities--Activities authorized by the license which are essential to achieving the purpose(s) for which the license is issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(101) Public dose--The dose received by a member of the public from exposure to radiation and/or radioactive material released by a licensee, or to any other source of radiation under the control of the licensee. It does not include occupational dose or doses received from background radiation, as a patient from medical practices, or from voluntary participation in medical research programs.

(102) Qualitative fit test (QLFT)--A pass/fail test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

(103) Quality factor (Q)--The modifying factor listed in Table I or II of §336.3 of this title that is used to derive dose equivalent from absorbed dose.

(104) Quantitative fit test (QNFT)--An assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

(105) Quarter (Calendar 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.

(106) Rad--See §336.3 of this title.

(107) Radiation--Alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. For purposes of the rules in this chapter, "ionizing radiation" is an equivalent term. Radiation, as used in this chapter, does not include non-ionizing radiation, such as radio- or microwaves or visible, infrared, or ultraviolet light.

(108) Radiation and Perpetual Care Account--An account in the general revenue fund established for the purposes specified in the Texas Health and Safety Code, §401.305.

(109) Radiation area--Any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 millisievert) in one hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates.

(110) Radiation machine--Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(111) Radioactive material--A naturally-occurring or artificially-produced solid, liquid, or gas that emits radiation spontaneously.

(112) Radioactive substance--Includes byproduct material, radioactive material, low-level radioactive waste, source material, special nuclear material, source of radiation, and NORM waste, excluding oil and gas NORM waste.

(113) Radioactivity--The disintegration of unstable atomic nuclei with the emission of radiation.

(114) Radiobioassay--See "Bioassay."

(115) Reference man--A hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics shall be used by researchers and public health workers 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."

(116) Rem--See §336.3 of this title.

(117) Residual radioactivity--Radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of 10 CFR Part 20.

(118) Respiratory protection equipment--An apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials. For purposes of the rules in this chapter, "respiratory protective device" is an equivalent term.

(119) Restricted area--An area, access to which is limited by the licensee for the purpose of protecting individuals against undue risks from exposure to radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building shall be set apart as a restricted area.

(120) Roentgen (R)--See §336.3 of this title.

(121) 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.

(122) Sealed source--Radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions that are likely to be encountered in normal use and handling.

(123) Self-contained breathing apparatus (SCBA)--An atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

(124) Shallow-dose equivalent (H_s) (which applies to the external exposure of the skin of the whole body or the skin of an extremity)--The dose equivalent at a tissue depth of 0.007 centimeter (seven milligrams/square centimeter).

(125) SI--The abbreviation for the International System of Units.

(126) Sievert (Sv)--See §336.3 of this title.

(127) Site boundary--That line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

(128) Source material--

(A) Uranium or thorium, or any combination thereof, in any physical or chemical form; or

(B) ores that contain, by weight, 0.05% or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.

(129) Special form radioactive material--Radioactive material which is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule and which has at least one dimension not less than five millimeters and which satisfies the test requirements of 10 CFR §71.75 as amended through September 28, 1995 (60 FR 50264) (Transportation of License Material).

(130) Special nuclear material--

(A) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the NRC, under the provisions of the Atomic Energy Act of 1954, §51, as amended through November 2, 1994 (Public Law 103-437), determines to be special nuclear material, but does not include source material; or

(B) any material artificially enriched by any of the foregoing, but does not include source material.

(131) Special nuclear material in quantities not sufficient to form a critical mass--Uranium enriched in the isotope 235 in quantities not exceeding 350 grams of contained uranium-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of these in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed 1. For example, the following quantities in combination would not exceed the limitation: (175 grams contained U-235/350 grams) + (50 grams U-233/200 grams) + (50 grams Pu/200 grams) = 1.

(132) Specific license--A licensing document issued by an agency upon an application filed under its rules. For purposes of the rules in this chapter, "radioactive material license" is an equivalent term. Unless stated otherwise, "license" as used in this chapter means a "specific license."

(133) State--The State of Texas.

(134) 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 the rules in this chapter, "probabilistic effect" is an equivalent term.

(135) Supplied-air respirator (SAR) or airline respirator--An atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

(136) Survey--An evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, and/or presence of radioactive materials or other sources of radiation. When appropriate, this evaluation includes, but is not limited to, physical examination of the location of radioactive material and measurements or calculations of levels of radiation or concentrations or quantities of radioactive material present.

(137) Termination--As applied to a license, a release by the commission of the obligations and authorizations of the licensee under the terms of the license. It does not relieve a person of duties and responsibilities imposed by law.

(138) Tight-fitting facepiece--A respiratory inlet covering that forms a complete seal with the face.

(139) Total effective dose equivalent (TEDE)--The sum of the effective dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

(140) Total organ dose equivalent (TODE)--The sum of the deep-dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in §336.346(a)(6) of this title (relating to Records of Individual Monitoring Results).

(141) Transuranic waste--For the purposes of this chapter, wastes containing alpha emitting transuranic radionuclides with a half-life greater than five years at concentrations greater than 100 nanocuries/gram.

(142) Type A quantity (for packaging)--A quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material, where A_1 and A_2 are given in or shall be determined by procedures in Appendix A to 10 CFR Part 71 as amended through September 28, 1995 (60 FR 50264) (Packaging and Transportation of Radioactive Material).

(143) Type B quantity (for packaging)--A quantity of radioactive material greater than a Type A quantity.

(144) Unrefined and unprocessed ore--Ore in its natural form before any processing, such as grinding, roasting, beneficiating, or refining.

(145) Unrestricted area--Any area that is not a restricted area.

(146) 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.

(147) Very high radiation area--An area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose in excess of 500 rads (five grays) in one hour at one meter from a source of radiation or one meter from any surface that the radiation penetrates.

(148) Violation--An infringement of any provision of the Texas Radiation Control Act (TRCA) or of any rule, order, or license condition of the commission issued under the TRCA or this chapter.

(149) Waste--Low-level radioactive wastes containing source, special nuclear, or byproduct material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in paragraph (16)(B) - (E) of this section.

(150) Week--Seven consecutive days starting on Sunday.

(151) 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: 30 TAC §336.2(151)

(152) Whole body--For purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(153) Worker--An individual engaged in activities under a license issued by the commission and controlled by a licensee, but does not include the licensee.

(154) Working level (WL)--Any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of 1.3 x 10^5 MeV of potential alpha particle energy. The short-lived radon daughters are: for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212.

(155) Working level month (WLM)--An exposure to one working level for 170 hours (2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month).

(156) Year--The period of time beginning in January used to determine compliance with the provisions of the rules in this chapter. The licensee shall change the starting date of the year used to determine compliance by the licensee provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

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

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SUBCHAPTER B. RADIOACTIVE SUBSTANCE FEES

30 TAC §336.103, §336.105

Statutory Authority

The amendments are adopted under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.201, which provides authority to the commission to regulate the disposal of low-level radioactive waste; §401.301, which authorizes the commission to set fees by rule; and §401.412, which provides authority to the commission to regulate licenses for the disposal of radioactive substances. The adopted amendments are also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the water code and other laws of the state.

The adopted amendments implement THSC, Chapter 401, including §§401.011, 401.051, 401.057, 401.059, 401.103, 401.104, 401.151, 401.201, 401.301, and 401.412.

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SUBCHAPTER C. GENERAL LICENSING REQUIREMENTS

30 TAC §336.210

Statutory Authority

The amendment is adopted under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.201, which provides authority to the commission to regulate the disposal of low-level radioactive waste; §401.301, which authorizes the commission to set fees by rule; and §401.412, which provides authority to the commission to regulate licenses for the disposal of radioactive substances. The adopted amendment is also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the water code and other laws of the state.

The adopted amendment implements THSC, Chapter 401, including §§401.011, 401.051, 401.057, 401.059, 401.103, 401.104, 401.151, 401.201, 401.301, and 401.412.

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SUBCHAPTER D. STANDARDS FOR PROTECTION AGAINST RADIATION

30 TAC §§336.305, 336.309, 336.331, 336.351, 336.357, 336.359

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 30 TAC §336.359(d) is not included in the print version of the Texas Register. The figure is available in the on-line version of the January 27, 2012, issue of the Texas Register.)

Statutory Authority

The amendments and new sections are adopted under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.201, which provides authority to the commission to regulate the disposal of low-level radioactive waste; §401.301, which authorizes the commission to set fees by rule; and §401.412, which provides authority to the commission to regulate licenses for the disposal of radioactive substances. The adopted amendments and new sections are also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the water code and other laws of the state.

The adopted amendments and new sections implement THSC, Chapter 401, including §§401.011, 401.051, 401.057, 401.059, 401.103, 401.104, 401.151, 401.201, 401.301, and 401.412.

§336.351. Reports of Transactions Involving Nationally Tracked Sources.

(a) Each licensee who manufactures, transfers, receives, disassembles, or disposes of a nationally tracked source shall complete and submit to the United States Nuclear Regulatory Commission (NRC) a National Source Tracking Transaction Report as specified in paragraphs (1) - (6) of this subsection for each type of transaction.

(1) Each licensee who manufactures a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report. The report must include the following information:

(A) the name, address, and license number of the reporting licensee;

(B) the name of the individual preparing the report;

(C) the manufacturer, model, and serial number of the source;

(D) the radioactive material in the source;

(E) the initial source strength in becquerels (curies) at the time of manufacture; and

(F) the manufacture date of the source.

(2) Each licensee that transfers a nationally tracked source to another person shall complete and submit to NRC a National Source Tracking Transaction Report. The report shall include the following information:

(A) the name, address, and license number of the reporting licensee;

(B) the name of the individual preparing the report;

(C) the name and license number of the recipient facility and the shipping address;

(D) the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(E) the radioactive material in the source;

(F) the initial or current source strength in becquerels (curies);

(G) the date for which the source strength is reported;

(H) the shipping date;

(I) the estimated arrival date; and

(J) 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.

(3) 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:

(A) the name, address, and license number of the reporting licensee;

(B) the name of the individual preparing the report;

(C) the name, address, and license number of the person that provided the source;

(D) the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(E) the radioactive material in the source;

(F) the initial or current source strength in becquerels (curies);

(G) the date for which the source strength is reported;

(H) the date of receipt; and

(I) for material received under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification with the nationally tracked source.

(4) 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:

(A) the name, address, and license number of the reporting licensee;

(B) the name of the individual preparing the report;

(C) the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(D) the radioactive material in the source;

(E) the initial or current source strength in becquerels (curies);

(F) the date for which the source strength is reported; and

(G) the disassemble date of the source.

(5) 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:

(A) the name, address, and license number of the reporting licensee;

(B) the name of the individual preparing the report;

(C) the waste manifest number;

(D) the container identification with the nationally tracked source;

(E) the date of disposal; and

(F) the method of disposal.

(6) The reports discussed in paragraphs (1) - (6) of this subsection 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:

(A) the on-line National Source Tracking System;

(B) electronically using a computer-readable format;

(C) by facsimile;

(D) by mail to the address on the National Source Tracking Transaction Report Form (NRC Form 748); or

(E) by telephone with follow-up by facsimile or mail.

(7) Each licensee shall correct any error in previously filed reports or file a new report for any missed transaction within five 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 paragraphs (1) - (6) of this subsection. 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.

(8) Each licensee that possesses Category 1 or Category 2 nationally tracked sources listed in subsection (b) of this section 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 paragraph (6)(A) - (E) of this subsection. The initial inventory report shall include the following information:

(A) the name, address, and license number of the reporting licensee;

(B) the name of the individual preparing the report;

(C) the manufacturer, model, and serial number of each nationally tracked source or, if not available, other information to uniquely identify the source;

(D) the radioactive material in the sealed source;

(E) the initial or current source strength in becquerels (curies); and

(F) the date for which the source strength is reported.

(b) Nationally tracked source thresholds. The Terabecquerel (TBq) values are the regulatory standards. The curie values specified are obtained by converting from the TBq value. The curie values are provided for practical usefulness only and are rounded after conversion. The following table contains nationally tracked source thresholds.
Figure: 30 TAC §336.351(b)

§336.357. Increased Controls for Licensees that Possess Sources Containing Radioactive Material Quantities of Concern.

Licensees possessing sources containing radioactive material, at any given time, in quantities greater than or equal to the quantities of concern listed in paragraph (11) of this section shall:

(1) control access at all times to radioactive material in quantities of concern and devices containing such radioactive material (devices) in accordance with paragraph (11) of this section; and

(2) limit access to such radioactive material and devices to only approved individuals who require access to perform their duties.

(A) The licensee shall allow only trustworthy and reliable individuals, approved in writing by the licensee, to have unescorted access to radioactive material quantities of concern and devices.

(B) The licensee shall approve for unescorted access only those individuals with job duties that require access to such radioactive material and devices. Personnel who require access to such radioactive material and devices to perform a job duty, but who are not approved by the licensee for unescorted access, must be escorted by an approved individual.

(C) For individuals employed by the licensee for three years or less, and for non-licensee personnel, such as physicians, physicists, house-keeping personnel, and security personnel under contract, trustworthiness and reliability shall be determined, at a minimum, by verifying employment history, education, and personal references. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (i.e., seeking references not supplied by the individual). For individuals employed by the licensee for longer than three years, trustworthiness and reliability shall be determined, at a minimum, by a review of the employees' employment history with the licensee.

(D) Service providers shall be escorted unless determined to be trustworthy and reliable by an NRC required background investigation as an employee of a manufacturing and distribution licensee. Written verification attesting to or certifying the person's trustworthiness and reliability shall be obtained from the manufacturing and distribution licensee providing the service.

(E) The licensee shall document the basis for concluding that there is reasonable assurance that an individual granted unescorted access is trustworthy and reliable, and does not constitute an unreasonable risk for unauthorized use of radioactive material quantities of concern. The licensee shall maintain a list of persons approved for unescorted access to such radioactive material and devices by the licensee.

(3) Each licensee shall have a documented program to monitor and immediately detect, assess, and respond to unauthorized access to radioactive material quantities of concern and devices in use or in storage. Enhanced monitoring shall be provided during periods of source delivery or shipment, where the delivery or shipment exceeds 100 times the values listed in paragraph (11) of this section.

(A) The licensee shall respond immediately to any actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices. The response shall include requesting assistance from a Local Law Enforcement Agency (LLEA).

(B) The licensee shall have a pre-arranged plan with LLEA for assistance in response to an actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices which is consistent in scope and timing with a realistic potential vulnerability of the sources containing such radioactive material. The pre-arranged plan shall be updated when changes to the facility design or operation affect the potential vulnerability of the sources.

(C) The licensee shall have a dependable means to transmit information between, and among, the various components used to detect and identify an unauthorized intrusion, to inform the assessor, and to summon the appropriate responder.

(D) After initiating appropriate response to any actual or attempted theft, sabotage, or diversion of radioactive material or of the devices, the licensee shall, as promptly as possible, notify the Office of Compliance and Enforcement 24-hour Emergency Response at 800-832-8224.

(E) The licensee shall maintain documentation describing each instance of unauthorized access and any necessary corrective actions to prevent future instances of unauthorized access.

(4) In order to ensure the safe handling, use, and control of licensed material in transportation for domestic highway and rail shipments by a carrier other than the licensee, for quantities that equal or exceed but are less than 100 times those listed in paragraph (11) of this section, per consignment, the licensee shall:

(A) use carriers which:

(i) use package tracking systems;

(ii) implement methods to assure trustworthiness and reliability of drivers;

(iii) maintain constant control and/or surveillance during transit; and

(iv) have the capability for immediate communication to summon appropriate response or assistance;

(B) verify and document that the carrier employs the measures in subparagraph (A) of this paragraph;

(C) contact the recipient to coordinate the expected arrival time of the shipment;

(D) confirm receipt of the shipment; and

(E) initiate an investigation to determine the location of the licensed material if the shipment does not arrive on or about the expected arrival time. When, through the course of the investigation, it is determined the shipment has become lost, stolen, or is missing, the licensee shall immediately notify the Office of Compliance and Enforcement 24-hour Emergency Response at 800-832-8224. If, after 24 hours of investigating, the location of the material still cannot be determined, the radioactive material shall be deemed missing and the licensee shall immediately notify the Office of Compliance and Enforcement 24-hour Emergency Response at 800-832-8224.

(5) For domestic highway and rail shipments, prior to shipping licensed radioactive material that exceeds 100 times the quantities in paragraph (11) of this section per consignment, the licensee shall:

(A) Notify the United States Nuclear Regulatory Commission (NRC) Director, Office of Federal and State Materials and Environmental Management Programs, United States Nuclear Regulatory Commission, Washington, DC 20555, in writing, at least 90 days prior to the anticipated date of shipment. The NRC will issue the Order to implement the Additional Security Measures (ASMs) for the transportation of Radioactive Material Quantities of Concern (RAM QC). The licensee shall not ship this material until the ASMs for the transportation of RAM QC are implemented or the licensee is notified otherwise, in writing, by the NRC.

(B) Once the licensee has implemented the ASMs for the transportation of RAM QC, the notification requirements in subparagraph (A) of this paragraph shall not apply to future shipments of licensed radioactive material that exceeds 100 times the quantities listed in paragraph (11) of this section. The licensee shall implement the ASMs for the transportation of RAM QC.

(6) If a licensee employs an Manufacturer/Distributor (M&D) licensee to take possession at the licensee's location of the licensed radioactive material and ship it under its M&D license, the requirements of paragraphs (4) and (5)(A) and (B) of this section shall not apply.

(7) If the licensee is to receive radioactive material greater than or equal to the quantities in paragraph (11) of this section, per consignment, the licensee shall coordinate with the originator to:

(A) establish an expected time of delivery; and

(B) confirm receipt of transferred radioactive material. If the material is not received at the expected time of delivery, notify the originator and assist in any investigation.

(8) Each licensee who possesses mobile or portable devices containing radioactive material in quantities greater than or equal to the values listed in paragraph (11) of this section, shall:

(A) For portable devices, have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.

(B) For mobile devices:

(i) that are only moved outside of the facility (e.g., on a trailer), have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.

(ii) that are only moved inside a facility, have a physical control that forms a tangible barrier to secure the material from unauthorized movement or removal when the device is not under direct control and constant surveillance by the licensee.

(C) For devices in or on a vehicle or trailer, licensees shall also utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee.

(9) The licensee shall retain documentation required by these increased controls for inspection by the executive director for three years after they are no longer effective.

(A) The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after the individual's employment ends.

(B) Each time the licensee revises the list of approved persons required by paragraph (2)(E) of this section, or the documented program required by paragraph (3) of this section, the licensee shall retain the previous documentation for three years after the revision.

(C) The licensee shall retain documentation on each radioactive material carrier for three years after the licensee discontinues use of that particular carrier.

(D) The licensee shall retain documentation on shipment coordination, notifications, and investigations for three years after the shipment or investigation is completed.

(E) After the license is terminated or amended to reduce possession limits below the quantities of concern, the licensee shall retain all documentation required by these increased controls for three years.

(10) Detailed information generated by the licensee that describes the physical protection of radioactive material quantities of concern, is sensitive information and shall be protected from unauthorized disclosure.

(A) The licensee shall control access to its physical protection information to those persons who have an established need to know the information, and are considered to be trustworthy and reliable.

(B) The licensee shall develop, maintain, and implement policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, its physical protection information for radioactive material covered by these requirements. The policies and procedures shall include the following:

(i) general performance requirement that each person who produces, receives, or acquires the licensee's sensitive information, protect the information from unauthorized disclosure;

(ii) protection of sensitive information during use, storage, and transit;

(iii) preparation, identification or marking, and transmission;

(iv) access controls;

(v) destruction of documents;

(vi) use of automatic data processing systems; and

(vii) removal from the licensee's sensitive information category.

(11) Radionuclide quantities of concern. The following methods shall be used to determine which sources of radioactive material require increased controls:

(A) include any single source equal to or greater than the quantity of concern;

(B) include multiple collocated sources of the same radionuclide when the combined quantity equals or exceeds the quantity of concern;

(C) for combinations of radionuclides, include multiple collocated sources of different radionuclides when the aggregate quantities satisfy the following unity rule: ((amount of radionuclide A) / (quantity of concern of radionuclide A)) + ((amount of radionuclide B) / (quantity of concern of radionuclide B)) + etc...> 1; and

(D) The following table contains quantities of radioactive materials to be used in determining a quantity of concern.
Figure: 30 TAC §336.357(11)(D)

§336.359. Appendix B. 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. For each radionuclide, Table I 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 micrometer 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 of less than 10 days, for W from 10 to 100 days, and for Y greater than 100 days.

(1) The class (D, W, or Y) given in the column headed "Class" applies only to the inhalation ALIs and DACs given in Table I, Columns 2 and 3. Table II provides concentration limits for airborne and liquid effluents released to the general environment. Table III provides concentration limits for discharges to sanitary sewerage.

(2) The values in Tables I, II, and III 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. Values are given in units of microcuries (μCi) or microcuries per milliliter (μCi/ml), as indicated.

(b) Table I, "Occupational Values". Note that the columns in Table I of this appendix captioned "Oral Ingestion ALI," "Inhalation ALI," and "DAC," are applicable to occupational exposure to radioactive material.

(1) The ALIs in this appendix are the annual intakes of a given radionuclide by "reference man" that would result in either a committed effective dose equivalent of 5 rems (0.05 sievert) (stochastic ALI) or a committed dose equivalent of 50 rems (0.5 sievert) 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 sievert). 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 §336.2 of this title (relating to Definitions). The non-stochastic ALIs were derived to avoid non-stochastic effects, such as prompt damage to tissue or reduction in organ function.

(2) 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 parts of the GI tract--stomach, small intestine, upper large intestine, and lower large intestine--are to be treated as four separate organs.

(3) Note that 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. When an ALI is defined by the stochastic dose limit, this value alone is given.

(4) 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. The following abbreviated organ or tissue designations are used:

(A) LLI wall = lower large intestine wall;

(B) St wall = stomach wall;

(C) Blad wall = bladder wall; and

(D) Bone surf = bone surface.

(5) The use of the ALIs listed first, the more limiting of the stochastic and non-stochastic ALIs, will ensure that non-stochastic effects are avoided and that the risk of stochastic effects is limited to an acceptably low value. If, in a particular situation involving a radionuclide for which the non-stochastic ALI is limiting, use of that non-stochastic ALI is considered unduly conservative, the licensee may use the stochastic ALI to determine the committed effective dose equivalent. However, the licensee shall also ensure that the 50-rem (0.5 sievert) dose equivalent limit for any organ or tissue is not exceeded by the sum of the external deep dose equivalent plus the internal committed dose equivalent to that organ (not the effective dose). For the case where there is no external dose contribution, this would be demonstrated if the sum of the fractions of the nonstochastic ALIs (ALI_{ns}) that contribute to the committed dose equivalent to the organ receiving the highest dose does not exceed 1 (i.e., Sigma (intake in μCi of each radionuclide/ALI_{ns}) < 1.0). If there is an external deep-dose equivalent contribution of H_d, then this sum must be less than 1 - (H_d/50), instead of < 1.0.

(6) The DAC values are derived limits intended to control chronic occupational exposures. The relationship between the DAC and the ALI is given by:
Figure: 30 TAC §336.359(b)(6) (No change.)

(7) 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. The DAC values based upon submersion are for immersion in a semi-infinite cloud of uniform concentration and apply to each radionuclide separately.

(8) 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 shall be treated by the general method appropriate for mixtures.

(9) 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 §336.306 of this title (relating to Compliance with Requirements for Summation of External and Internal Doses)). When an individual is exposed to radioactive materials which fall under several of the translocation classifications of the same radionuclide (i.e., Class D, Class W, or Class Y), the exposure may be evaluated as if it were a mixture of different radionuclides.

(10) It shall 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) Table II, "Effluent Concentrations". The columns in Table II of this appendix captioned "Effluent Concentrations," "Air," and "Water" are applicable to the assessment and control of dose to the public, particularly in the implementation of the provisions of §336.314 of this title (relating to Compliance with Dose Limits for Individual Members of the Public). The concentration values given in Columns 1 and 2 of Table II 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 millisievert).

(1) 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. For this reason, the DAC and airborne effluent limits are not always proportional.

(2) The air concentration values listed in Table II, Column 1, 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 ml, relating the inhalation ALI to the DAC and then divided by a factor of 300. The factor of 300 is composed of a factor of 50 to relate the 5-rem (0.05 sievert) annual occupational dose limit to the 0.1 rem (1 millisievert) limit for members of the public, 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 a factor of 2 to adjust the occupational values (derived for adults) so that they are applicable to other age groups.

(3) For those radionuclides for which submersion (external dose) is limiting, the occupational DAC in Table I, Column 3, was divided by 219. The factor of 219 is composed of a factor of 50 and a factor of 4.38 relating occupational exposure for 2,000 hours/year to full-time exposure (8,760 hours/year). Note that an additional factor of 2 for age considerations is not warranted in the submersion case.

(4) The water concentrations were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^7 ml. The factor of 7.3×10^7 ml is composed of the factors of 50 and 2 and a factor of 7.3×10^5 ml which is the annual water intake of "reference man."

(5) Note 6 of this appendix 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 sewerage, 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 either from knowledge of the radionuclide composition of the source or from actual measurements.

(d) Table III, "releases to sewers." The monthly average concentrations for release to sanitary sewerage are applicable to the provisions in §336.215 of this title (relating to Disposal by Release into Sanitary Sewerage). 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 (5 millisieverts).

Figure: 30 TAC §336.359(d)

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 January 13, 2012.

TRD-201200148
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: February 2, 2012
Proposal publication date: August 5, 2011
For further information, please call: (512) 239-2548

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SUBCHAPTER E. NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS AND INSPECTIONS

30 TAC §336.405

Statutory Authority

The amendment is adopted under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.201, which provides authority to the commission to regulate the disposal of low-level radioactive waste; §401.301, which authorizes the commission to set fees by rule; and §401.412, which provides authority to the commission to regulate licenses for the disposal of radioactive substances. The adopted amendment is also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the water code and other laws of the state.

The adopted amendment implements THSC, Chapter 401, including §§401.011, 401.051, 401.057, 401.059, 401.103, 401.104, 401.151, 401.201, 401.301, and 401.412.

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 January 13, 2012.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: February 2, 2012
Proposal publication date: August 5, 2011
For further information, please call: (512) 239-2548

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER E. SALVAGE VEHICLE DEALERS

43 TAC §217.81

The Texas Department of Motor Vehicles (department) adopts amendments to §217.81, Administrative Sanctions and Procedures, relating to denial, suspension and revocation of a salvage vehicle dealer or an agent license issued under Occupations Code, Chapter 2302 and proceedings relating to administrative sanctions and procedures concerning a salvage vehicle dealer or an agent license issued under Chapter 2302. The amendments are adopted without changes to the proposed text as published in the October 28, 2011, issue of the *Texas Register* (36 TexReg 7306) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

House Bill 2357, 82nd Legislature, Regular Session, 2011, added Occupations Code, §2302.354, authorizing the department to impose administrative penalties upon a licensee for non-compliance with law and rules relating to salvage vehicle dealers. The amendments allow the Enforcement Division to more effectively pursue violations and should deter violations by licensees under this chapter. The department considers it important to have administrative penalty authority over salvage dealer and agent licensees so as to have the ability to tailor sanctions based on the factors enumerated in Occupations Code, §2302.354.

Section 217.81 is renamed as Administrative Sanctions and Procedures to better reflect the contents of the amended rule. The amendments to §217.81(a) clarify that when an applicant for a license is not a natural person, the denial of a license can be based on the actions and backgrounds of owners, officers or directors of the applicant, rather than the actions and backgrounds of only the entity that is the applicant. Section 217.81(b)(15) is amended to provide that failure to pay an administrative penalty may be grounds for sanctions. The new §217.81(c) adds an administrative penalty as a permissible sanction that may be imposed on a licensee. The amendment to §217.81(d) is a renumbering of the former (c).

The amendment to §217.81(e) renumbers the former (d) and adds language to clarify that sanctions may include administrative penalties, in addition to license denial, revocation or suspension.

The amendment to §217.81(e)(1) substitutes department for director. This amendment makes the provision consistent with

§217.81(a) and also provides flexibility to the department in determining how best to issue the notice required in §217.81(e)(1).

The amendment to §217.81(e)(1)(B) deletes the requirement that the licensee make a written request for an administrative hearing to the director within 10 days of receipt of the notice, and substitutes a requirement that the written request for an administrative hearing be received by the department within 26 days of the date of mailing of the notice. This amendment makes the notice and hearing request provisions consistent with other department rules, thus streamlining and bringing efficiency to the hearing process across the department.

The amendment to §217.81(e)(2) deletes the reference to Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases) as it is in conflict with the language found in Occupations Code, §2302.108(b), which provides that a rule adopted under that subsection not conflict with a rule adopted by the State Office of Administrative Hearings.

New §217.81(e)(3) allows for the decision of the department to become final on the 27th day after mailing of the notice if a timely request for hearing has not been received by the department or if the applicant, licensee or agent has not entered into a settlement agreement with the department. This provision is consistent with other department rules. Furthermore, the language clarifies that the process is consistent with Government Code, Chapter 2001 (Administrative Procedure Act).

Subsections (f) and (g) are renumbered.

COMMENTS

One written comment concerning the proposed amendments was received.

COMMENT

Texas Automotive Recyclers Association supports the proposed amendments to §217.81 which provide meaningful enforcement tools to the Texas Department of Motor Vehicles in administrating Chapter 2302, Occupations Code.

RESPONSE

The department appreciates the expression of support.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which authorizes the Board of the Texas Department of Motor Vehicles to establish rules as necessary and appropriate to implement the powers and duties of the department; Occupations Code, §2302.051, which authorizes the Board to adopt rules necessary to administer Chapter 2302; and more specifically, Occupations Code, §2302.108, which authorizes the Board to adopt disciplinary rules for licensees, and Occupations Code, §2302.354, which authorizes the department to impose an administrative penalty against upon a person licensed under Chapter 2302 who violates that chapter or a rule or order adopted under that chapter.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 1002, and Occupations Code, Chapter 2302.

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 January 13, 2012.

TRD-201200155
Brett Bray
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 467-3853

TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Office of the Governor

Rule Transfer

Title 1, Part 1

Through the enactment of Senate Bill 1, 82nd Legislature, 2011, First Called Session, the uniform contract and grant management duties and powers of the Office of the Governor are transferred to the Comptroller of Public Accounts (the Comptroller).

Under the bill, rules of the Office of the Governor that are related to an activity transferred by the bill to the Comptroller continue in effect as the rules of the Comptroller until superseded by an act of the Comptroller.

The rules governing the duties being transferred are currently located under Title 1, Part 1, Chapter 5, Subchapter A, Division 4 of the Texas Administrative Code. These rules are transferred and reorganized under Title 34, Part 1, Chapter 20, Subchapter I of the Texas Administrative Code.

This transfer is effective September 1, 2011.

Please refer to Figure: 1 TAC Chapter 5, to see the complete conversion chart.

TRD-201200198

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Comptroller of Public Accounts

Rule Transfer

Title 34, Part 1

Through the enactment of Senate Bill 1, 82nd Legislature, 2011, First Called Session, the uniform contract and grant management duties and powers of the Office of the Governor are transferred to the Comptroller of Public Accounts (the Comptroller).

Under the bill, rules of the Office of the Governor that are related to an activity transferred by the bill to the Comptroller continue in effect as the rules of the Comptroller until superseded by an act of the Comptroller.

The rules governing the duties being transferred are currently located under Title 1, Part 1, Chapter 5, Subchapter A, Division 4 of the Texas Administrative Code. These rules are transferred and reorganized under Title 34, Part 1, Chapter 20, Subchapter I of the Texas Administrative Code.

This transfer is effective September 1, 2011.

Please refer to Figure: 1 TAC Chapter 5, to see the complete conversion chart.

TRD-201200199

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Texas Department of Transportation

Rule Transfer

Title 43, Part 1

Senate Bill 1420, 82nd Legislature, 2011, transferred certain functions related to oversize and overweight vehicles from the Texas Department of Transportation (TxDOT) to the Texas Department of Motor Vehicles (department) no later than January 1, 2012. See Section 102 of Senate Bill 1420. The bill specifies certain powers and duties are retained by TxDOT, including the authority over contracts for certain highway crossings and the power to authorize certain port authorities and Chambers County to issue certain permits. Under the bill, certain TxDOT rules continue in effect as the rules of the department until altered by the department.

The rules regulating oversize and overweight vehicles previously found in Texas Administrative Code, Title 43, Part 1, Chapter 28, Subchapters A - E and I - K, will be transferred and reorganized under Texas Administrative Code, Title 43, Part 10, Chapter 219, Subchapters A - H.

The transfer under Senate Bill 1420 took effect on January 1, 2012.

Please refer to Figure: 43 TAC Chapter 28, to see the complete conversion chart.

TRD-201200200

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Texas Department of Motor Vehicles

Rule Transfer

Title 43, Part 10

Senate Bill 1420, 82nd Legislature, 2011, transferred certain functions related to oversize and overweight vehicles from the Texas Department of Transportation (TxDOT) to the Texas Department of Motor Vehicles (department) no later than January 1, 2012. See Section 102 of Senate Bill 1420. The bill specifies certain powers and duties are retained by TxDOT, including the authority over contracts for certain highway crossings and the power to authorize certain port authorities and Chambers County to issue certain permits. Under the bill, certain TxDOT rules continue in effect as the rules of the department until altered by the department.

The rules regulating oversize and overweight vehicles previously found in Texas Administrative Code, Title 43, Part 1, Chapter 28, Subchapters A - E and I - K, will be transferred and reorganized under Texas Administrative Code, Title 43, Part 10, Chapter 219, Subchapters A - H.

The transfer under Senate Bill 1420 took effect on January 1, 2012.

Please refer to Figure: 43 TAC Chapter 28, to see the complete conversion chart.

TRD-201200201

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Figure: 1 TAC Chapter 5

Current Rules from: **Title 1, Part 1** **Office of the Governor** **Chapter 5. Budget and Planning Office** **Subchapter A. Federal and Intergovernmental Coordination** **Division 4. Uniform Grant Management Standards**		**Transferred to:** **Title 34, Part 1** **Comptroller of Public Accounts** **Chapter 20. Texas Procurement and Support Services** **Subchapter I. Uniform Grant Management Standards**	
Section	**Heading**	**Section**	**Heading**
§5.141	Introduction	§20.421	Introduction
§5.142	Purpose, Applicability, and Scope	§20.422	Purpose, Applicability, and Scope
§5.143	Effective Date	§20.423	Effective Date
§5.144	Adoption by Reference	§20.424	Adoption by Reference
§5.145	Grants and Contracts	§20.425	Grants and Contracts
§5.146	Standard Assurances	§20.426	Standard Assurances
§5.147	Variance from Standards	§20.427	Variance from Standards
§5.148	Obtaining Copies of Standards	§20.428	Obtaining Copies of Standards
§5.149	Recommendations for Change	§20.429	Recommendations for Change
§5.150	Uniform Cost Principles and Cost Allocation Plans	§20.430	Uniform Cost Principles and Cost Allocation Plans
§5.151	Uniform Administrative, Accounting, Reporting, and Auditing Standards	§20.431	Uniform Administrative, Accounting, Reporting, and Auditing Standards
§5.167	State of Texas Single Audit Circular	§20.432	State of Texas Single Audit Circular

Figure: 43 TAC Chapter 28

Current Rules from Title 43, Part 1 Texas Department of Transportation Chapter 28. Oversize and Overweight Vehicles and Loads			**Transfer to Title 43, Part 10 Texas Department of Motor Vehicles Chapter 219. Oversize and Overweight Vehicles and Loads**		
Subchapter	**Section**	**Heading**	**Subchapter**	**Section**	**Heading**
A		**General Provisions**	**A**		**General Provisions**
	§28.1	Purpose and Scope		§219.1	Purpose and Scope
	§28.2	Definitions		§219.2	Definitions
	§28.3	Surety Bonds for Ready-mix Concrete Trucks, Concrete Pump Trucks, Vehicles Transporting Recyclable Materials, and Solid Waste Vehicles		§219.3	Surety Bonds for Ready-mix Concrete Trucks, Concrete Pump Trucks, Vehicles Transporting Recyclable Materials, and Solid Waste Vehicles
B		**General Permits**	**B**		**General Permits**
	§28.10	Purpose and Scope		§219.10	Purpose and Scope
	§28.11	General Oversize/Overweight Permit Requirements and Procedures		§219.11	General Oversize/Overweight Permit Requirements and Procedures
	§28.12	Single-Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D		§219.12	Single-Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D
	§28.13	Time Permits		§219.13	Time Permits
	§28.14	Manufactured Housing, and Industrialized Housing and Building Permits		§219.14	Manufactured Housing, and Industrialized Housing and Building Permits
	§28.15	Portable Building Unit Permits		§219.15	Portable Building Unit Permits
	§28.16	Permits for Military and Governmental Agencies		§219.16	Permits for Military and Governmental Agencies
	§28.17	Multi-state Permitting Agreements		§219.17	Multi-state Permitting Agreements
C		**Permits for Over Axle and Over Gross Weight Tolerances**	**C**		**Permits for Over Axle and Over Gross Weight Tolerances**
	§28.30	Permits for Over Axle and Over Gross Weight Tolerances		§219.30	Permits for Over Axle and Over Gross Weight Tolerances
D		**Permits for Oversize and Overweight Oil Well Related Vehicles**	**D**		**Permits for Oversize and Overweight Oil Well Related Vehicles**
	§28.40	Purpose and Scope		§219.40	Purpose and Scope
	§28.41	General Requirements		§219.41	General Requirements
	§28.42	Single-Trip Mileage Permits		§219.42	Single-Trip Mileage Permits
	§28.43	Quarterly Hubometer Permits		§219.43	Quarterly Hubometer Permits

	§28.44	Annual Permits		§219.44	Annual Permits
	§28.45	Permits for Vehicles Transporting Liquid Products Related to Oil Well Production		§219.45	Permits for Vehicles Transporting Liquid Products Related to Oil Well Production
E		**Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles**	E		**Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles**
	§28.60	Purpose and Scope		§219.60	Purpose and Scope
	§28.61	General Requirements for Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles		§219.61	General Requirements for Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles
	§28.62	Single Trip Mileage Permits		§219.62	Single Trip Mileage Permits
	§28.63	Quarterly Hubometer Permits		§219.63	Quarterly Hubometer Permits
	§28.64	Annual Permits		§219.64	Annual Permits
I		**Compliance**	F		**Compliance**
	§28.110	Purpose		§219.80	Purpose
	§28.111	Applicability		§219.81	Applicability
	§28.112	Falsification of Information on Application and Permit		§219.82	Falsification of Information on Application and Permit
	§28.113	Shipper Certificate of Weight		§219.83	Shipper Certificate of Weight
	§28.114	Compliance with Remote Permit System		§219.84	Compliance with Remote Permit System
	§28.115	Permits Issued by Another State		§219.85	Permits Issued by Another State
	§28.116	Permit Compliance		§219.86	Permit Compliance
J		**Records and Inspections**	G		**Records and Inspections**
	§28.200	Purpose		§219.100	Purpose
	§28.201	Investigations and Inspections of Records		§219.101	Investigations and Inspections of Records
	§28.202	Records		§219.102	Records
K		**Enforcement**	H		**Enforcement**
	§28.300	Purpose		§219.120	Purpose
	§28.301	Administrative Penalties		§219.121	Administrative Penalties
	§28.302	Administrative Sanctions		§219.122	Administrative Sanctions
	§28.303	Implications for Nonpayment of Penalties; Grounds for Action		§219.123	Implications for Nonpayment of Penalties; Grounds for Action
	§28.304	Administrative Proceedings		§219.124	Administrative Proceedings
	§28.305	Settlement Agreements		§219.125	Settlement Agreements
	§28.306	Administrative Penalty for False Information on Certificate by a Shipper		§219.126	Administrative Penalty for False Information on Certificate by a Shipper

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 Board of Nursing

Title 22, Part 11

In accordance with Government Code §2001.039, the Texas Board of Nursing (Board) files this notice of intention to review and consider for re-adoption, re-adoption with amendments, or repeal, the following Chapter contained in Title 22, Part 11, of the Texas Administrative Code:

Chapter 226, Patient Safety Pilot Programs on Nurse Reporting Systems, §§226.1 - 226.7.

In conducting its review, the Board will assess whether the reasons for originally adopting this chapter continue to exist. Each section of this chapter will be reviewed to determine whether it is obsolete, whether it reflects current legal and policy considerations and current procedures and practices of the Board, and whether it is in compliance with Chapter 2001 of the Government Code (the Administrative Procedure Act).

The public has thirty (30) days from the publication of this rule review in the *Texas Register* to comment and submit any response or suggestions. No action is required by the Board. Written comments may be submitted by mail to Lance Brenton, Assistant General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, by e-mail to lance.brenton@bon.texas.gov, or by fax to Lance Brenton at (512) 305-8101. Any proposed changes to the rules as a result of this review will be published separately in the Proposed Rule section of the *Texas Register* and will be open for an additional comment period prior to the final adoption or repeal by the Board.

This rule review is undertaken pursuant to the Board's 2011 rule review plan that is available on the Secretary of State's website.

TRD-201200133
Lance Brenton
Assistant General Counsel
Texas Board of Nursing
Filed: January 12, 2012

♦ ♦ ♦

Texas Board of Veterinary Medical Examiners

Title 22, Part 24

The Texas Board of Veterinary Medical Examiners (TBVME) proposes the review of 22 TAC Chapter 573, concerning Rules of Professional Conduct, pursuant to the Texas Government Code, §2001.039. Chapter 573 contains the following rules:

SUBCHAPTER A. GENERAL PROFESSIONAL ETHICS

§573.1. Avoidance of Conflicting Interest.

§573.2. Avoidance of Encroachment on Another's Practice.

§573.3. Exposure of Corrupt or Dishonest Conduct.

§573.4. Adherence to the Law.

§573.5. Avoidance of Corruption of Others.

§573.6. Restriction of Partnerships to Members of Profession.

§573.7. No Abuse of Position or Trust.

§573.8. Loss of Accreditation.

§573.9. Nonresident Consultants.

SUBCHAPTER B. SUPERVISION OF PERSONNEL

§573.10. Supervision of Non-Licensed Employees.

§573.11. Responsibility for Unlicensed and Licensed Employees.

§573.12. Alternate Therapies--Chiropractic and Other Forms of Musculoskeletal Manipulation.

§573.13. Use of Ultrasound in Diagnosis or Therapy.

§573.14. Alternate Therapies--Acupuncture.

§573.15. Alternate Therapies--Holistic Medicine.

§573.16. Alternate Therapies--Homeopathy.

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

§573.20. Responsibility for Acceptance of Medical Care.

§573.21. Direct Responsibility to Client.

§573.22. Professional Standard of Humane Treatment.

§573.23. Board Certified Specialists and Duty of Licensee To Refer a Case.

§573.24. Issuance of Certificates through Direct Knowledge Only.

§573.25. Avoidance of Guaranteeing Cures.

§573.26. Honesty, Integrity, and Fair Dealing.

§573.27. Observance of Confidentiality.

§573.28. Maintenance of Sanitary Premises.

§573.29. Complaint Information and Notice to Clients.

SUBCHAPTER D. ADVERTISING, ENDORSEMENTS AND CERTIFICATES

§573.30. Advertising.

§573.32. Speciality Listings.

§573.33. Display of Degree, Certificate, or Title from Approved Institutions Only.

§573.34. Authorized Degrees, Certificates, or Titles Only

§573.35. Display of License.

§573.36. Corporate and Assumed Names.

§573.37. Ban on Use of Solicitors.

SUBCHAPTER E. PRESCRIBING AND/OR DISPENSING MEDICATION

§573.40. Labeling of Medications Dispensed.

§573.41. Use of Prescription Drugs.

§573.42. Use of Scheduled Drugs in Training and/or Racing.

§573.43. Misuse of DEA Narcotics Registration.

§573.44. Compounding Drugs.

§573.45. Extra-Label or Off-Label Use of Drugs.

SUBCHAPTER F. RECORDS KEEPING

§573.50. Controlled Substances Records Keeping for Drugs on Hand.

§573.51. Rabies Control.

§573.52. Patient Record Keeping.

§573.53. Patient Records Release and Charges.

§573.54. Transfer and Disposal of Patient Records.

SUBCHAPTER G. OTHER PROVISIONS

§573.60. Prohibition Against Treatment of Humans.

§573.61. Minimum Security for Controlled Substances.

§573.62. Violation of Board Orders/Negotiated Settlements.

§573.63. Inspection of Veterinary Facilities and Records.

§573.64. Continuing Education Requirements.

§573.65. Definitions.

§573.66. Monitoring Licensee Compliance.

§573.68. Conditions Relative to License Suspension.

§573.69. Reporting of Criminal Activity.

§573.70. Operation of Temporary Limited-Service Veterinary Services.

§573.71. Employment by Nonprofit or Municipal Corporations.

§573.72. Animal Reproduction.

§573.73. Management Services Organizations in Veterinary Practice.

§573.74. Duty to Cooperate with Board.

§573.75. Notification of Licensee Addresses.

§573.76. Sterilization of Animals from Releasing Agencies

§573.77. Default on Student Loan/Child Support Payments

As required by the Texas Government Code, §2001.039, TBVME will accept comments as to whether the reasons for adopting 22 TAC Chapter 573, Subchapters A - G, continue to exist. The assessment made by TBVME indicates that the reasons for initially adopting the chapter do continue to exist. Contemporaneously with this proposal, TBVME is also publishing in this issue of the *Texas Register* a proposed repeal and replacement for all sections of Chapter 573 except §§573.1, 573.40, 573.50, and 573.62, which TBVME proposes to readopt without amendment.

Comments or questions regarding this rule review should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe Street, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by email to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

TRD-201200190
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Filed: January 17, 2012

♦ ♦ ♦

Adopted 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) has completed its review required by the Texas Government Code §2001.039 of the following chapters of the Texas Administrative Code, Title 28, Part 2: Chapter 114, Self Insurance. The reviewed sections in these chapters are subsequently referred to collectively in this Notice of Adopted Review as "the sections."

The notice of proposed rule review was published in the July 22, 2011, issue of the *Texas Register* (36 TexReg 4683). As provided in this notice, the Division reviewed and considered the sections for readoption, revision, or repeal.

The Division considered whether the reasons for adoption of the sections continue to exist. The Division received written comments by multiple commenters regarding the review of the sections.

Comment: Commenter states that the method of calculating the amount of security deposits in §114.4, Security Deposit Requirements, is overly burdensome and does not correctly collateralize the actual obligations of self-insured parties. Commenter suggests that the section be amended to state that "(d) the amount of the security deposit shall equal the base security deposit as outlined in §407.064(d) plus the projection of liabilities for continuing operations."

Agency Response: The Division agrees that future amendments to 114.4 may be required to update this chapter. The Division declines to change this section as part of rule review. Labor Code 407.064 specifies the security deposit shall be at least equal to the greater of: (1) $300,000; or (2) 125 percent of the applicant's incurred liabilities for compensation. These suggestions may have merit and will be retained in further policy analysis and when Chapter 114 is opened for formal rulemaking efforts in the future.

Comment: Commenter states that the need for Chapter 114 continues to exist. Commenter states that the need for Chapter 114 continues to exist because there is a need for rules that impose a requirement that self-insured employers are financially able to pay claims and committed to workplace safety. Commenter also states that Chapter 114 should be strengthened and not weakened.

Agency Response: The Division agrees that the reasons for adoption of Chapter 114 continue to exist. These suggestions may have merit and will be retained in further policy analysis and when Chapter 114 is opened for formal rulemaking efforts in the future.

The Division has determined that the reasons for adopting the sections continue to exist and the sections are retained in their present form. Any revisions in the future will be accomplished in accordance with the Administrative Procedure Act.

This concludes and completes the Division's review of Chapter 114; the chapter will be reviewed again in the future in accordance with Government Code §2001.039.

TRD-201200187
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: January 17, 2012

♦ ♦ ♦

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) has completed its review required by the Texas Government Code §2001.039 of the following chapters of the Texas Administrative Code, Title 28, Part 2: Chapter 148, Hearings Conducted by the State Office of Administrative Hearings. The reviewed sections in these chapters are subsequently referred to collectively in this Notice of Adopted Review as "the sections."

The notice of proposed rule review was published in the July 22, 2011, issue of the *Texas Register* (36 TexReg 4684). As provided in this notice, the Division reviewed and considered the sections for readoption, revision, or repeal.

The Division considered whether the reasons for adoption of the sections continue to exist. The Division received no written comments regarding the review of the sections.

The Division has determined that the reasons for adopting the sections continue to exist and the sections are retained. The Division has determined certain sections could require amendment through future rulemaking. This rulemaking will, if necessary be coordinated with the amendment or repeal of Chapter 149, Memorandum of Understanding with the State Office of Administrative Hearings. Any revisions in the future will be accomplished in accordance with the Administrative Procedure Act.

This concludes and completes the Division's review of Chapter 148; the chapter will be reviewed again in the future in accordance with Government Code §2001.039.

TRD-201200188
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: January 17, 2012

♦ ♦ ♦

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) has completed its review required by the Texas Government Code §2001.039 of the following chapters of the Texas Administrative Code, Title 28, and Part 2: Chapter 149, Memorandum of Understanding with the State Office of Administrative Hearings. The reviewed sections in these chapters are subsequently referred to collectively in this Notice of Adopted Review as "the sections."

The notice of proposed rule review was published in the July 22, 2011, issue of the *Texas Register* (36 TexReg 4684). As provided in this notice, the Division reviewed and considered the sections for readoption, revision, or repeal.

The Division considered whether the reasons for adoption of the sections continue to exist. The Division received no written comments regarding the review of the sections.

The Division has determined that the reasons for adopting the sections continue to exist and the sections are retained. The Division has determined certain sections could require amendment through future rulemaking. The changes made to Labor Code §402.073, necessary to implement House Bill (HB) 2605 (82nd Legislature, Regular Session, 2011), have changed the requirements for the Division's Memorandum of Understanding with the State Office of Administrative Hearings. Any repeal or amendment of Chapter 149 shall be coordinated with the process of creating a Memorandum of Understanding in accordance with the revisions to Labor Code §402.073, and any amendments to Chapter 148, Hearings Conducted by the State Office of Administrative Hearings. Any revisions in the future will be accomplished in accordance with the Administrative Procedure Act.

This concludes and completes the Division's review of Chapter 149; the chapter will be reviewed again in the future in accordance with Government Code §2001.039.

TRD-201200189
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: January 17, 2012

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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 §82.120(b)

BARBER INSTRUCTOR - 750 HOUR CURRICULUM			
(1)	instruction in theory, consisting of:		175 hours
	(A)	lesson planning	15 hours
	(B)	personality and professional conduct	15 hours
	(C)	development of a barber course	15 hours
	(D)	student learning principles	10 hours
	(E)	principles of teaching	35 hours
	(F)	basic teaching methods	35 hours
	(G)	teaching aids	10 hours
	(H)	testing	10 hours
	(I)	self evaluation	10 hours
	(J)	teaching adults	10 hours
	(K)	classroom problems	5 hours
	(L)	classroom management	5 hours
(2)	instruction in practical work, consisting of:		575 hours
	(A)	assisting with students	350 hours
	(B)	theory class (assisting teacher, observing, teaching)	150 hours
	(C)	learning office procedures and state laws	50 hours
	(D)	grading test papers (assisting teacher, observing, grading)	25 hours

Figure: 16 TAC §82.120(c)

BARBER INSTRUCTOR - 500 HOUR WITH 1 YEAR EXPERIENCE CURRICULUM			
(1)	instruction in theory, consisting of:		125 hours
	(A)	lesson planning	15 hours
	(B)	personality and professional conduct	15 hours
	(C)	development of a barber course	15 hours
	(D)	student learning principles	10 hours
	(E)	principles of teaching	10 hours
	(F)	basic teaching methods	10 hours
	(G)	teaching aids	10 hours
	(H)	testing	10 hours
	(I)	self evaluation	10 hours
	(J)	teaching adults	10 hours
	(K)	classroom problems	5 hours
	(L)	classroom management	5 hours
(2)	instruction in practical work, consisting of:		375 hours
	(A)	assisting with students	250 hours
	(B)	theory class (assisting teacher, observing, teaching)	50 hours
	(C)	learning office procedures and state laws	50 hours
	(D)	grading test papers (assisting teacher, observing, grading)	25 hours

Figure: 16 TAC §82.120(d)

PRIVATE AND PUBLIC POST-SECONDARY BARBER SCHOOL CLASS A BARBER CURRICULUM				
(1)	theory, consisting of:			180 hours
	(A)	anatomy, physiology, and histology, consisting of the study of:		50 hours
		(i)	Hair	
		(ii)	Skin	
		(iii)	Muscles	
		(iv)	Nerves	
		(v)	Cells	
		(vi)	Circulatory system	
		(vii)	Digestion	
		(viii)	Bones	
	(B)	Texas barber law and rules		35 hours
	(C)	bacteriology, sterilization, and sanitation		30 hours
	(D)	disorders of the skin, scalp, and hair		10 hours
	(E)	salesmanship		5 hours
	(F)	barbershop management		5 hours
	(G)	chemistry		5 hours
	(H)	shaving		5 hours
	(I)	scalp, hair treatments and skin		5 hours
	(J)	sanitary professional techniques		4 hours
	(K)	professional ethics		4 hours
	(L)	scientific fundamentals of barbering		4 hours
	(M)	cosmetic preparations		3 hours
	(N)	shampooing and rinsing		2 hours
	(O)	cutting and processing curly and over-curly hair		2 hours
	(P)	haircutting, male and female		2 hours
	(Q)	theory of massage of scalp, face and neck		2 hours
	(R)	hygiene and good grooming		1 hour
	(S)	barber implements		1 hour
	(T)	honing and stropping		1 hour
	(U)	mustaches and beards		1 hour
	(V)	facial treatments		1 hour
	(W)	electricity and light therapy		1 hour

	(X)	history of barbering		1 hour
(2)	instruction in practical work, consisting of the study of:			1320 hours
	(A)	dressing the hair, consisting of:		800 hours
		(i)	men's haircutting	
		(ii)	children's haircutting	
		(iii)	women's haircutting	
		(iv)	cutting and processing curly and over-curly hair	
		(v)	razor cutting	
	(B)	shaving		80 hours
	(C)	styling		55 hours
	(D)	shampooing and rinsing		40 hours
	(E)	bleaching and dyeing of the hair		30 hours
	(F)	waving hair		28 hours
	(G)	straightening		25 hours
	(H)	cleansing		25 hours
	(I)	professional ethics		22 hours
	(J)	barbershop management		22 hours
	(K)	hair weaving and hairpieces		17 hours
	(L)	processing		15 hours
	(M)	clipping		15 hours
	(N)	beards and mustaches		15 hours
	(O)	shaping		15 hours
	(P)	dressing		15 hours
	(Q)	curling		15 hours
	(R)	first aid and safety precautions		11 hours
	(S)	scientific fundamentals of barbering		10 hours
	(T)	barber implements		10 hours
	(U)	haircutting or the process of cutting, tapering, trimming, processing, and molding and scalp, hair treatments, and tonics		10 hours
	(V)	massage and facial treatments		10 hours
	(W)	arranging		10 hours
	(X)	beautifying		10 hours
	(Y)	singeing		7 hours
	(Z)	manicuring		8 hours

Figure: 16 TAC §82.120(e)

COSMETOLOGY OPERATOR TO CLASS A BARBER CURRICULUM			
(1)	Instruction in theory, consisting of:		25 hours
	(A)	History of Barbering	1 hour
	(B)	Barber Laws and Rules Review	1 hour
	(C)	Implements, Honing, and Stropping	5 hours
	(D)	Shaving	5 hours
	(E)	Men's Haircutting and tapering	5 hours
	(F)	Beard and Mustache Trimming and Design	1 hour
	(G)	Hair color Review	1 hour
	(H)	Permanent Waving and Relaxing Review	1 hour
	(I)	Manicuring and Nail Care Review	1 hour
	(J)	Facial Treatments and Skin Care Review	1 hour
	(K)	Anatomy and Physiology Review	1 hour
	(L)	Blow-dry Styling Review	1 hour
	(M)	Shampooing and Conditioning Review	1 hour
(2)	Instruction in practical work, consisting of:		275 hours
	(A)	Men's Haircutting and tapering	165 hours
	(B)	Shaving, Mustache and Beard Trimming	85 hours
	(C)	Hair coloring	5 hours
	(D)	Permanent Waving and Relaxing	5 hours
	(E)	Facial Treatments	5 hours
	(F)	Shampooing and Conditioning and Blow-dry Styling	5 hours
	(G)	Manicuring	5 hours

Figure: 16 TAC §82.120(f)

PUBLIC SECONDARY CLASS A BARBER CURRICULUM FOR HIGH SCHOOL STUDENTS				
(1)	Theory, consisting of the study of:			
	(A)	anatomy, physiology, and histology, consisting of the study of:		50 hours
		(i)	Hair	
		(ii)	Skin	
		(iii)	Muscles	
		(iv)	Nerves	
		(v)	Cells	
		(vi)	Circulatory system	
		(vii)	Digestion	
		(viii)	Bones	
	(B)	Texas barber law and rules		25 hours
	(C)	bacteriology, sterilization, and sanitation		30 hours
	(D)	disorders of the skin, scalp, and hair		5 hours
	(E)	salesmanship		1 hour
	(F)	barbershop management		1 hour
	(G)	chemistry		1 hour
	(H)	shaving		1 hour
	(I)	scalp, hair treatments and skin		1 hour
	(J)	sanitary professional techniques		1 hour
	(K)	professional ethics		1 hour
	(L)	scientific fundamentals of barbering		1 hour
	(M)	cosmetic preparations		1 hour
	(N)	shampooing and rinsing		1 hour
	(O)	cutting and processing curly and over-curly hair		1 hour
	(P)	haircutting, male and female		1 hour
	(Q)	theory of scalp, face and neck message		1 hour
	(R)	hygiene and good grooming		1 hour
	(S)	barber implements		1 hour
	(T)	honing and stropping		1 hour
	(U)	mustaches and beards		1 hour
	(V)	facial treatments		1 hour
	(W)	electricity and light therapy		1 hour

	(X)	history of barbering		1 hour
(2)	instruction in practical work, consisting of the study of:			
	(A)	dressing the hair, consisting of:		500 hours
		(i)	men's haircutting	
		(ii)	children's haircutting	
		(iii)	women's haircutting	
		(iv)	cutting and processing curly and over-curly hair	
		(v)	razor cutting	
	(B)	shaving		80 hours
	(C)	styling		50 hours
	(D)	shampooing and rinsing		30 hours
	(E)	hair bleaching and dyeing		20 hours
	(F)	waving hair		25 hours
	(G)	straightening		25 hours
	(H)	cleansing		20 hours
	(I)	professional ethics		20 hours
	(J)	hair weaving and hairpieces		5 hours
	(K)	processing		5 hours
	(L)	Clipping		5 hours
	(M)	beards and mustaches		6 hours
	(N)	shaping		5 hours
	(O)	dressing		5 hours
	(P)	curling		5 hours
	(Q)	first aid and safety precautions		5 hours
	(R)	scientific fundamentals of barbering		5 hours
	(S)	barber implements		5 hours
	(T)	haircutting or the process of cutting, tapering, trimming, processing, and molding and scalp, hair treatments, and tonics		10 hours
	(U)	massage and facial treatments		10 hours
	(V)	arranging		10 hours
	(W)	beautifying		10 hours
	(X)	singeing		1 hours
	(Y)	manicuring		8 hours

Figure: 16 TAC §82.120(g)

MANICURIST CURRICULUM			
(1)	instruction in theory, consisting of:		45 hours
	(A)	bacteriology, sterilization, and sanitation	16 hours
	(B)	manicuring, equipment, and procedures	4 hours
	(C)	the nail and disorders	4 hours
	(D)	Texas barber law and rules	4 hours
	(E)	anatomy and physiology	4 hours
	(F)	skin	4 hours
	(G)	professional ethics	3 hours
	(H)	hygiene and good grooming	3 hours
	(I)	advanced nail techniques	3 hours
(2)	instruction in practical work, consisting of:		555 hours
	(A)	shaping nails	96 hours
	(B)	applying polish	74 hours
	(C)	trimming cuticle and buffing nails	59 hours
	(D)	hand and arm massage	57 hours
	(E)	removal of polish	57 hours
	(F)	application of artificial and gel nails	44 hours
	(G)	applying cuticle remover and loosening	40 hours
	(H)	preparation of manicure table	40 hours
	(I)	softening cuticle	37 hours
	(J)	Bleaching under free edge	18 hours
	(K)	cleaning under free edge	18 hours
	(L)	applying cuticle oil or cream	15 hours

Figure: 16 TAC §82.120(h)

BARBER TECHNICIAN/MANICURIST CURRICULUM		
THEORY		
A	Bacteriology, sterilization, and sanitation hygiene (M/T)	37 hours
B	Manicuring, equipment, and procedures (M)	4 hours
C	The nail and disorders (M)	4 hours
D	Texas barber law and rules (M/T)	8 hours
E	Anatomy and physiology (M)	4 hours
F	Skin (M)	4 hours
G	Professional ethics (M/T)	7 hours
H	Advanced nail techniques (M)	3 hours
I	Common disorders of the skin; facial treatments (T)	4 hours
J	Shampooing, equipment, and procedures (T)	4 hours
K	Cosmetic applications and massage (T)	3 hours
L	Good grooming; preparing patron and making appointments (T)	3 hours
M	Theory of massage, and structure of head, neck, and face (T)	2 hours
N	Rinsing, types and procedures (T)	2 hours
O	Scalp and hair treatments (T)	2 hours
PRACTICAL		
A	Shaping nails (M)	96 hours
B	Applying polish (M)	74 hours
C	Trimming cuticle and buffing nails (M)	59 hours
D	Hand and arm massage (M)	57 hours
E	Removal of polish (M)	57 hours
F	Application of artificial and gel nails (M)	44 hours
G	Applying cuticle remover and loosening	40 hours
H	Preparation of manicure table (M)	40 hours
I	Softening cuticle (M)	37 hours
J	Bleaching under free edge (M)	18 hours
K	Cleaning under free edge (M)	18 hours
L	Applying cuticle oil or cream (M)	15 hours
M	Application of shampoo and shampooing (T)	45 hours
N	Application of rinses and removal (T)	35 hours
O	Makeup application (T)	33 hours
P	Facial manipulations (T)	20 hours
Q	Application of conditioner and rinsing (T)	20 hours
R	Scalp manipulations (T)	20 hours

S	Brushing and drying (T)	18 hours
T	Sanitation and sterilization (T)	15 hours
U	Draping and scalp examination (T)	11 hours
V	Application and removal of creams (T)	10 hours
W	Application and removal of packs (T)	8 hours
X	Set-up for facial (T)	8 hours
Y	Preparation of work area for shampooing (T)	7 hours
Z	Patron protection (T)	5 hours

Figure: 16 TAC §82.120(i)

BARBER TECHNICIAN/HAIR WEAVING CURRICULUM		
THEORY		
A	Hygiene, bacteriology, sterilization, and sanitation (T/H)	28 hours
B	Common disorders of the skin; facial treatments and theory of massage (T)	4 hours
C	Shampooing, equipment, and procedures (T/H)	4 hours
D	Texas barber law and rules (T/H)	4 hours
E	Cosmetic applications and massage	3 hours
F	Professional ethics (T)	3 hours
G	Good grooming; preparing patron and making appointments (T/H)	5 hours
H	Anatomy and physiology-scalp: theory of head, neck, and face. Bones, major muscles, major nerves and functions, skin structures, appendages, conditions and lesions, structure, ,hair regularities, hair and scalp diseases (T/H)	30 hours
I	Composition of hair or fiber used (H)	2 hours
J	Rinsing, types and procedures (T/H)	2 hours
K	Chemistry of compounds, and mixtures, composition and uses of cosmetics in hair weaving and facial treatments (T/H)	2 hours
L	Scalp and hair treatments (T/H)	2 hours
PRACTICAL		
A	Definitions, importance, sanitary rules and laws, sterilization methods of unused hair and fiber droppings Basic hair weaving, repair on hair weaving, removal of weft, sizing and finishing.	150 hours
B	Professional practices: vocabulary, ethics, salon procedures, hygiene, grooming, professional attitudes, salesmanship, public relations including purpose, effect, equipment, implements, supplies, and preparation (T/H)	40 hours
C	Application of shampoo and shampooing (T/H)	45 hours
D	Application of rinses and removal (T)	35 hours
E	Makeup application (T)	33 hours
F	Facial manipulations (T)	20 hours
G	Application of conditioner and rinsing (T/H)	20 hours
H	Shampooing client, weft and extensions (H)	50 hours
I	Scalp manipulations (T/H)	20 hours
J	Brushing and drying (T/H)	18 hours
K	Draping and scalp examination (T/H)	11 hours
L	Application and removal of creams (T)	10 hours

M	Application and removal of packs (T)	8 hours
N	Set-up for facial (T)	8 hours
O	Preparation of work area for shampooing (T/H)	7 hours
P	Safety measures: client protection (T/H)	28 hours
Q	Chemistry in hair weaving Elements, compounds, and mixtures, composition and uses of cosmetics in hair weaving (H)	8 hours

Figure: 16 TAC §82.120(j)

BARBER TECHNICIAN CURRICULUM			
(1)	instruction in theory, consisting of:		45 hours
	(A)	hygiene, bacteriology, sterilization, and sanitation	18 hours
	(B)	common disorders of the skin; facial treatments	4 hours
	(C)	shampooing, equipment, and procedures	4 hours
	(D)	Texas barber law and rules	4 hours
	(E)	cosmetic applications and massage	3 hours
	(F)	professional ethics	3 hours
	(G)	good grooming; preparing patron and making appointments	3 hours
	(H)	theory of massage, and structure of head, neck, and face	2 hours
	(I)	rinsing, types and procedures	2 hours
	(J)	scalp and hair treatments	2 hours
(2)	instruction in practical work, consisting of:		255 hours
	(A)	application of shampoo and shampooing	45 hours
	(B)	application of rinses and removal	35 hours
	(C)	makeup application	33 hours
	(D)	facial manipulations	20 hours
	(E)	application of conditioner and rinsing	20 hours
	(F)	scalp manipulations	20 hours
	(G)	brushing and drying	18 hours
	(H)	sanitation and sterilization	15 hours
	(I)	draping and scalp examination	11 hours
	(J)	application and removal of creams	10 hours
	(K)	application and removal of packs	8 hours
	(L)	set-up for facial	8 hours
	(M)	preparation of work area for shampooing	7 hours
	(N)	patron protection	5 hours

Figure: 16 TAC §82.120(k)

HAIR BRAIDING CURRICULUM			
(1)	Hair Braiding - Technical Skills:		11 hours
	(A)	tools and equipment: types of combs, yarn, thread	
	(B)	types and patterns of braids: twists, knots, multiple strands, corn rows, hair locking	
	(C)	artificial hair and materials for extensions	
	(D)	trimming of artificial hair only as applicable to the braiding process	
	(E)	braid removal and scalp care	
	(F)	client education: maintenance	
(2)	Health and Safety/Law and Rules:		16 hours
	(A)	Texas health and safety law and rules	
	(B)	bacteriology: sanitation, and disinfection	
	(C)	viruses, diseases, disorders: transmission, control, recognition	
	(D)	Texas license requirements - individuals and salons	
	(E)	Texas professional responsibility requirements - individuals and salons	
	(F)	Texas Occupations Code, Chapters 1601 and 1603 (laws)	
	(G)	16 Texas Administrative Code Chapter 82 (rules)	
(3)	Hair Analysis and Scalp Care:		8 hours
	(A)	hair and scalp disorders and diseases: dandruff, alopecia, fungal infections, infestations, infections	
	(B)	hair structure, composition, texture	
	(C)	hair growth patterns, styles, textures	
	(D)	effect of physical treatments on the hair	

Figure: 16 TAC §82.120(l)

HAIR WEAVING CURRICULUM	
(1) Hair weaving: Basic hair weaving, repair on hair weaving, removal of weft, sizing and finishing	150 hours
(2) Shampooing client, weft and extensions: Basic shampooing, basic conditioners, semi-permanent and weakly rinses, basic hair drying, draping	50 hours
(3) Professional practices: Hair weaving as a profession, vocabulary, ethics, salon procedures, hygiene, grooming, professional attitudes, salesmanship, public relations, hair weaving/braiding skills, including purpose, effect, equipment, implements, supplies, and preparation	40 hours
(4) Anatomy and physiology-scalp: Major bones and functions, major muscles and functions, major nerves and functions, skin structures, functions, appendages, conditions and lesions, hair or fiber used, structure, composition, hair regularities, hair and scalp diseases	30 hours
(5) Chemistry in hair weaving: Elements, compounds, and mixtures, composition and uses of cosmetics in hair weaving	10 hours
(6) Sanitation and safety measures: Definitions, importance, sanitary rules and laws, sterilization methods of unused hair and fiber droppings	10 hours
(7) Safety measures: client protection	10 hours

Figure: 25 TAC §229.162(78)(B)(ii)(I)

Table A. Interaction of pH and a_w for control of spores in food heat-treated to destroy vegetative cells and subsequently packaged

a_w values	pH values		
	4.6 or less	**>4.6 - 5.6**	**>5.6**
≤ 0.92	non-PHF*/non-TCS food**	non-PHF/non-TCS food	non-PHF/non-TCS food
>0.92 -0.95	non-PHF/non-TCS food	non-PHF/non-TCS food	PA***
>0.95	non-PHF/non-TCS food	PA	PA
* PHF means Potentially Hazardous Food ** TCS food means Time/Temperature Control for Safety Food *** PA means Product Assessment Required			

Figure: 25 TAC §229.162(78)(B)(ii)(II)

Table B. Interaction of pH and a_w for control of vegetative cells and spores in food not heat-treated or heat-treated but not packaged

a_w values	**pH values**			
	<4.2	**4.2 - 4.6**	**>4.6 - 5.0**	**>5.0**
<0.88	non-PHF*/non-TCS food**	non-PHF/non-TCS food	non-PHF/non-TCS food	non-PHF/non-TCS food
0.88 - 0.90	non-PHF/non-TCS food	non-PHF/non-TCS food	non-PHF/non-TCS food	PA***
>0.90 - 0.92	non-PHF/non-TCS food	non-PHF/non-TCS food	PA	PA
>0.92	non-PHF/non-TCS food	PA	PA	PA
* PHF means Potentially Hazardous Food ** TCS food means Time/Temperature Control for Safety Food *** PA means Product Assessment Required				

Figure: 25 TAC §229.171(j)(6)

Retail Food Establishment Inspection Report

San Code	Date	Time In	Time Out	Establishment Number	Permit Number	Risk Category

Purpose of Inspection: 1-Compliance 2-Routine 3-Field Investigation 4-Visit 5-Other

Establishment:	Owner:	
Physical Address:	Zip:	Phone: ( )

OUT 5 Pts	IN	NA	NO	COS	**Food Temperature/Time Requirements** Violations Require Immediate Corrective Action	Remarks
					1. Proper Cooling for Cooked/Prepared Food	
					2. Cold Hold (41 degrees Fahrenheit /45 degrees Fahrenheit)	
					3. Hot Hold (135 degrees Fahrenheit)	
					4. Proper Cooking Temperatures	
					5. Rapid Reheating (165 degrees Fahrenheit in 2 Hrs)	

Item/Location/Temperature

OUT 4 Pts	IN	NA	NO	COS	**Personnel/Handling/Source Requirements** Violations Require Immediate Corrective Action	Remarks
					6. Personnel with Infections Restricted/Excluded	
					7. Proper/Adequate Handwashing	
					8. Good Hygienic Practices (Eating/Drinking/Smoking/Other)	
					9. Approved Source/Labeling	
					10. Sound Condition	
					11. Proper Handling of Ready-To-Eat Foods	
					12. Cross-contamination of Raw/Cooked Foods/Other	
					13. Approved Systems (HACCP Plans/Time as Public Health Control)	
					14. Water Supply - Approved Sources/Sufficient Capacity/Hot and Cold Under Pressure	

OUT 3 Pts	IN	NA	NO	COS	**Facility and Equipment Requirements** Violations Require Immediate Correction, Not To Exceed 10 Days	Remarks
					15. Equipment Adequate to Maintain Product Temperature	
					16. Handwash Facilities Adequate and Accessible	
					17. Handwash Facilities with Soap and Towels	
					18. No Evidence of Insect Contamination	
					19. No Evidence of Rodents/Other Animals	
					20. Toxic Items Properly Labeled/Stored/Used	
					21. Manual/Mechanical Warewashing and Sanitizing at ( )ppm/temperature	
					22. Manager Demonstration of Knowledge/Certified Food Manager	
					23. Approved Sewage/Wastewater Disposal System, Proper Disposal	
					24. Thermometers Provided/Accurate/Properly Calibrated (±2 degrees Fahrenheit)	
					25. Food Contact Surfaces of Equipment and Utensils Cleaned/Sanitized/Good Repair	
					26. Posting of Consumer Advisories (Disclosure/Reminder/Buffet Plate)	
					27. Food Establishment Permit	

Subtotal	**Other Violations** - Require Corrective Action, Not to Exceed 90 Days or the Next Inspection, Whichever Comes First
5pt	
4pt	
3pt	
Total	

Inspected by:	Print:	
Received by:	Print:	Title:

F/U Yes/ No

Corrective Actions to Ensure Safe Food

Item No.

1 Cooling

- PHF/TCS* food cooled from 135° F to 70° F more than 2 hours OR 135° F to 41° F (45° F) more than 6 hours; OR prepared food cooled to 41° F (45° F) more than 4 hours:

  Action: Voluntary destruction, rapid reheating of cooked foods if less than 4 hours

2 Cold Hold

- PHF/TCS food held above 41° F (45° F) more than 4 hours:

  Action: Voluntary destruction

- PHF/TCS food held above 41° F (45° F) less than 4 hours:

  Action: Rapid cool (e.g. ice bath)

3 Hot Hold

- PHF/TCS food held below 135° F more than 4 hours:

  Action: Voluntary destruction

- PHF/TCS food held below 135° F less than 4 hours:

  Action: Rapid reheat to 165° F or more

4 Cooking

- PHF/TCS food undercooked:

  Action: Re-cook to proper temperature

5 Rapid Reheating

- Cold PHF/TCS food improperly reheated:

  Action: Reheat rapidly to 165° F

7 Handwashing

- Food employees observed not washing hands:

  Action: Instruct employees to wash hands as specified in the Rules.

9, 10 Approved Source/Sound Condition

- Foods from unapproved sources/unsound condition:

  Action: Voluntary destruction

11 **Proper Handling of Ready-to-Eat Foods**

- Employee did not properly wash and sanitize hands before touching ready-to-eat food with bare hands:

Action: Voluntary destruction

12 **Cross-Contamination of Raw/Cooked Foods**

- Ready-To-Eat food contaminated by raw PHF/TCS food:

Action: Voluntary destruction of ready-to-eat foods

14 **Water Supply**

- Facility does not have water for washing hands, preparing food, or cleaning equipment/utensils:

Action: Voluntary suspension of food preparation

*Potentially Hazardous Food (PHF)/Time/Temperature Control for Safety for Food (TCS)

Figure: 25 TAC §229.661(b)(8)(B)(ii)(I)

Table A. Interaction of pH and a_w for control of spores in food heat-treated to destroy vegetative cells and subsequently packaged

a_w values	pH values		
	4.6 or less	**>4.6 - 5.6**	**>5.6**
≤ 0.92	non-PHF*/non-TCS food**	non-PHF/non-TCS food	non-PHF/non-TCS food
>0.92 - 0.95	non-PHF/non-TCS food	non-PHF/non-TCS food	PA***
>0.95	non-PHF/non-TCS food	PA	PA
* PHF means Potentially Hazardous Food ** TCS food means Time/Temperature Control for Safety Food *** PA means Product Assessment required			

Figure: 25 TAC §229.661(b)(8)(B)(ii)(II)

Table B. Interaction of pH and a_w for control of vegetative cells and spores in food not heat-treated or heat-treated but not packaged

a_w values	pH values			
	<4.2	**4.2 - 4.6**	**>4.6 - 5.0**	**>5.0**
<0.88	non-PHF*/non-TCS food**	non-PHF/non-TCS food	non-PHF/non-TCS food	non-PHF/non-TCS food
0.88 - 0.90	non-PHF/non-TCS food	non-PHF/non-TCS food	non-PHF/non-TCS food	PA***
>0.90 - 0.92	non-PHF/non-TCS food	non-PHF/non-TCS food	PA	PA
>0.92	non-PHF/non-TCS food	PA	PA	PA

* PHF means Potentially Hazardous Food
** TCS food means Time/Temperature Control for Safety Food
*** PA means Product Assessment required

Figure: 30 TAC §336.2(151)

Organ Dose Weighting Factors

Organ or Tissue	W_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30[1]
Whole body	1.00[2]

1. The value 0.30 results from 0.06 for each of five remainder organs, excluding the skin and the lens of the eye, that receive the highest doses.

2. For the purpose of weighting the external whole body dose (for adding it to the internal dose) a single weighting factor, $w_T = 1.0$, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

Figure: 30 TAC §336.351(b)

Nationally Tracked Sources Threshold

Radioactive Material	Category 1 (TBq)	Category 1 (Ci)	Category 2 (TBq)	Category 2 (Ci)
Actinium-227	20	540	0.2	5.4
Americium-241	60	1,600	0.6	16.0
Americium-241/Be	60	1,600	0.6	16.0
Californium-252	20	540	0.2	5.4
Cobalt-60	30	810	0.3	8.1
Curium-244	50	1,400	0.5	14.0
Cesium-137	100	2,700	1.0	27.0
Gadolinium-153	1,000	27,000	10.0	270.0
Iridium-192	80	2,200	0.8	22.0
Plutonium-238	60	1,600	0.6	16.0
Plutonium-239/Be	60	1,600	0.6	16.0
Polonium-210	60	1,600	0.6	16.0
Promethium-147	40,000	1,100,000	400.0	11,000.0
Radium-226	40	1,100	0.4	11.0
Selenium-75	200	5,400	2.0	54.0
Strontium-90	1,000	27,000	10.0	270.0
Thorium-228	20	540	0.2	5.4
Thorium-229	20	540	0.2	5.4
Thulium-170	20,000	540,000	200.0	5,400.0
Ytterbium-169	300	8,100	3.0	81.0

TBq - Terabecquerel
Ci - Curie

Figure: 30 TAC §336.357(11)(D)

Radionuclides of Concern

Radionuclide	Quantity of Concern[1] (TBq)	Quantity of Concern[2] (Ci)
Am-241	0.6	16
Am-241/Be	0.6	16
Cf-252	0.2	5.4
Cm-244	0.5	14
Co-60	0.3	8.1
Cs-137	1	27
Gd-153	10	270
Ir-192	0.8	22
Pm-147	400	11,000
Pu-238	0.6	16
Pu-239/Be	0.6	16
Ra-226	0.4	11
Se-75	2	54
Sr-90 (Y-90)	10	270
Tm-170	200	5,400
Yb-169	3	81
Combinations of radioactive materials listed above[3]	See footnote below[4]	

[1]The aggregate activity of multiple, collocated sources of the same radionuclide should be included when the total activity equals or exceeds the quantity of concern.

[2] The primary values used for compliance with this Order are terabecquerel (TBq). The curie (Ci) values are rounded to two significant figures for informational purposes only.

[3] Radioactive materials are to be considered aggregated or collocated if breaching a common physical security barrier (e.g., a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material. When transporting or storing sources on vehicles and/or trailers, the sources are automatically considered collocated.

[4] If several radionuclides are aggregated, the sum of the ratios of the activity of each source, i of radionuclide, n, A(i,n), to the quantity of concern for radionuclide n, Q(n), listed for that radionuclide equals or exceeds one. ((aggregated source activity for radionuclide A) /(quantity of concern for radionuclide A)) + ((aggregated source activity for radionuclide B) /(quantity of concern for radionuclide B)) + etc...>1

Coastal Coordination Council

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

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of January 4, 2012, through January 11, 2012. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office's web site. The notice was published on the web site on January 18, 2012. The public comment period for this project will close at 5:00 p.m. on February 17, 2012.

FEDERAL AGENCY ACTIONS:

Applicant: Copano Pipelines/South Texas

Location: The project site is located under the Corpus Christi Ship Channel (CCSC) and across Nueces Bay, beginning from a tie-in to an existing pipeline located north of the Nueces Bay north shoreline approximately 5 miles west of Portland, in San Patricio County, and ending on the south side of the CCSC at a refinery near Cantwell Lane, in Corpus Christi, Nueces County, Texas. The site can be located on the U.S.G.S. quadrangle map titled: Corpus Christi, Texas. NAD 83, Latitude: 27.8775/27.8166 North; Longitude: -97.4219/-97.4355 West.

Project Description: The applicant proposes to install a 4.5-mile-long, 16-inch petroleum products pipeline with a combination of horizontally directional drilling, ditching through uplands and wetlands, and jetting for a bay portion. Horizontally directional drilling will occur under the CCSC (one 16-inch and two 12-inch lines), and at the south and north Nueces Bay shorelines (one 16-inch only). Approximately 1,069 linear feet of pipeline will be buried in wetlands located adjacent to Nueces Bay between the CCSC and Nueces Bay, and is to be restored to pre-project contours upon completion. Approximately 1.94 miles of pipeline will be installed by jetting through Nueces Bay (one 16-inch only). The applicant has not proposed to mitigate.

CMP Project No.: 12-0583-F1

Type of Application: U.S.A.C.E. permit application #SWG-2011-00563 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Note: The consistency review for this project will be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the application listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Kate Zultner, Consistency Review Specialist, P.O. Box 12873, Austin, Texas 78711-2873, or via email at kate.zultner@glo.texas.gov. Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201200206
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: January 18, 2012

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/23/12 - 01/29/12 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/23/12 - 01/29/12 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 02/01/12 - 02/29/12 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 02/01/12 - 02/29/12 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.

TRD-201200186
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 17, 2012

♦ ♦ ♦

Credit Union Department

Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from Texell Credit Union (#1), Temple, Texas to expand its field of membership. The proposal would permit persons who live, work, worship or attend school within a ten mile ra-

dius of 1101 South IH 35, Georgetown, Texas, to be eligible for membership in the credit union.

An application was received from Texell Credit Union (#2), Temple, Texas to expand its field of membership. The proposal would permit persons who live, work, worship or attend school within a ten mile radius of 651 North Highway 183, Leander, Texas, to be eligible for membership in the credit union.

An application was received from Texell Credit Union (#3), Temple, Texas to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in Williamson County, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201200193
Harold E. Feeney
Commissioner
Credit Union Department
Filed: January 18, 2012

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Denied

Texas Bay Area Credit Union, Houston, Texas - See *Texas Register* issue, dated September 30, 2011.

YOUR Community Credit Union (#1), Irving, Texas - See *Texas Register* issue, dated October 28, 2011.

Application to Expand Field of Membership - Closed

Anheuser-Busch Employees' Credit Union, St. Louis Missouri - See *Texas Register* issue, dated October 28, 2011.

Application for a Merger or Consolidation - Approved

Prestige Community Credit Union (Dallas) and First Texas Choice Federal Credit Union, (Irving) - See *Texas Register* issue, dated June 24, 2011.

Resource One Credit Union (Dallas) and Metroplex Credit Union, (Carrollton) - See *Texas Register* issue, dated August 26, 2011.

Abilene Teachers Federal Credit Union (Abilene) and People's Credit Union of Abilene, (Abilene) - See *Texas Register* issue, dated August 26, 2011.

Texas Dow Employees Credit Union (Lake Jackson) and San Jacinto Area Credit Union, (Pasadena) - See *Texas Register* issue, dated September 30, 2011.

TRD-201200194
Harold E. Feeney
Commissioner
Credit Union Department
Filed: January 18, 2012

♦ ♦ ♦

Texas Education Agency

Request for Proficiency Tests for the Assessment of Limited English Proficient Students

Description. The Texas Education Agency (TEA) is notifying assessment publishers that proficiency assessments and/or achievement tests may be submitted for review for the *List of State Approved Tests for the Assessment of Limited English Proficient Students.* Texas Education Code (TEC), §29.056(a)(2), authorizes the TEA to compile a list of approved assessments for the purposes of identifying students as limited English proficient for entry into or exit (when appropriate) from bilingual education and/or English as a second language (ESL) programs; annually assessing oral language proficiency in English and Spanish when required; and measuring reading and writing proficiency in English and Spanish for program placement. The state-approved tests placed on the list must be based on scientific research and must measure oral language proficiency in listening and speaking in English and Spanish from Prekindergarten (PK)-Grade 12. Assessments must also measure reading and writing in English and Spanish from PK-Grade 12.

Norm-referenced standardized achievement tests in English will be used for identification and entry into programs and for exit from programs for Grades 1 and 2 and may be used as formative assessments.

Norm-referenced standardized achievement tests in Spanish may be used for placement or language development purposes only. All tests to be included on the *List of State Approved Tests for the Assessment of Limited English Proficient Students* must be re-normed at least every eight years to meet the criteria specified in the TEC, §39.032, which requires that standardization norms not be more than eight years old at the time the test is administered. Only new assessments, newly normed assessments, and/or modified/updated assessments must be submitted for evaluation at this time.

The Assessment Committee, comprised of stakeholders from throughout the state, will review and approve the 2012-2013 *List of State Approved Tests for the Assessment of Limited English Proficient Students.*

Selection Criteria. Assessment publishers will be responsible for submitting tests that they wish to be reviewed for consideration for inclusion on the 2012-2013 *List of State Approved Tests for the Assessment of Limited English Proficient Students.* All tests submitted for review must be based on scientific research and must measure oral language proficiency in listening and speaking in English and Spanish from PK-Grade 12. Assessments must measure reading and writing in English and Spanish from PK-Grade 12 and must meet the state criteria for reliability and validity. Therefore, technical manuals must also be submitted and must be available for the review of assessments to be held on Friday, February 24, 2012. Assessments must also measure specific proficiency levels in oral language, reading, and writing in English and Spanish. Assessment instruments (English and Spanish) submitted for review will be grouped in the following categories: (1) Oral Language Proficiency Tests in English in Listening and Speaking domains; (2) Oral Language Proficiency Tests in Spanish in Listening and Speaking domains; (3) Reading and Writing Proficiency in English; and (4) Reading and Writing Proficiency in Spanish. Publishers are not required to submit proposals for all categories.

Proposals must be submitted and presented on Friday, February 24, 2012, to be considered for inclusion on the 2012-2013 *List of State Approved Tests for the Assessment of Limited English Proficient Students.* Assessment publishers will be required to attend the review of the assessments on Friday, February 24, 2012, which will be held at the William B. Travis Building, Room G-100, PDC7, 1701 North Congress Avenue, Austin, Texas. Complete official sample test copies in English and Spanish with comprehensive explanations, including (1) scoring information; (2) norming data information, including ethnicity, gender, grade level, and geographic region; and (3) technical manuals with validity and reliability information, must be presented at that time. Only materials presented on Friday, February 24, 2012, will be considered for approval. Publishers must be available all day at the request of the committee and must make arrangements to pick up all materials at the end of the day. Any materials and/or revisions submitted after the deadline cannot be reviewed until the following year.

Further Information. For clarifying information, contact Susie Coultress, State Director of Bilingual/ESL/Title III/Migrant, Texas Education Agency, (512) 463-9581.

TRD-201200196
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: January 18, 2012

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Employees Retirement System of Texas

Request for Information - Texas Employees Group Benefits Program Tricare Supplemental Insurance Program

In accordance with §1551.213 and §1551.214 of the Texas Insurance Code, the Employees Retirement System of Texas ("ERS") is issuing a Request for Information ("RFI") seeking information from qualified Carriers to provide a TRICARE Supplemental Insurance Program to qualified members of the Texas Employees Group Benefits Program ("GBP"). The Carriers are to provide the information required in the RFI for review and consideration by ERS.

ERS may be publishing a Request for Proposal ("RFP") to contract for these services, depending upon the analysis of responses to this RFI, to enhance services that may be offered to eligible Participants under the GBP at a later time.

The RFI will be available on or after January 31, 2012 on ERS' website, and all responses must be received at ERS by 12:00 noon (CT) on March 6, 2012. To access the RFI from the website, qualified Carriers shall email their request to the attention of ivendor Mailbox at: **ivendorquestions@ers.state.tx.us.** The email request shall include the Carrier's full legal name, street address, as well as phone and fax numbers of an immediate Carrier contact. Upon receipt of your emailed request, a user ID and password will be issued to the requesting Carrier that will permit access to the secured RFI.

General questions concerning the RFI should be sent to the ivendor mailbox where responses, if applicable, are updated frequently.

TRD-201200145
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: January 13, 2012

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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 February 27, 2012. 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 February 27, 2012. 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: BUENA VISTA WATER SUPPLY CORPORATION; DOCKET NUMBER: 2011-1245-PWS-E; IDENTIFIER: RN101191542; LOCATION: Timpson, Shelby County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meters at least once every three years; 30 TAC §290.42(e)(4)(A), by failing to provide a full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration standards for construction and operation that is located outside the chlorination room and immediately available to the operator in the event of an emergency; 30 TAC §290.43(c), by failing to design and construct the standpipe in accordance with current American Water Works Association standards; 30 TAC §290.46(d)(2)(A) and §290.110(b)(2) and Texas Health and Safety Code, §341.0315(c), by failing to operate the disinfection equipment to maintain a free chlorine residual of at least 0.2 milligrams per liter free chlorine throughout the distribution system; 30 TAC §290.42(l), by failing to compile and maintain a thorough plant operations manual for operator review and reference; 30 TAC §290.109(c)(1)(A), by failing to collect routine distribution coliform samples at active service connections which are representative of water quality throughout the distribution system; 30 TAC §290.44(h)(4), by failing to test all backflow prevention assemblies which are installed to provide protection against health hazards and certify the assembly is operating within specifications at least annually by a recognized backflow assembly tester; 30 TAC §290.46(f)(3)(A)(iii), by failing to keep on file and make available for review at the facility, a record of the date, location, and nature of water quality, pressure, or outage complaints received by the Respondent and the results of any subsequent complaint investigations; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regu-

lations, or service agreement with provisions for proper enforcement to insure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.42(e)(3)(D), by failing to provide facilities for determining the amount of disinfectant used daily as well as the amount of disinfectant remaining for use; 30 TAC §290.42(e)(4)(B), by failing to properly house gas chlorine cylinders so that they are protected from adverse weather conditions and vandalism; 30 TAC §290.113(c)(3), by failing to collect routine samples for analysis of Total Trihalomethanes and Haloacetic Acids at locations representing the maximum residence time of the water within the distribution system; and 30 TAC §290.46(f)(3)(B)(v), by failing to provide facility records to commission personnel at the time of the investigation; PENALTY: $4,289; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: BUSHRA CORPORATION dba Tiger Mart 5; DOCKET NUMBER: 2011-1304-PST-E; IDENTIFIER: RN102493749; LOCATION: Waxahachie, Ellis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to ensure the cathodic protection system is inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: $4,250; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Cargill Meat Solutions Corporation; DOCKET NUMBER: 2011-1347-IWD-E; IDENTIFIER: RN101634368; LOCATION: Plainview, Hale County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and TCEQ Permit Number WQ00001463000, Permit Conditions IV and Special Provisions V.C.10, by failing to comply with permitted nitrogen loading rates; PENALTY: $12,700; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(4) COMPANY: Catholic Charities of the Archdiocese of Galveston-Houston; DOCKET NUMBER: 2011-1293-PWS-E; IDENTIFIER: RN101200632; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(3)(A)(ii) and (4)(B) and §290.122(c)(2)(B), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a sample collected during the month of February 2011; by failing to provide public notice to persons served by the facility regarding the failure to collect repeat samples; and by failing to collect raw groundwater source Escherichia coli samples from all sources within 24 hours of notification of a distribution total coliform-positive result; and 30 TAC §290.109(f)(3) and §290.122(b)(2)(B) and Texas Health and Safety Code, §341.031(a), by failing to comply with the Maximum Contaminant Level (MCL) for total coliform and by failing to provide public notification of the MCL exceedance; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2011-1597-AIR-E; IDENTIFIER: RN100209857; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4); Permit Number 21101, Special Conditions (SC) Number 8; Federal Operating Permit (FOP) Number O1235, Special Terms and Conditions (STC) Number 21 and General Terms and Conditions (GTC); and Texas Health and Safety Code (THSC), by failing to prevent unauthorized emissions; and 30 TAC §116.115(c) and §122.143(4); Permit Number 21101, SC Number 8; FOP Number O1235, STC Number 21 and GTC; and THSC, §382.085(b), and by failing to prevent unauthorized emissions; PENALTY: $18,775; Supplemental Environmental Project offset amount of $7,510 applied to Southeast Texas Regional Planning Commission - West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: City of Bellevue; DOCKET NUMBER: 2011-1673-PWS-E; IDENTIFIER: RN101390490; LOCATION: Bellevue, Clay County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(3)(A)(ii), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a routine sample collected during the month of May 2011; 30 TAC §290.109(c)(4)(B), by failing to collect raw groundwater source Escherichia coli samples from all active sources within 24 hours of being notified of a distribution total coliform-positive result on a routine sample collected during the month of May 2011; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of each quarter; PENALTY: $1,143; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: City of Robinson; DOCKET NUMBER: 2011-2077-PWS-E; IDENTIFIER: RN101196251; LOCATION: Robinson, McLennan County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q) and (q)(1), by failing to issue a boil water notification to the customers of the facility within 24 hours of a water outage using the prescribed format in 30 TAC §290.47(e); PENALTY: $768; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Foust, Mark T; DOCKET NUMBER: 2011-2355-WOC-E; IDENTIFIER: RN103269619; LOCATION: Sour Lake, Hardin County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Hidalgo County Municipal Utility District Number 1; DOCKET NUMBER: 2011-2087-PWS-E; IDENTIFIER: RN101175511; LOCATION: Palmview, Hidalgo County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(f)(3) and §290.122(b)(2)(A) and Texas Health and Safety Code, §341.031(a), by failing to comply with the maximum contaminant level (MCL) for total coliform during the months of April and June 2011, and by failing to provide public notice for exceeding the MCL for total coliform for the month of June 2011; PENALTY: $1,160; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(10) COMPANY: Nueces County Water Control and Improvement District Number 3; DOCKET NUMBER: 2011-1645-MLM-E; IDENTIFIER: RN101428233; LOCATION: Robstown, Nueces County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(f)(1)(E)(ii), by failing to provide adequate containment facilities for all liquid chemical storage tanks; 30 TAC §290.44(h)(1)(A), by failing to install backflow prevention assemblies or an air gap at the meter at all residences or establishments

where an actual or potential contamination hazard exists; 30 TAC §290.111(h)(2), by failing to submit properly completed Surface Water Monthly Operating Reports to the commission; 30 TAC §290.42(m), by failing to enclose the surface water treatment plant and all appurtenances thereof within an intruder-resistant fence; 30 TAC §290.43(c)(3), by failing to provide the overflow on the elevated storage tank with a gravity-hinged and weighted cover that fits tightly with no gap over 1/16 inch; 30 TAC §290.42(d)(2)(A), by failing to provide a vacuum breaker on each hose bibb within the facility; and 30 TAC §330.15(a) and TWC, §26.121(a)(1), by failing to properly dispose municipal solid waste from the surface water treatment plant at an authorized facility; PENALTY: $3,503; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(11) COMPANY: Park Hills Baptist Church of Austin, Texas; DOCKET NUMBER: 2011-1205-PWS-E; IDENTIFIER: RN101184430; LOCATION: Austin, Travis County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; PENALTY: $1,210; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(12) COMPANY: Rios, Juan; DOCKET NUMBER: 2012-0019-WOC-E; IDENTIFIER: RN106215262; LOCATION: Cottonwood, Burnet County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(13) COMPANY: Sahil Management Ltd. dba Shady Acres Trailer Park; DOCKET NUMBER: 2011-1045-PWS-E; IDENTIFIER: RN101458990; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of each quarter; PENALTY: $4,249; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: Sam's East, Incorporated dba Sam's Club 8210; DOCKET NUMBER: 2011-1150-PST-E; IDENTIFIER: RN101505014; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b)(1)(B), by failing to maintain underground storage tank records and make them immediately available for inspection upon request by agency personnel; PENALTY: $750; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: San Antonio Water System; DOCKET NUMBER: 2011-1774-EAQ-E; IDENTIFIER: RN105804538; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: organized sewage collection system with an associated lift station; RULE VIOLATED: 30 TAC §213.4(j)(4) and Sewer Collection System (SCS) Plan Number 13-11050401, Standard Conditions Number 5, by failing to obtain approval of a modification of an SCS plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $1,500; Supplemental Environmental Project offset amount of $1,200 applied to Texas Association of Resource Conservation and Development Areas, Inc. - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(16) COMPANY: South Houston Green Power, LLC; DOCKET NUMBER: 2011-1729-AIR-E; IDENTIFIER: RN103934493; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: cogeneration plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(1), Federal Operating Permit Number O2627, Special Terms and Conditions Number 12, and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification within 30 days after the end of the November 28, 2009 - November 27, 2010 certification period; PENALTY: $2,175; ENFORCEMENT COORDINATOR: Raymond Marlow, P.G., (409) 899-8785; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: SUN SHINE STAR CORPORATION dba Sunrise Super Stop; DOCKET NUMBER: 2011-1687-PST-E; IDENTIFIER: RN102425535; 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 for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,300; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Texas Tile Manufacturing LLC; DOCKET NUMBER: 2011-1583-IWD-E; IDENTIFIER: RN100896729; LOCATION: Houston, Harris County; TYPE OF FACILITY: floor tile manufacturing facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0000785000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and (17) and §319.7(d), and TPDES Permit Number WQ0000785000, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring reports for the monitoring period ending May 31, 2011 for Outfall Number 001 and the monitoring periods ending January 31, 2011; February 28, 2011; March 31, 2011; April 30, 2011; and May 31, 2011 for Outfall Number 002 by the 20th day of the following month; and 30 TAC §305.125(1) and (17) and §319.1, and TPDES Permit Number WQ0000785000, Monitoring and Reporting Requirements Number 1, by failing to submit monitoring results at the intervals specified in the permit; PENALTY: $8,484; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Total Petrochemicals USA, Incorporated; DOCKET NUMBER: 2011-1477-AIR-E; IDENTIFIER: RN102457520; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: oil refining and chemical plant; RULE VIOLATED: 30 TAC §§101.20(1) and (3), 116.115(b) and (b)(2)(F), and (c), 116.615(2), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Air Permit Numbers 18936, PSDTX762M3, 9193A, 9194A, and PSDTX453M6, Special Conditions (SC) Numbers 1, 2, 3, 3A, 5, and 8 and the Maximum Allowable Emission Rates Table, Air Permit Number 5694A, General Conditions (GC) Number 8, and Federal Operating Permit (FOP) Number 01267, Special Terms and Conditions (STC) Number 29, Air Permit Numbers 8983A, 9195A, 3615, 43109, and 56385, by failing to comply with the hourly allowable emissions rate and the concentration limit; 30 TAC §§115.112(a)(1), 116.116(a)(1), and 122.143(4), THSC, §382.085(b), Permit by Rule 30 TAC §106.472, and FOP Number O1267, STC Number 29, by failing to operate an emission source

as represented in the authorization; and 30 TAC §§101.20(1) and (3), 116.115(b)(2)(F) and (c), and 122.143(4), 40 Code of Federal Regulations §60.102(f)(1)(i), THSC, §382.085(b), Air Permit Numbers 46396 and PSDTX1073M1, SC Numbers 1, 24, and 26, and FOP Number O1267, STC Number 29, by failing to comply with the hourly allowable emissions rate, the concentration limit, and the minimum firebox temperature; PENALTY: $269,775; Supplemental Environmental Project offset amount of $53,955 applied to Southeast Texas Regional Planning Commission - West Port Arthur Home Energy Efficiency Program and $53,955 applied to Southeast Texas Regional Planning Commission - Southeast Texas Regional Air Monitoring Network Ambient Air Monitoring Station; ENFORCEMENT COORDINATOR: John Muennink, (713) 422-8970; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(20) COMPANY: Upham Oil & Gas Company, L.P.; DOCKET NUMBER: 2011-1660-AIR-E; IDENTIFIER: RN100210194; LOCATION: Chico, Wise County; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O262/General Operating Permit Number 514, Site-wide Requirements (b)(2), by failing to submit a permit compliance certification for the certification period from May 13, 2010 - May 12, 2011 within 30 days after the end of the certification period; PENALTY: $1,875; ENFORCEMENT COORDINATOR: John Muennink, (713) 422-8970; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: ZNY Enterprises, Incorporated dba ZNY Mart; DOCKET NUMBER: 2011-1176-PST-E; IDENTIFIER: RN100526854; LOCATION: Arlington, 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 tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $3,570; ENFORCEMENT COORDINATOR: Charles Lockwood, (512) 239-1653; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201200171
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 17, 2012

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Notice of a Public Hearing on Proposed Revisions to 30 TAC Chapter 114

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 114, Control of Air Pollution from Motor Vehicles, §114.7 and §114.64, under the requirements of Texas Health and Safety Code, §§382.017, 382.011, 382.003, and 382.209; Texas Water Code, §5.102 and §5.103 and Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement House Bill (HB) 3272, 82nd Legislature, 2011, authorizing changes to the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP). The proposed rulemaking would amend 30 Texas Administrative Code Chapter 114, Control of Air Pollution from Motor Vehicles, §114.7, Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions; and §114.64, LIRAP Requirements, making changes to the requirements and guidelines of the LIRAP.

The commission will hold a public hearing on this proposal in Austin on February 21, 2012, at 10:00 a.m. in Building E, Room 201S at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: http://www5.tceq.texas.gov/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2011-062-114-EN. The comment period closes February 27, 2012. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.texas.gov/nav/rules/propose_adopt.html. For further information, please contact Michael Regan, Air Quality Planning, (512) 239-2988.

TRD-201200130
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 12, 2012

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Notice of a Public Hearing on Proposed Revisions to 30 TAC Chapter 342

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 342, Regulation of Certain Aggregate Production Operations, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would establish a new chapter to implement House Bill 571 from the 82nd Legislature, 2011. The bill requires Aggregate Production Operations to register with the TCEQ annually and to pay an annual fee. Additional requirements include TCEQ to conduct an annual survey of aggregate production operations and conduct inspections of these operations at a minimum of once every three years.

The commission will hold a public hearing on this proposal in Austin on February 9, 2012, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2011-045-342-OW. The comment period closes February 27, 2012. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html*. For further information, please contact Lynda Clayton, Water Quality Assessment Unit, (512) 329-4591.

TRD-201200136
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 12, 2012

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Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility

REGISTRATION APPLICATION NO. 40260

APPLICATION. Nexus Continuum, LLC, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40260, to construct and operate a Type V municipal solid waste Material Recovery and Transfer Station facility. The proposed facility, Nexus Material Recovery and Transfer Station will be located at 6124 Cunningham Road, Houston, Texas 77041, in Harris County. The Applicant is requesting authorization to process, transfer, and store municipal solid waste and recover recyclable materials. The registration application is available for viewing and copying at the Harris County Fairbanks Branch Public Library at 7122 North Gessner, Houston, Texas 77040 and may be viewed online at http://www.nexusdisposal.com. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.857777&lng=-95.580277&zoom=13&type=r. For exact location, refer to application.

PUBLIC COMMENT/PUBLIC MEETING. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the INFORMATION section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 60 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

EXECUTIVE DIRECTOR ACTION. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

INFORMATION. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk, Mail Code 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically submitted to http://www10.tceq.texas.gov/epic/ecmnts/. If you choose to communicate with the TCEQ electronically, please be aware that your e-mail address, like your physical mailing address, will become part of the agency's public record. For information about this application or the registration process, individual members of the general public may call the TCEQ Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Further information may also be obtained from Efrain Gonzalez, Jr. at the address stated above or by calling Joel B. Miller, P.E. at (512) 498-4716.

TRD-201200211
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 18, 2012

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Notice of Availability of the Procedures to Implement the Texas Surface Water Quality Standards

Notice is hereby given that the Texas Commission on Environmental Quality (TCEQ) has made available for review and public comment a draft version of the Procedures to Implement the Texas Surface Water Quality Standards (Implementation Procedures). Revisions are proposed to address the United States Environmental Protection Agency's objections to the Whole Effluent Toxicity and dechlorination requirements contained in the June 2010 version of the Implementation Procedures. The public comment period begins January 27, 2012 and ends February 27, 2012.

Written comments may be submitted to David Galindo, MC 150, Water Quality Division, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4420. Electronic comments may be submitted via email to *IPCOMMNT@tceq.texas.gov.* File size restrictions may apply to comments being submitted via e-mail. All comments should reference the Implementation Procedures, RG-194. The comment period closes February 27, 2012.

Copies of the proposed guidance document are available in the TCEQ Regional offices, in the TCEQ library in Austin, Texas, and on the commission's Web site at: *http://www.tceq.texas.gov/waterquality/standards/WQ_standards_implementing.html.* For further information, please contact David Galindo, Water Quality Division, at (512) 239-0951.

TRD-201200195
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 18, 2012

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Notice of Issuance of Air Quality Standard Permit for Oil and Gas Handling and Production Facilities

The Texas Commission on Environmental Quality (TCEQ or commission) is issuing amendments to the Air Quality Standard Permit for Oil and Gas Handling and Production Facilities.

Copies of the Air Quality Standard Permit for Oil and Gas Handling and Production Facilities may be obtained from the TCEQ Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html* or by contacting the TCEQ, Office of Permitting and Registration, Air Permits Division, at (512) 239-1250 or Blake Stewart at (512) 239-6931.

EXPLANATION AND BACKGROUND OF AIR QUALITY STANDARD PERMIT

On January 26, 2011, the TCEQ issued a non-rule standard permit for oil and gas production facilities. The standard permit became effective on April 1, 2011 and applied only in the following counties making up the Barnett Shale region of the state: Archer, Bosque, Clay, Comanche, Cooke, Coryell, Dallas, Denton, Eastland, Ellis, Erath, Hill, Hood, Jack, Johnson, Montague, Palo Pinto, Parker, Shackelford, Stephens, Somervell, Tarrant, and Wise Counties. The commission is issuing a corrected standard permit to address typographical errors, formatting, and duplicative language.

OVERVIEW OF AIR QUALITY STANDARD PERMIT

The standard permit includes operating specifications and emissions limitations for typical equipment and facilities used during normal operation, which includes production and planned maintenance, startup, and shutdown (MSS). The standard permit references the new federal standards which have been promulgated by the United States Environmental Protection Agency (EPA), and includes criteria for registration and changes at existing, authorized sites. It also specifically addresses the appropriateness of multiple authorizations at one contiguous property.

PERMIT CONDITION ANALYSIS AND JUSTIFICATION

The commission is amending subsection (m), table 8 to remove unnecessary, repetitive language under the heading Control Devices, Control with process combustion or heating devices (e.g. reboilers, heaters and furnaces). Additionally, there have been non-substantive corrections to typographical errors and formatting changes.

PROTECTIVENESS REVIEW

None of the conditions affecting protectiveness are being changed in this amendment, therefore a protectiveness review was not produced.

PUBLIC NOTICE AND COMMENT PERIOD

In accordance with 30 TAC §116.603, Public Participation in Issuance of Standard Permits, the TCEQ published notice of the proposed standard permit in the *Texas Register* and newspapers of the largest general circulation in the following metropolitan areas: Austin, Dallas, and Houston. The date for the newspaper publications was August 22, 2011. The date of the *Texas Register* notice was September 2, 2011. The public comment period ran from the date of newspaper publication until 5:00 p.m. on October 3, 2011. Written comments were received from the Texas Oil & Gas Association (TxOGA).

PUBLIC MEETING

A public meeting was held on the proposed amendments to the Air Quality Standard Permit for Oil and Gas Handling and Production Facilities on October 3, 2011, and no comments were submitted.

ANALYSIS OF COMMENTS

TxOGA expressed appreciation for the removal of unnecessary, repetitive language in subsection (m) of the standard permit provided that the change is not substantive.

Response

The commission thanks TxOGA for its support of this amendment to the standard permit and confirms that the change is a non-substantive removal of a typographical error.

TxOGA also stated that it would object to any changes resulting from other comments made in reference this amendment to the standard permit. Additionally, TxOGA stated that Senate Bill (SB) 1134, 82nd Legislature, 2011, precluded any changes to §106.352 unless accompanied by the requisite regulatory impact analysis and air monitoring data.

Response

No other comments were received on this amendment, consequently, there will be no additional changes resulting from comments. Also, the commission will not make changes that would conflict with the requirements of SB 1134. However, the commission may make non-substantive corrections to typographical errors or formatting changes necessary for this standard permit amendment.

STATUTORY AUTHORITY

The amendments to this standard permit are adopted under the Texas Clean Air Act (TCAA), Texas Health and Safety Code (THSC), §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.051, Permitting Authority of Commission; Rules, which authorizes the commission to issue permits, including standard permits for similar facilities; and THSC, §382.0513, Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with the TCAA, THSC, §382.05195, Standard Permit, which authorizes the commission to issue standard permits according to the procedures set out in that standard permit, and THSC, §382.051963 which authorizes the commission to make certain amendments to the standard permit.

TRD-201200151
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 13, 2012

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

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. 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 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 **February 27, 2012.** 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 27, 2012.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Dan Canaris; DOCKET NUMBER: 2011-0472-PST-E; TCEQ ID NUMBER: RN101731982; LOCATION: 734 East Main Street, Eagle Lake, Colorado County; TYPE OF FACILITY: underground storage tank (UST) system and a former grocery store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition; and 30 TAC §334.47(a)(2) and §334.54(b)(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 and by failing to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secure manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: $6,600; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: FVC Food Mart Inc.; DOCKET NUMBER: 2010-1487-PST-E; TCEQ ID NUMBER: RN102701117; LOCATION: 2216 Thompson Road, Richmond, Fort Bend County; TYPE OF FACILITY: underground storage tank (UST) system with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2)(A)(i)(III) and (d)(1)(B)(ii), by failing to test the leak line detectors at least once per year for performance and operational reliability and by failing to provide a release detection method for the UST system by failing to conduct reconciliation of inventory control at least once a month in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; TWC, §26.3475(c)(1) and 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight, and free of liquid and debris; Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.246(4), by failing to maintain Stage II records at the station; TWC, §26.3475(d) and 30 TAC §334.49(a), by failing to provide proper corrosion protection for the UST system; and THSC, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months and vapor space manifolding and dynamic back-pressure once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY: $8,486; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201200170

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 17, 2012

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Notice of Receipt of Application for Land Use Compatibility Determination for a New Municipal Solid Waste Permit (Proposed)

PERMIT NO. 2378

APPLICATION. Post Oak Clean Green, Inc., P.O. Box 1270, Seguin, Guadalupe County, Texas 78155, has applied to the Texas Commission on Environmental Quality (TCEQ) for separate land use compatibility determination on proposed Permit No. 2378, to authorize a new Type I Municipal Solid Waste Landfill that will accept Municipal Solid Waste and certain special waste for disposal and lead acid batteries, motor oils, tires, and items containing Chlorinated Fluorocarbons to be stored in a designated area until transported off-site for recycling. The facility is located at 7787 Farm to Market Road 1150, Seguin, Guadalupe County, Texas 78155. The land use compatibility portion of the application was received by the TCEQ on December 28, 2011. This application is available for viewing and copying at Guadalupe County Courthouse, 307 West Court Street, Suite 200, Seguin, Guadalupe County, Texas 78155-5746. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.605277&lng=-97.724444&zoom=13&type=r. For exact location, refer to application.

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 compatible with the surrounding land uses, the TCEQ may at another time consider conformity with other regulatory requirements. 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 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. 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 public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087.

If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, toll free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040. Further information may also be obtained from Post Oak Clean Green, Inc. at the address stated above or by calling Thomas Funderburg, President at (888) 885-6606.

TRD-201200210
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 18, 2012

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Notice of Water Quality Applications

The following notices were issued on January 6, 2012 through January 13, 2012.

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

GEORGE AIVAZIAN has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0012427001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,000 gallons per day. The facility is located at 1910 Highway 6 South in the City of Houston in Harris County, Texas 77077.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 427 has applied for a new permit, proposed TPDES Permit No. WQ0015015001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 960,000 gallons per day. The facility will be located approximately 9,000 feet northeast of the intersection of North Lake Houston Parkway and East Beltway 8 North, and approximately 7,500 feet east of East Beltway 8 North in Harris County, Texas 77044.

STP NUCLEAR OPERATING COMPANY which operates South Texas Project Electric Generating Station, has applied for a renewal with changes to TPDES Permit No. WQ0001908000, which authorizes the discharge of recirculated cooling water, cooling reservoir blowdown, storm water, make up water from the Colorado River, and previously monitored effluent (low volume wastes, metal cleaning wastes, storm water, treated sanitary sewage, car wash water, air conditioning condensate, and HVAC cooling tower blowdown) at a daily average flow not to exceed 144,000,000 gallons per day via Outfall 001. The facility is located on Farm-to-Market Road 521, approximately 10 miles north of Matagorda Bay and 12 miles south southwest of the City of Bay City, Matagorda County, Texas 77483.

BASF FINA PETROCHEMICALS LIMITED PARTNERSHIP which operates the BASF FINA NAFTA Region Olefins Complex, has applied for a major amendment to TPDES Permit No. WQ0004135000 to authorize changes to the critical conditions review at Outfall 001, the removal of zinc monitoring and reporting at Outfall 001, and the inclusion of storm water from process areas and utility wastewaters at Outfall 001. The draft permit authorizes the discharge of storm water commingled with miscellaneous wastewater (including fire suppression system water, steam condensate, hydrostatic test water, and other deminimus non-storm water wastewaters), process area storm water, and utility wastewater on an intermittent and flow variable basis via Outfall 001 and the discharge of cooling tower blowdown and other utility wastewater ad a daily average flow not to exceed 2,000,000 gallons per day via Outfall 002. The current permit authorizes the discharge of storm water commingled with miscellaneous wastewaters (including fire suppression system water, steam condensate, hydrostatic test water, and other deminimus non-storm water wastewaters) on an intermittent and flow variable basis via Outfall 001, and cooling tower blowdown and other utility wastewater at a daily average flow not to exceed 2,000,000 gallons per day via Outfall 002. The facility is located north of Highway 87/73 at the intersection of Highway 87/73 and Highway 366 in the City of Port Arthur, Jefferson County, Texas 77643. The Texas Commission on Environmental Quality (TCEQ) Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable Texas Coastal Management Program goals and policies.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 21 has applied for a renewal of TPDES Permit No. WQ0010105001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located at 228 Cedar Lane on the southeast corner of the intersection of Interstate Highway 10 and Cedar Lane in the City of Channelview in Harris County, Texas 77530.

CITY OF ATHENS has applied for a renewal of TPDES Permit No. WQ0010143001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,027,000 gallons per day. The facility is located at 1500 North Pinkerton, east of Onemile Creek and approximately 3,100 feet northwest of the intersection of Prairieville Street and State Highway 19 in Henderson County, Texas 75751.

CITY OF ATHENS has applied for a renewal of TPDES Permit No. WQ0010143003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,367,000 gallons per day. The facility is located at 2300 Old Malakoff Highway, south of Walnut Creek and approximately four miles southwest of the intersection of Prairieville and Corsicana Streets in the City of Athens, Henderson County, Texas 75751.

CITY OF GROESBECK has applied for a renewal of TPDES Permit No. WQ0010182001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 709,000 gallons per day. The facility is located northeast of Groesbeck, approximately 1 mile northeast of the intersection of State Highway 164 and State Highway 14 on the north side of Farm-to-Market Road 1245 in Limestone County, Texas 76642.

CITY OF MINEOLA has applied for a renewal of TPDES Permit No. WQ0010349001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at 4441 Southeast Farm-to-Market Road 564, approximately two miles southeast of the intersection of U.S. Highway 69 and U.S. Highway 80 in Wood County, Texas 75773.

MOSCOW WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0011139001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located at 16372 U.S. Highway 59 North, approximately 600 feet southeast of the intersection of U.S. Highway 59 and Loop 177 in the City of Moscow in Polk County, Texas 75960.

C AND R WATER SUPPLY INC has applied for a renewal of TPDES Permit No. WQ0014285001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located 2,000 feet east of Crockett-Martin Road and 3,000 feet south of State Highway 105 in Montgomery County, Texas 77304.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 418 has applied for a major amendment to TPDES Permit No. WQ0014476001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 1,000,000 gallons per day to an annual average flow not to exceed 3,600,000 gallons per day. The facility is located at 17520 House Hahl Road, approximately 4,000 feet south and 3,000 feet west of the intersection of House Hahl Road and U.S. Highway 290 in Harris County, Texas 77433.

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 above, WITHIN 10 DAYS OF THE ISSUED DATE OF THE NOTICE.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY has initiated a minor amendment of the TPDES Permit No. WQ0004637000 (TXS000501) issued to City of Beaumont, P.O. Box 3827, Beaumont, Texas 77704, and Jefferson County Drainage District No. 6, P.O. Box 20078, Beaumont, Texas 77720, which operate the City of Beaumont Municipal Separate Storm Sewer System (MS4), to authorize a change in the due date for the first annual report from February 1, 2012 to February 1, 2013. This change corrects a typographical error and makes the due date of the first annual report consistent with the first annual reporting period of June 1, 2011 through September 30, 2012. The existing permit authorizes storm water point source discharges to surface water in the state from the City of Beaumont MS4. The MS4 is located within the corporate boundary of the City of Beaumont and within the jurisdiction of Jefferson County Drainage District No. 6 that is within the corporate boundary of the City of Beaumont, in Jefferson County, Texas 77657, 77701, 77702, 77703, 77704, 77705, 77706, 77707, 77708, 77709, 77710, 77713, 77720, 77725, 77726.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201200208
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 18, 2012

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Notice of Water Rights Application

Notice issued January 9, 2012.

APPLICATION NO. 18-3858A; The City of Victoria, 105 W. Juan Linn, Victoria, Texas 77901, Applicant, seeks to amend Certificate of Adjudication No. 18-3858 to add uses; change the place of use; request an exempt interbasin transfer; change the diversion point to a point on the Guadalupe River, Guadalupe River Basin; and to allow storage of the authorized 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, June 14, and November 3, 2010, and April 27, 2011. 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 amendment, if granted, would include special conditions. 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, Building F, Austin, Texas 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 January 30, 2012.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/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 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, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201200212
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 18, 2012

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Proposal for Decision

The State Office of Administrative Hearings (SOAH) issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality (TCEQ) on January 13, 2012, in the matter of the Executive Director of TCEQ, Petitioner v. Mohamed Basheer d/b/a EXXON 45; SOAH Docket No. 582-11-1709; TCEQ Docket No. 2010-0503-PST-E. The Commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Mohamed Basheer d/b/a EXXON 45 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-201200213
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 18, 2012

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Proposal for Decision

The State Office of Administrative Hearings (SOAH) issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality (TCEQ) on January 17, 2012, in the matter of the Executive Director of TCEQ, Petitioner v. Edward Ratliff; SOAH Docket No. 582-11-2028; TCEQ Docket No. 2010-1087-PST-E. The Commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Edward Ratliff 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-201200214
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 18, 2012

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Request for Nominations for Appointment to Serve on the Irrigator Advisory Council

The Texas Commission on Environmental Quality (TCEQ) is requesting nominations for three individuals to serve on the Irrigator Advisory Council (council). Two of the individuals must be an irrigator licensed to work in Texas, and the third individual represents the public. Council members will be asked to serve a six-year term beginning in 2013.

The Texas Occupations Code, Title 12, Chapter 1903, Subchapter D *(see also* 30 TAC §344.80) provides the structure of the nine-member council appointed by the TCEQ. The council is comprised of nine members appointed by the TCEQ: six licensed irrigators, who are residents of Texas, experienced in the irrigation business, and familiar with irrigation methods and techniques; and three public members.

The council provides valuable feedback and suggestions to improve landscape irrigation in Texas. The council members are required to attend half of the annual meetings. The council members generally meet for one day in Austin in March, July, and November of each year. Council members are not paid for their services, but are eligible for reimbursement of travel expenses at state rates as appropriated by the legislature.

To nominate an individual: 1) ensure that the individual is qualified for the position for which he/she is being considered; 2) submit a brief resumé which includes relevant work experience; and 3) provide the nominee a copy of this request. The nominee must submit a letter indicating his/her agreement to serve, if appointed.

Written nominations and letters from nominees must be received by 5:00 p.m. on April 30, 2012. The appointment will be considered by the TCEQ at a future agenda. Please mail all correspondence to Richard Allen, Texas Commission on Environmental Quality, Field Operations Support Division, MC 235, P.O. Box 13087, Austin, Texas 78711-3087 or fax to (512) 239-2249. Questions regarding the council can be directed to Mr. Allen at (512) 239-5296 or e-mail: *Richard.Allen@tceq.texas.gov.* Additional information regarding the council is available on the Web site: *http://www.tceq.texas.gov/licensing/irrigation/irr_advisory.html.*

TRD-201200169

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 17, 2012

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Revised Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit Amendment (Proposed)

PERMIT NO. 2234d

APPLICATION. Liquid Environmental Solutions of Texas, LLC, 7651 Esters Boulevard, Suite 200, Irving, Dallas County, Texas 75063, a Type V, liquid waste processing facility that de-waters, recycles, and pre-treats non-hazardous liquid waste from municipal and industrial generators, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit amendment to authorize an increase in the permitted liquid waste acceptance limit from 6 million gallons per month (200,000 gallons per day) to 354,500 gallons per day; the extension of waste acceptance hours from 7:30 a.m. - 5:30 p.m. to 6:30 a.m. - 6:30 p.m.; a variance from buffer zone requirements; and a name change for the owner/operator from Liquid Environmental Solutions of Texas, L.P., to Liquid Environmental Solutions of Texas, LLC. The facility is located at 250 Gellhorn Drive, Houston, Harris County, Texas 77013. The TCEQ received the application on August 16, 2011. The permit application is available for viewing and copying at the Galena Park Branch Library, 1500 Keene Street, Galena Park, Harris County, Texas 77547. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.785555&lng=-95.260833&zoom=13&type=r. For exact location, refer to application.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. 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 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. 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. Written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/about/comments.html. If you need more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, toll free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040. Further information may also be obtained from Liquid Environmental Solutions of Texas, LLC at the address stated above or by calling Bob Keplinger at (713) 671-4800.

TRD-201200209
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 18, 2012

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Department of State Health Services

Notice of Certification of Nonprofit Hospitals or Hospital Systems for Limited Liability

The Hospital Survey Program in the Center for Health Statistics, Department of State Health Services (department), has completed its analysis of hospital data for the purpose of certifying nonprofit hospitals or hospital systems for limited liability in accordance with the Health and Safety Code, §311.0456. We received requests for certification from 10 hospitals. We will notify each hospital by mail that is certified in accordance with §311.0456. Therefore, if you have any comments or questions about the following certification results, please contact Mr.

Dwayne Collins or Ms. JaNell Jenkins of the department's Center for Health Statistics.

Certified. 1 non-profit hospital system (6 hospitals) and 4 non-profit hospitals were determined to be eligible for certification based on information that they provided; i.e., charity care in an amount equal to or greater than 8 percent of their net patient revenue and that they provided 40 percent or more of the charity care in their counties. The certification issued under Health and Safety Code, §311.0456, to a non-profit hospital or hospital system takes effect on December 31, 2011, and expires on the anniversary of that date.

Seton Healthcare System - Travis County only (6 hospitals)

1. Dell Children's Medical Center in Travis County

2. Seton Medical Center Austin in Travis County

3. Seton Northwest Hospital in Travis County

4. Seton Shoal Creek Hospital in Travis County

5. Seton Southwest Hospital in Travis County

6. University Medical Center at Brackenridge Hospital in Travis County

7. Seton Edgar B. Davis in Caldwell County

8. Seton Medical Center Hays in Hays County

9. Shannon West Texas Memorial Hospital in Tom Green County

10. Seton Medical Center Williamson in Williamson County

For further information about this report, please contact Mr. Dwayne Collins or Ms. JaNell Jenkins in the Center for Health Statistics, Department of State Health Services, 1100 West 49th Street, Austin, Texas, telephone (512) 776-3312.

TRD-201200162
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: January 13, 2012

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Texas Department of Housing and Community Affairs

Notice of Public Hearing Residential Mortgage Revenue Bonds

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the Department) at 221 East 11th Street, Room 116, Austin, Texas, at 12:00 noon on February 28, 2012, with respect to a plan of financing (the Plan) that consists of the issuance, on one or more separate dates, of tax-exempt residential mortgage revenue bonds in the maximum aggregate face amount of $400,000,000 (the Bonds). The Bonds will be issued as "qualified mortgage bonds" under §143 of the Internal Revenue Code of 1986, as amended (the Code). The first Bonds delivered under the Plan will be delivered no later than one year following approval of the Plan pursuant to this Notice. All Bonds under the Plan will be delivered no later than three years following the first issue of bonds issued pursuant to such approval.

The proceeds of the Bonds will be used directly to make single family residential mortgage loans in an aggregate estimated amount of $400,000,000. All of such single family residential mortgage loans will be made to eligible very low, low and moderate income homebuyers for the purchase of homes located within the State of Texas.

For purposes of the Department's mortgage loan finance programs, eligible borrowers generally will include individuals and families:

(a) whose family income does not exceed:

(i) for families of three or more persons, 115% (140% in certain targeted areas) of the area median income; and

(ii) for individuals and families of two persons, 100% (120% in certain targeted areas) of the area median income; and

(b) who have not owned a principal residence during the preceding three years (except in certain cases permitted under applicable provisions of the Code).

Further, residences financed with loans under the programs generally will be subject to certain other limitations, including limits on the purchase prices of the residences being acquired. All the limitations described in this paragraph are subject to revision and adjustment from time to time by the Department pursuant to changes in applicable federal or State law and Department policy.

All interested parties are invited to attend such public hearing to express their views with respect to the Department's mortgage loan finance program and the issuance of the Bonds. Questions or requests for additional information may be directed to Heather Hodnett at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701; telephone (512) 475-1899.

Persons who intend to appear at the hearing and express their views are invited to contact Heather Hodnett in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Heather Hodnett prior to the date scheduled for the hearing.

TDHCA WEBSITE: www.tdhca.state.tx.us/hf.htm

Individuals who require auxiliary aids for the hearing should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1-800-735-2989 at least two days before the hearing so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for the hearing should contact Heather Hodnett at (512) 475-1899 at least three (3) days before the hearing so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

This notice is published and the above-described hearing is to be held in satisfaction of the requirements of §147(f) of the Code regarding the public approval prerequisite to the exclusion from gross income for federal income tax purposes of interest on the Bonds.

TRD-201200207
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 18, 2012

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Request for Proposal for Market Rate Ginnie Mae to be Announced Program Administrator

The Texas Department of Housing and Community Affairs (TDHCA) has issued a Request for Proposal (RFP) for a Market Rate Ginnie Mae (GNMA) To Be Announced (TBA) Program Administrator. TDHCA anticipates the need for a GNMA TBA Program Administrator for the Texas First Time Homebuyer Program relating to its Single Family Mortgage Revenue Bond Programs. The Program Administrator must

demonstrate qualifications and experience in one or more areas that are listed in the RFP.

Proposals must be received at TDHCA no later than, 4:00 p.m. on February 14, 2012.

For more information, see RFP #332-RFP12-1004 on the Electronic State Business Daily website at http://esbd.cpa.state.tx.us/.

TRD-201200204
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 18, 2012

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Request for Proposal for Master Servicer for the Single Family Residential Mortgage Revenue Bond Programs or Other Alternatively Funded Programs

The Texas Department of Housing and Community Affairs (TDHCA) has issued a Request for Proposal (RFP) for Master Servicer. TDHCA anticipates the need for a Master Servicer relating to its Single Family Residential Mortgage Revenue Bond Programs. The Master Servicer must demonstrate qualifications and experience in one or more areas that are listed in the RFP.

Proposals must be received at TDHCA no later than, 4:00 p.m. on January 25, 2012.

For more information, see RFP #332-RFP12-1003 on the Electronic State Business Daily website at http://esbd.cpa.state.tx.us/.

TRD-201200203
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 18, 2012

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Texas Department of Insurance

Notice of Public Hearing, 2012 Texas Title Insurance Periodic Hearing

Docket No. 2732

The Commissioner of Insurance (commissioner) will hold a title insurance hearing on February 28, 2012, to consider adoption of premium rates and other matters relating to regulating the business of title insurance.

The hearing will begin at 9:30 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas, on February 28, 2012, and will continue thereafter at dates, times, and places designated by the commissioner until its conclusion.

The commissioner calls the hearing under Insurance Code §2703.202 and §2703.206. In accordance with §2703.202(c), the commissioner will conduct the hearing as a rulemaking hearing. However, the State Office of Administrative Hearings may conduct the ratemaking portion as a contested case hearing, in accordance with Insurance Code Chapter 40 and Government Code Chapter 2001, Subchapters C - H. This may occur at the commissioner's direction or at the request of one of the parties listed in Insurance Code §2703.202(d). In the event of a contested case hearing, the commissioner will certify the matters that must be heard as contested cases.

Authority, Jurisdiction, Statutes, and Rules Involved

The commissioner has jurisdiction over the promulgation of rules and premium rates, over amendments to or promulgation of approved forms, and over other matters set out in this notice pursuant to Insurance Code §31.021 and §2551.003, and Insurance Code Chapters 2501, 2703, 2751; and pursuant to Administrative Code Title 28, Chapter 9. The hearing procedure will follow the Administrative Code Rules of Practice and Procedure before the Department of Insurance (28 TAC §§1.1 - 1.208) and the Administrative Procedure Act (Government Code Chapter 2001).

Matters to be Considered

The commissioner will consider testimony presented and information filed by title insurers, title agents, Texas Department of Insurance (TDI) staff, and other interested parties relating to the following issues:

Item No.	Submitted By	Description
2012-1	Texas Land Title Association (TLTA)	Amends Form T-7, Commitment for Title Insurance, to correct typographical errors and conform the language to other rules and forms in the Basic Manual.
2012-2	TLTA	Amends Form T-1, Owner's Policy of Title Insurance, to correct margins and conform the language to other rules and forms in the Basic Manual.
2012-3	TLTA	Amends Form T-2, Loan Policy of Title Insurance, to correct margins.
2012-4	TLTA	Amends Form T-43, Texas Reverse Mortgage Endorsement, to conform the language to other rules and forms in the Basic Manual.
2012-5	TLTA	Amends Form T-42, Equity Loan Mortgage Endorsement, to conform the language to other rules and forms in the Basic Manual.
2012-6	TLTA	Amends Form T-42.1, Supplemental Coverage Equity Loan Mortgage Endorsement, to conform the language to other rules and forms in the Basic Manual.
2012-7	TLTA	Amends Form T-38, Mortgagee Policy of Title Insurance P-9.b.(3) Endorsement, to conform the language to other rules and forms in the Basic Manual.
2012-8	TLTA	Amends Form T-98, Limited Pre-Foreclosure Policy, to correct typographical errors in the Basic Manual.
2012-9	TLTA	Amends Form T-46, Texas Residential Limited Coverage Junior Mortgagee Policy Home Equity Line of Credit/Variable Rate Endorsement, to conform the language to other rules and forms in the Basic Manual.
2012-10	TLTA	Amends Rate Rule R-11D, regarding the Loan Policy Endorsement, to correct typographical errors and conform the language to other rules and forms in the Basic Manual.
2012-11	TLTA	Amends Rate Rule R-15, Owner Policy Endorsement, to correct typographical errors and conform the language to other rules and forms in the Basic Manual.
2012-12	TLTA	Amends Rate Rule R-17, Policy Forms for Use by United States Government, to conform the language to other rules and forms in the Basic Manual.
2012-13	TLTA	Amends Rate Rule R-22, Owner and Leasehold Policies, to conform the language to other rules and forms in the Basic Manual.
2012-14	TLTA	Amends Procedural Rule P-1w, regarding the definition of "premium," to correct typographical errors in the Basic Manual.

2012-15	TLTA	Amends Procedural Rule P-9, Endorsement of Owner or Loan Policies, to conform the language to other rules and forms in the Basic Manual.
2012-16	TLTA	Amends Form T-56, Owner Policy Rejection Form, to correct typographical errors and conform the language to other rules and forms in the Basic Manual.
2012-17	TLTA	Amends Procedural Rule P-70(b), regarding Cancellation Fees; Fees for Services Rendered, to correct a typographical error in the Basic Manual.
2012-18	TLTA	Amends Form T-14, First Loss Endorsement, to conform the language to other rules and forms in the Basic Manual.
2012-19	TLTA	Amends Form T-16, Mortgagee Policy Aggregation Endorsement, to conform the language to other rules and forms in the Basic Manual.
2012-20	TLTA	Amends Form T-53, Texas Limited Coverage Residential Chain of Title Policy Combined Schedule, to conform the language to other rules and forms in the Basic Manual, correct margins, and correct a reference to a twelve month chain of title by making the period of time referenced to be not more than sixty months.
2012-21	TLTA	Minimum Capitalization Rule. Petitions to adopt Rule G-__, Minimum Capitalization Standards for Title Agents Pursuant to §2651.012 and Certification and Procedure to Determine Value of Assets Pursuant to §2651.158. The rule alters the timetables and capitalization amounts in Insurance Code §2651.012, in order to achieve compliance with minimum capitalization requirements.
2012-22	TLTA	Minimum Capitalization Certification of Assets Form. Petitions to adopt Form T-G__, Title Agent's Unencumbered Assets Certification Form. The form certifies unencumbered assets, pursuant to Insurance Code §2651.158. The form specifies the title agent's method of meeting the required minimum capitalization, and would accompany the annual audit of escrow accounts submitted to TDI unless the agent made a deposit under Insurance Code §2651.012(f).
2012-23	TLTA	Solvency Account Rule. Petitions to adopt Rule G-__, Solvency Account for Capitalization Standards, to meet the requirements of Insurance Code §2651.012. The rule sets forth the requirements for establishing and maintaining a solvency account.
2012-24	TLTA	Solvency Account Tripartite Agreement Form. Petitions to adopt Form T-G__, Tripartite Agreement, to establish a solvency account to comply with capitalization requirements. The form authorizes release of funds from a solvency account in limited circumstances.

2012-25	TLTA	Release of Solvency Account Assets Rule. Petitions to adopt Rule G-__, Title Agent Requirements, procedures and forms for obtaining release of assets in accordance with §2651.012(b) or §2651.0121, Insurance Code. The rule provides procedures to request the release of assets, including funds held in a solvency account, in accordance with §2651.0121. The rule articulates the steps to be taken in order to obtain a release of the assets.
2012-26	TLTA	Release of Solvency Account Request Form. Petitions to adopt Form T-G__, Solvency Account Release Request, to meet the Insurance Code §2651.0121(i) requirement by providing a form to request the release of funds held in a solvency account in accordance with §2651.0121. The form provides a checklist for the actions required to request the release.
2012-27	TLTA	Surety Bond Rule. Petitions to adopt Rule G-__, Surety Bond for Title Agents to Comply with Minimum Capitalization Standards. The rule enables title agents to comply with capitalization requirements by using a surety bond.
2012-28	TLTA	Surety Bond Form. Petitions to adopt a form of surety bond as an option for title agents to meet capitalization requirements.
2012-29	TLTA	Title Company Financial Matter Disclosure Rule. Petitions to adopt Rule G-__, Title Company Requirements, Procedures, and Forms for Providing Privileged Title Agent Financial Solvency Information to the Department Pursuant to §2651.011. Provides that an underwriter may provide information to TDI about a financial matter that may relate to the solvency of a title agent.
2012-30	TLTA	Title Company Financial Matter Disclosure Authorized Officer's Form. Petitions to adopt Form T-G__, Annual Report of Title Company's Officers Authorized to Provide Information on Agent Financial Matters. This form provides a form for title companies to identify to TDI the officers of the title company who are authorized to provide privileged financial information to TDI regarding title agents.
2012-31	TLTA	Title Company Financial Matter Disclosure Form. Petitions to adopt Form T-G__, Financial Matter Disclosure Report. The form provides a means for a designated officer of a title company to provide information to TDI pursuant to Insurance Code §2651.011. It declares that financial information regarding a title agent that is provided to TDI by a title company is not public information.
2012-32	TLTA	Title Agent's Quarterly Withholding Tax Report Rule. Petitions to adopt Rule G-__, Filing of Title Agent's Quarterly Withholding Tax Report. The rule provides TDI with an early warning tool to monitor the financial condition of title agents. It requires agents to file with TDI copies of their quarterly withholding tax reports or their equivalent.

2012-33	TLTA	Title Agent's Quarterly Withholding Tax Report Form. Petitions to adopt Form T-G__, Title Agent Certification Form of Agent's Quarterly Tax Reports. The form provides a method for a title agent to certify that the agent had no employees during a calendar quarter and did not file a quarterly withholding tax report.
2012-34	TLTA	Professional Training Program Rule. Amends Procedural Rule P-28, Requirements for Continuing Education for Title Agents and Escrow Officers. The amendments update continuing education requirements, conform the rule to Education Code §132.001, and address issues regarding management personnel.
2012-35	TLTA	Title Agent Examinations Report Rule. Petitions to adopt Rule G-__, Requirements for Title Agent Examination Reports Pursuant to §2651.206. The rule adds a new section to the Basic Manual to incorporate statutory changes resulting from HB 4338 (81R). In accordance with Insurance Code §2651.206, the rule establishes requirements and procedures for an examination report. The procedures allow the title agent to respond to the contents and conclusions of the report and allow for an appeal under 28 TAC §7.83.
2012-36	TLTA	Abstract Plant Requirement Rule (P-1 & P-12). Amends Procedural Rules P-1 and P-12. The rule amends the P-1 definition of abstract plant in accordance with Insurance Code §2501.004(b). The rule amends P-12 in accordance with §2501.004 and updates certain statutory references.
2012-37	TLTA	Abstract Plant Requirement Form (T-57). Amends Form T-57, Agreement to Furnish Title Evidence, in accordance with Insurance Code §2501.004(b).
2012-38	TLTA	Amends Procedural Rule P-5.1, Exception or Exclusion Regarding Minerals. HB 2408 (82R) made issuance of the endorsement not mandatory after January 1, 2012.
2012-39	TLTA	Amends Procedural Rule P-50.1, Minerals and Surface Damage Endorsement (T-19.2), and Minerals and Surface Damage Endorsement (T-19.3). HB 2408 (82R) made issuance of the endorsements not mandatory after January 1, 2012.
2012-40	TLTA	Amends Procedural Rule P-53, Rebates and Discounts Prohibited to conform the rule to statutory changes made by HB 2408 (82R). In addition, the amendments provide prerequisites for filing complaints regarding this rule with TDI. The commissioner will also consider whether P-53 should be modified further or repealed, in light of recent court rulings.
2012-41	TLTA	Amends Rate Rule R-36, Credit for Exclusion of or General Exception for Minerals. HB 2408 (82R) repealed Rate Rule R-36, effective January 1, 2012.

2012-42	TLTA	Amends R-29.1, Premium for Minerals and Surface Damage Endorsement (T-19.2), and Minerals and Surface Damage Endorsement (T-19.3). As a result of HB 2408 (82R), no charge may be made for either endorsement to a Loan Policy issued after January 1, 2012.
2012-43	TLTA	Regulatory Communications Officers. Petitions to adopt Procedural Rule P-__, Regulatory Communications Officers. The rule establishes an official point of contact for each title agent and title company so that TDI may more efficiently seek clarifications relative to items filed with or reported to TDI in compliance with existing regulations.
2012-44	Texas Title Insurance Guaranty Association (TTIGA)	Amends licensing requirements with regard to issuance, cancellation, renewal, change in operations to secure additional information for the licensing of the title agents and streamline the process.
2012-45	TTIGA	Changes address on Policy Guaranty Fee Remittance Form to [current address] to update the current Policy Guaranty Fee Remittance Form and provide more flexibility for future changes to information without a rule amendment.
2012-46	TTIGA	Deletes all information on Form T-G1 to update the current Policy Guaranty Fee Remittance Form and provide more flexibility for future changes to information without a rule amendment.
2012-47	Alamo Title Company	Amends disclosure requirements with respect to third party notaries to conform the rule to Insurance Code §2501.008.
2012-48	Fidelity National Title Group, Inc. (Fidelity)	Amends Procedural Rule P-20 to clarify when the standard tax exception (Item 3 of Schedule B) may be amended to delete the words "and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership" ("insure or insuring against roll back taxes"). This will provide much needed guidance to a company as to what may or may not be done regarding the standard tax exception and the practice of insuring that taxes are paid or insuring against roll back taxes based upon an indemnity and/or the escrow of funds for the future payment of taxes.
2012-49	Fidelity	Amends Rate Rule R-32 related to the Contiguity Endorsement (T-25 or T-25.1) to facilitate the issuance of the T-25.1 endorsement in transactions where there are four or more parcels of land at the same rate as the Contiguity Endorsement T-25.
2012-50	Stewart Title Guaranty Company (Stewart)	Amends Procedural Rule P-57, Additional Insured Endorsement (T-26), to allow as an optional coverage the inclusion of language addressing issues arising from the transfer of an interest in an insured under an owner's policy ("Fairway" language).

2012-51	Stewart	Amends Form T-26, Additional Insured Endorsement, to allow as an optional coverage the inclusion of language addressing issues arising from the transfer of an interest in an insured under an owner's policy ("Fairway" language).
2012-52	Stewart	Amends Procedural Rule P-58, Report on Directly Issued Policy, to conform the rule to Form T-00, which contains three statuses, rather than only the two currently listed in P-58.
2012-53	Stewart	Amends Form T-1R, Texas Residential Owner's Policy of Title Insurance, to incorporate the changes recently made to Form T-1. Form T-1 is similar to the American Land Title Association (ALTA) 2006 Owner's Policy. The changes comply with the requirements of Insurance Code §2703.101(g). Additionally, the amendments conform Form T-1R to the requirements adopted in HB 3768 (81R), regarding continuation of coverage upon dissolution of marriage, for a trustee or successor trustee, and for beneficiaries of a stated trust.
2012-54	Stewart	Amends Form T-11, Policy of Title Insurance (USA), to add a creditors' rights exclusion relating to the transaction, in compliance with Insurance Code §2502.006, which prohibits certain extra hazardous coverages.
2012-55	Stewart	Amends Form T-38, Mortgagee Policy of Title Insurance P-9.b.(e) Endorsement, to add a creditors' rights exclusion relating to the transaction, in compliance with Insurance Code §2502.006, which prohibits certain extra hazardous coverages.
2012-56	Stewart	Amends Endorsement Instructions III Concerning Assignments, Use Upon Assignment of Lien, to add a creditors' rights exclusion relating to the transaction, in compliance with Insurance Code §2502.006, which prohibits certain extra hazardous coverages. This endorsement also amends the exception and condition relating to delivery of the promissory note to be consistent with the exception set for in the ALTA Assignment Endorsements.
2012-57	Stewart	Amends Form T-16, Mortgagee Policy Aggregation Endorsement, to provide optional language that could provide a separate lower limit of liability for the policy in identified states in order to conform to single risk limits. The amendment also conforms the language to the current text of ALTA Endorsement 12-06.
2012-58	Stewart	Amends Form T-50, Insured Closing Service - Lender, to conform to the applicable terms of the ALTA Closing Protection Letter - Single Transaction (12/1/11).
2012-59	Stewart	Petitions to adopt Form T-23.1, Utility Access Endorsement. The endorsement provides coverage for buildings that do not have actual access to the utility services listed and checked in the endorsement.

2012-60	Stewart	Petitions to adopt Rate Rule R-11.n, Premium for Utility Access Endorsement (T-23.1). The rule sets the premium for Form T-23.1 at $100 for each policy to cover costs of review, production, discussion, accounting, and underwriting.
2012-61	Stewart	Amends Procedural Rule P-9, Endorsement of Owner or Mortgagee Policies. This endorsement provides coverage if buildings do not have access to the utility services listed and checked in the endorsement. It is limited in applicability to situations where the improvements have already been built or are under construction and can be shown on a survey of the property.
2012-62	Stewart	Amends Form T-19, Restrictions, Encroachments, Minerals Endorsement. Identification of the terms of a covenant, condition, or restrictions should be satisfied by reference to the recorded document. This endorsement separately insures against loss of priority of the lien of the Insured Mortgage or of title because of the provisions of the covenant, condition, or restriction in paragraph 2, and insures against current violations in paragraph 1.b.
2012-63	Stewart	Amends Form T-19.1, Restrictions, Encroachments, Minerals Endorsement - Owner Policy. Identification of the terms of a covenant, condition, or restrictions should be satisfied by reference to the recorded document. This endorsement separately insures against current violations in paragraph 1.a.
2012-64	Stewart	Amends Form T-4, Leasehold Owner's Policy Endorsement to conform Form T-4 to ALTA Endorsement 13-06 (Leasehold - Owner's).
2012-65	Stewart	Amends Form T-4R, Residential Leasehold Endorsement to conform Form T-4R to ALTA Endorsement 13-06 (Leasehold - Owner's).
2012-66	Stewart	Amends Form T-5, Leasehold Loan Policy Endorsement to conform Form T-5 to ALTA Endorsement 13.1-06 (Leasehold - Loan).
2012-67	Stewart	Petitions to adopt Form T-36.1, Commercial Environment Protection Lien Endorsement. This endorsement is ALTA Endorsement 8.2-06. In commercial loan transactions in other jurisdictions, an ALTA 8.2-06 Endorsement is commonly requested and issued.
2012-68	Stewart	Amends Procedural Rule P-9.b.(9) to allow use of Form T-36.1 in certain circumstances. Proposed Form T-36.1 is ALTA Endorsement 8.2-06. In commercial loan transactions in other jurisdictions, an ALTA 8.2-06 Endorsement is commonly requested and issued.

2012-69	Stewart	Petitions to adopt Form T-__, Severable Improvements Endorsement, to address situations in which an item's status as real or personal property is disputed. This endorsement affects the measure of damages available if there are title defects that cause diminution of value in certain circumstances, or certain costs incurred resulting from the defect.
2012-70	Stewart	Petitions to adopt Procedural Rule P-__, Severable Improvements Endorsement, to address situations in which an item's status as real or personal property is disputed. This endorsement affects the measure of damages available if there are title defects that cause diminution of value in certain circumstances, or certain costs incurred resulting from the defect.
2012-71	TDI	Amends Rate Rule R-11 to update references. Incorporates changes suggested by TLTA under Agenda Item 2012-10 re: R-11(D).
2012-72	TDI	Amends Procedural Rule P-9 to conform to changes made to Rate Rule R-11 in Agenda Item 2008-61; to update references; and to conform the language to other rules and forms in the Basic Manual. Incorporates changes submitted by TLTA in Agenda Item 2012-15.
2012-73	TDI	Amends Form T-1R continuation of coverage language pursuant to HB 3768 (81R) and Insurance Code §2703.101(g).
2012-74	TDI	Amends Rate Rule R-5 to correct references as a result of the Agenda Item 2008-57 paragraph rearrangement and renumbering.
2012-75	TDI	Amends Rate Rule R-21 to update the reference to Rate Rule R-3, which changed to Procedural Rule P-66 as a result of Agenda Item 2008-65, and to conform the language to other rules and forms in the Basic Manual.
2012-76	TDI	Rescinds Rate Rule R-10 as obsolete.
2012-77	TDI	Amends Rate Rule R-32 to include the reference to Form T-25.1 (Agenda Item 2008-39) adopted for Procedural Rule P-56 (Agenda Item 2008-56) and to conform the language to other rules and forms in the Basic Manual.
2012-78	TDI	Amends Procedural Rule P-16 to conform the language to other rules and forms in the Basic Manual.
2012-79	TDI	Amends Procedural Rule P-11 to conform to changes made to Property Code §12.017 by HB 3945 (81R).
2012-80	TDI	Amends Form T-2R and Addendum to incorporate previous changes and correct references.
2012-81	TDI	Amends Rate Rule R-2 to conform R-20 to the changes made to R-5 in Agenda Item 2008-57 and to correct a typographical error.

2012-82	TDI	Amends Rate Rule R-20 to conform R-20 to the changes made to R-5 in Agenda Item 2008-57.
2012-83	TDI	Amends Form T-48, Co-Insurance Endorsement, to modify signature lines.
2012-84	TDI	Amends Form T-31, Manufactured Housing Endorsement, to update language and references.
2012-85	TDI	Amends Administrative Rule L-1, Title Insurance Agent, to include requirements when a title insurance agent changes abstract plant provider or buys/sells an abstract plant, to update definitions, to streamline the process, and to conform to Procedural Rule P-28.
2012-86	TDI	Amends Administrative Rule L-3, Direct Operations License, to include requirements when a Direct Operation changes abstract plant provider or buys/sells an abstract plant.
2012-87	TDI	Amends Administrative Rule L-2, Title Insurance Escrow Officer, to incorporate the changes of HB 652 (81R) regarding escrow officer schedule bonds, and to standardize formatting.
2012-88	TDI	Amends Procedural Rule P-28 to implement provisions for Professional Training Program as set forth in HB 4338 (81R), effective 9/1/2009.
2012-89	TDI	Amends T-3 instructions to better clarify the form use and conform the language to other rules and forms in the Basic Manual.
2012-90	TDI	Amends statistical plan to conform the language to other rules and forms in the Basic Manual.
2012-91	TDI	To consider amending Procedural Rule P-35, Prohibition Against Guaranties, Affirmations, Indemnifications, and Certifications, to expressly allow or disallow affidavits from settlement agents in short sales beyond the coverage in our promulgated forms.

You may request complete copies of agenda items at:

Office of the Chief Clerk

Texas Department of Insurance (Mail Code 113-2A)

P.O. Box 149104

Austin, Texas 78714-9104

Pursuant to Insurance Code §31.02 and §2551.003, and Chapters 2501, 2703, and 2751; and the Administrative Procedure Act, TDI reserves the right to propose for adoption any rule for the regulation of title insurance at any time.

Conduct Expected at Hearing

Each page of any exhibit offered in evidence at a hearing before the commissioner, including pre-filed testimony, must be on 8 1/2" x 11" paper, numbered consecutively at the center of the bottom margin, and three-hole-punched along the left margin. The front page of each exhibit must indicate that the exhibit will be part of the record of a public hearing before the commissioner and must identify the subject of the hearing, the docket number, the date of the hearing, and the party offering the exhibit. On the front page, the party offering the exhibit must also describe the exhibit and leave a space for numbering the exhibit. For example:

Public Hearing before the Department of Insurance

Subject of Hearing:

Docket No._____

Date: _____

Party:_____

Exhibit # _____

Description of Exhibit: _____

Parties offering exhibits into evidence at the hearing should be prepared with sufficient copies of each proposed exhibit to provide all of the following:

The original exhibit, which will be tendered to the commissioner for marking and retention for the official record. A photocopy of the original exhibit will be marked and used during witness examinations.

One copy each for every other party admitted to the hearing.

Six paper copies to be filed with the Office of the Chief Clerk.

One electronic copy to be filed with the Office of the Chief Clerk.

You must submit testimony and exhibits accompanying testimony from your witnesses, including underlying work papers, to the Office of the Chief Clerk in both paper and electronic formats. Parameters, assumptions, and references to underlying data should be identifiable in the electronic exhibits. TDI must be able to access and use all information submitted in electronic format without passwords or other security devices.

Deadlines Subject to Change. All deadlines in this notice are subject to change at the commissioner's discretion to the extent permitted by statute and rule.

TRD-201200160
Sara Waitt
Acting General Counsel
Texas Department of Insurance
Filed: January 13, 2012

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 1396 "Emerald 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1396 is "EMERALD 7'S". The play style is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1396 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1396.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 7 (BLACK), LEMON SYMBOL, POT OF GOLD SYMBOL, DIAMOND SYMBOL, GRAPES SYMBOL, HORSESHOE SYMBOL, BLACK 7 SYMBOL, DOLLAR BILL SYMBOL, 7 SYMBOL (BLACK), $5.00, $10.00, $20.00, $25.00, $50.00, $100, $500, $2,000 and $77,777. The possible green play symbols are: 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 7 (GREEN) APPLE SYMBOL, ORANGE SYMBOL, WATERMELON SYMBOL, COIN SYMBOL, STAR SYMBOL, GREEN 7 SYMBOL, and CLOVER SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1396 - 1.2D

PLAY SYMBOL	CAPTION
1 (BLACK)	ONE
2 (BLACK)	TWO
3 (BLACK)	THR
4 (BLACK)	FOR
5 (BLACK)	FIV
6 (BLACK)	SIX
8 (BLACK)	EGT
9 (BLACK)	NIN
10 (BLACK)	TEN
11 (BLACK)	ELV
12 (BLACK)	TLV
13 (BLACK)	TRN
14 (BLACK)	FTN
15 (BLACK)	FFN
16 (BLACK)	SXN
18 (BLACK)	ETN
19 (BLACK)	NTN
20 (BLACK)	TWY
21 (BLACK)	TWON
22 (BLACK)	TWTO
23 (BLACK)	TWTH
24 (BLACK)	TWFR
25 (BLACK)	TWFV
7 (BLACK)	BLK SVN
1 (GREEN)	ONE
2 (GREEN)	TWO
3 (GREEN)	THR
4 (GREEN)	FOR
5 (GREEN)	FIV
6 (GREEN)	SIX
8 (GREEN)	EGT
9 (GREEN)	NIN
10 (GREEN)	TEN
11 (GREEN)	ELV
12 (GREEN)	TLV
13 (GREEN)	TRN
14 (GREEN)	FTN
15 (GREEN)	FFN
16 (GREEN)	SXN
18 (GREEN)	ETN
19 (GREEN)	NTN
20 (GREEN)	TWY
21 (GREEN)	TWON
22 (GREEN)	TWTO
23 (GREEN)	TWTH
24 (GREEN)	TWFR

25 (GREEN)	TWFV
7 (GREEN)	GRE SVN
LEMON SYMBOL (BLACK)	LEMON
POT OF GOLD SYMBOL (BLACK)	POTGOLD
DIAMOND SYMBOL (BLACK)	DIAMOND
GRAPES SYMBOL (BLACK)	GRAPES
HORSESHOE SYMBOL (BLACK)	-SHOE-
BLACK 7 SYMBOL	BLK SVN
DOLLAR BILL SYMBOL (BLACK)	BILL
APPLE SYMBOL (GREEN)	APPLE
ORANGE SYMBOL (GREEN)	ORANGE
WATERMELON SYMBOL (GREEN)	WTRMLN
COIN SYMBOL (GREEN)	COIN
STAR SYMBOL (GREEN)	STAR
GREEN 7 SYMBOL	GRE SVN
CLOVER SYMBOL (GREEN)	CLOVER
7 SYMBOL (BLACK)	SVN
$5.00 (BLACK)	FIVE$
$10.00 (BLACK)	TEN$
$20.00 (BLACK)	TWENTY
$25.00 (BLACK)	TWY FIV
$50.00 (BLACK)	FIFTY
$100 (BLACK)	ONE HUND
$500 (BLACK)	FIV HUND
$2,000 (BLACK)	TWO THOU
$77,777 (BLACK)	77THO777

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $25.00, $50.00, $100 or $500.

H. High-Tier Prize - A prize of $2,000 or $77,777.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1396), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1396-0000001-001.

K. Pack - A pack of "EMERALD 7'S" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "EMERALD 7'S" Instant Game No. 1396 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "EMERALD 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 52 (fifty-two) play symbols. GAME 1: If the player matches any of YOUR NUMBERS play symbols to either of the WINNING NUMBERS play symbols, the player wins the PRIZE for that number. If the player reveals a BLACK "7" symbol, the player wins the PRIZE for that symbol instantly. If the player reveals a GREEN "7" symbol, the player wins DOUBLE the PRIZE for that symbol. GAME 2: If the player reveals 3 BLACK "7" symbols within a SPIN, the player wins the PRIZE for that SPIN. If the

player reveals 3 GREEN "7" symbols within a SPIN, the player wins DOUBLE the PRIZE for that SPIN. GAME 3: If the player reveals three "7" symbols in any one row, column or diagonal, the player wins the PRIZE. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 52 (fifty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 52 (fifty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 52 (fifty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 52 (fifty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to seventeen (17) times on a ticket in accordance with the approved prize structure.

B. Adjacent non-winning tickets within a pack will not have identical play and prize symbol patterns. Two (2) tickets have identical play and prize symbol patterns if they have the same play and prize symbols in the same positions.

C. No ticket will ever contain more than three (3) identical non-winning prize symbols.

D. The top prize symbol will appear on every ticket unless otherwise restricted.

GAME 1

E. Non-winning prize symbols will never be the same as the winning prize symbol(s).

F. Each game will contain two (2) different "WINNING NUMBERS" play symbols.

G. The "BLACK 7" and "GREEN 7" play symbols will never appear in the "WINNING NUMBERS" play symbol spots.

H. The "GREEN 7" play symbol will only appear as dictated by the prize structure.

I. Non-winning games will contain twelve (12) different "YOUR NUMBERS" play symbols.

J. On winning games, non-winning "YOUR NUMBERS" play symbols will all be different.

K. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" play symbol (i.e. 5 and $5).

L. When comparing play symbols only consider their numerical value, as they will have the same value regardless of the color (with the exception of the "BLACK 7" and "GREEN 7" play symbols).

M. No game will have any GREEN "WINNING NUMBERS" play symbols.

N. GREEN "YOUR NUMBERS" play symbols will never match any BLACK "WINNING NUMBERS" play symbols.

O. All games will contain at least 5 GREEN "YOUR NUMBERS" numbers unless restricted by the prize structure or other parameters.

GAME 2

P. Non-winning prize symbols will never be the same as the winning prize symbol(s).

Q. No ticket will contain an occurrence of 3 (three) or more consecutive identical symbols vertically or diagonally (regardless of color - all "7" play symbols are considered the same play symbol), unless restricted by the prize structure or other parameters.

R. Non-winning play symbols will never appear more than two (2) times.

S. There will be no duplicate non-winning SPINS in a game. Duplicate non-winning SPINS are considered duplicate if the same play symbols appear in the same order in both SPINS.

T. The three (3) "BLACK 7" or "GREEN 7" play symbols will only appear within a SPIN as dictated by the prize structure.

U. All games will contain at least 5 GREEN play symbols unless restricted by the prize structure or other parameters.

V. There will be no occurrence of three (3) "7" play symbols of mixed colors in any SPIN.

GAME 3

W. No game will ever contain two (2) or more duplicate play symbols (with the exception of the "7" play symbol).

X. Non-winning games will contain two (2) "7" play symbols in at least one (1) row, column or diagonal.

Y. Non-winning games will contain at least four (4) "7" play symbols, at least one (1) of which is in the top horizontal row.

Z. Winning games will have only one occurrence of three "7" play symbols in any row, column, or diagonal.

2.3 Procedure for Claiming Prizes.

A. To claim a "EMERALD 7'S" Instant Game prize of $5.00, $10.00, $20.00, $25.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $25.00, $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "EMERALD 7'S" Instant Game prize of $2,000 or $77,777, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "EMERALD 7'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "EMERALD 7'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "EMERALD 7'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1396. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1396 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	720,000	8.33
$10	800,000	7.50
$20	120,000	50.00
$25	75,000	80.00
$50	50,000	120.00
$100	11,000	545.45
$500	600	10,000.00
$2,000	79	75,949.37
$77,777	6	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.38. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1396 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the instant game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1396, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201200168
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 13, 2012

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Texas Public Finance Authority

Request for Information for Bond Counsel

The Texas Public Finance Authority (the "Authority") is requesting qualifications and other information for bond counsel services to assist the Authority in its work as an issuer of debt for FY 2012-2014. This notice will be sent by electronic mail to law firms that have worked with the Authority in the past or that have requested that they be notified of an issuance of such a request by the Authority. Interested firms may also contact the agency directly by email at: RFP@tpfa.state.tx.us.

The Board will make its selection based upon demonstrated competence, experience, knowledge and qualifications, as well as the reasonableness of the proposed fees and any conflicts of interest or potential conflicts of interest identified. All things being equal, the Board will give first consideration to firms whose principal place of business is located in Texas. All contracts with outside counsel must be approved by the Office of Attorney General. Texas Government Code §402.0212. Hourly fees and expense reimbursements may be limited by Office of the Attorney General. The Office of the Attorney General has published proposed rules requiring Outside Counsel to pay an administrative fee for the review of invoices for services, which is required by Government Code §402.0212. You may review the proposed rules, which were published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7427).

A copy of the RFI will be available on the Authority's website on Tuesday, January 17, 2012, at www.tpfa.state.tx.us/rfp.aspx (please note that the address uses the acronym "RFP," not "RFI") and on the Electronic State Business Daily website at esbd.cpa.state.tx.us.

Proposals must be submitted by 5:00 p.m., CST, February 17, 2012, pursuant to the instructions in the Request for Information.

TRD-201200182
Susan Durso
Interim Executive Director and General Counsel
Texas Public Finance Authority
Filed: January 17, 2012

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Request for Proposal for Arbitrage Services

The Texas Public Finance Authority (the "Authority") is requesting proposals for arbitrage compliance services. It is anticipated that first term of service will begin November 1, 2012 through August 31, 2013, with one or more options to renew the contract term.

The Board will make its selection based upon demonstrated competence, experience, knowledge and qualifications, as well as the reasonableness of the proposed fees for the services to be rendered. By issuing a Request for Proposals, however, the Board has not committed itself to employ an arbitrage compliance consultant. The Authority reserves the right to negotiate individual elements of the firm's proposal and to reject any and all proposals.

A copy of the RFP will be available on the Authority's website on Tuesday, January 17, 2012, at www.tpfa.state.tx.us/RFP.aspx and on the Electronic State Business Daily website at esbd.cpa.state.tx.us.

Proposals must be submitted by 5:00 p.m., CST, February 17, 2012, pursuant to the instructions in the Request for Proposals.

TRD-201200183
Susan Durso
Interim Executive Director and General Counsel
Texas Public Finance Authority
Filed: January 17, 2012

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Public Utility Commission of Texas

Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 17, 2012, for a service provider certificate of operating authority, pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act.

Docket Title and Number: Application of Delcoms, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 40110.

Applicant intends to provide data, facilities-based, and resale telecommunications services.

Applicant's requested SPCOA geographic area consists of the entire State of Texas, except those local exchanges already served by Dell Telephone Cooperative, Inc.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by telephone at (512) 936-7120 or toll free at (888) 782-8477 no later than February 3, 2012. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 40110.

TRD-201200202
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 18, 2012

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Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 11, 2012, for an amendment to certificated service area for a service area exception within Williamson County, Texas.

Docket Style and Number: Application of Oncor Electric Delivery Company LLC to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Williamson County. Docket Number 40097.

The Application: Oncor Electric Delivery Company LLC (Oncor) filed an application for a service area exception to allow Oncor to provide service to a specific customer located within the certificated service area of Pedernales Electric Cooperative, Inc. (PEC). PEC has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than February 3, 2012, 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 comments should reference Docket Number 40097.

TRD-201200166
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 13, 2012

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on January 12, 2012, to amend a certificate of convenience and necessity for a proposed transmission line in Harris and Montgomery Counties, Texas.

Docket Style and Number: Application of CenterPoint Energy Houston Electric, LLC to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line within Harris and Montgomery Counties. Docket Number 40049.

The Application: The application of CenterPoint Energy Houston Electric, LLC for a proposed 138-kV transmission line located north of Houston, Texas in Harris and Montgomery Counties is designated as the 138-kV Springwoods Transmission Line Project. The facilities include construction of a new 138-kV double-circuit transmission line extending from an existing 138-kV transmission line corridor to a new Springwoods Substation. The proposed project will consist of a combination of double-circuit, 138-kV lattice towers, single concrete poles, and single steel poles. The total estimated cost for the project ranges from approximately $21,002,000 to $37,408,000 depending on the route chosen.

The proposed project is presented with nine alternate routes and three alternate substation site locations. Any of the routes or route segments presented in the application could, however, be approved by the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by telephone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is February 27, 2012. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at (800) 735-2989. All comments should reference Docket Number 40049.

TRD-201200191
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 17, 2012

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Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on January 9, 2012, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Brownsville Public Utilities Board (BPUB) to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County. Docket Number 40095.

The Application: The application encompasses an area of land which is singly certificated to American Electric Power Company (AEP), formerly known as Central Power & Light (CP&L), and is within the corporate limits of the City of Brownsville. BPUB received a letter request from Mr. Charles Cabler, City Manager for the City of Brownsville, requesting BPUB to provide electric utility service to property within the Palo Alto Subdivision No. 1 at Stillman Road located on an 8.6-acre tract of land. The estimated cost to BPUB to provide service to this proposed area is $11,571.49. If the application is granted, the area would be dually certificated for electric service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than February 7, 2012, 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 comments should reference Docket Number 40095.

TRD-201200167
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 13, 2012

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Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on January 12, 2012, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Brownsville Public Utilities Board (BPUB) to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County. Docket Number 40103.

The Application: The application encompasses an area of land which is singly certificated to American Electric Power Company, formerly known as Central Power & Light, and is within the corporate limits of the City of Brownsville. BPUB received a letter request from Mr. Ryad Bakalem, President of Gran-Cam, requesting BPUB to provide electric utility service to a 7.65-acre tract of land within the Lenena Subdivision. The estimated cost to BPUB to provide service to this proposed area is $50,474.03. If the application is granted, the area would be dually certificated for electric service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than February 6, 2012, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by telephone 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) at (800) 735-2989. All comments should reference Docket Number 40103.

TRD-201200192
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 17, 2012

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South East Texas Regional Planning Commission

Notice of Request for Proposals Professional Engineering Services

The South East Texas Regional Planning Commission Metropolitan Planning Organization (SETRPC-MPO) for the Jefferson-Orange-Hardin Regional Transportation Study (JOHRTS) area is preparing to issue a Call for Projects under the Congestion Mitigation and Air Quality (CMAQ) Improvement Program. As part of this process, candidate projects from local entities will be evaluated for an air quality benefit prior to consideration for inclusion into the Metropolitan Transportation Plan (MTP) and subsequently the Transportation Improvement Program (TIP). To be eligible for inclusion in the MTP and TIP, candidate projects must first go through a selection process. The JOHRTS Project Selection Process (PSP) requires that each candidate transportation project submitted for CMAQ funding include an assessment of alternatives and accurate cost estimate as part of the submittal package. A candidate project is not eligible for CMAQ funds unless it has a positive air quality benefit.

The SETRPC-MPO is soliciting written proposals from firms for their assistance to regional project sponsors in: (a) developing accurate cost estimates; (b) conducting preliminary alternatives analysis for all candidate projects; and (c) providing an engineering report discussing the safety, rehabilitation, and other project benefits according to the JOHRTS PSP guidelines. These services will be required for the period between April 2012 and October 2012. The air quality benefit evaluation to determine eligibility for funding is not included in the services being requested.

If your firm is interested and qualified to provide the requested professional engineering services for the CMAQ Improvement Program candidate projects for the JOHRTS area, please contact Bob Dickinson, Director of the SETRPC Transportation and Environmental Resources Division, via fax at (409) 729-6511 to express your interest and obtain an RFP package or download the RFP package at www.setrpc.org.

Chapter 176 of the Local Government Code requires bidders/offerors contracting or seeking to do business with SETRPC to file a conflict of interest questionnaire (CIQ). The required questionnaire is located at the Texas Ethics Commission website http://www.ethics.state.tx.us/forms/CIQ.pdf.

The CIQ must be completed and filed with a bid/proposal response. Vendors and consultants that do not include the form with the response, and fail to timely provide it, may be disqualified from consideration by SETRPC.

Proposals must be properly sealed, marked, and received no later than 2:00 PM CST on Thursday, March 1, 2012. Proposals received after this time will not be considered and will be returned to the proposer unopened. All other proposals will be publicly opened and announced at 2:30 PM CST on March 1, 2012, in the SETRPC-Transportation Conference Room at 2210 Eastex Freeway, Beaumont, TX 77703.

TRD-201200184
Bob Dickinson
Director, Transportation and Environmental Resources
South East Texas Regional Planning Commission
Filed: January 17, 2012

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Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services

Hale County and City of Plainview, through their agent the Texas Department of Transportation (TxDOT), intend to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: Hale County and City of Plainview, Hale County Airport. TxDOT CSJ No. 12MPPLAIN. Scope: Prepare an Airport Master Plan which includes, but is not limited to, information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to develop, anticipated capital needs, financial considerations, management structure and options, as well as an updated non-AGIS Airport Layout Drawing with preferred landside development. The Airport Master Plan should be tailored to the individual needs of the airport.

There is no HUB goal. TxDOT Project Manager is Daniel Benson.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal." The form may be requested from TxDOT Aviation Division, telephone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/business/projects/aviation.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT web site as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-551 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than February 21, 2012, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Kelle Chancey.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The evaluation criteria for airport planning projects can be found at http://www.txdot.gov/business/projects/aviation.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Kelle Chancey, Grant Manager, or Daniel Benson, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-201200205
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 18, 2012

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Texas Water Development Board

Notice of Hearing

The Texas Water Development Board will hold a hearing on a petition submitted by the Forestar (USA) Real Estate Group, Inc. and Crown Pine Timber 1, L.P., Inc. submitted under 31 TAC §356.44. The hearing on the petition will begin at 10:00 a.m. on Wednesday, February 8, 2012. The hearing will take place at the Norman Activity Center, 526 E. Commerce Street, Jacksonville, Texas.

A petition on the reasonableness of the Desired Future Conditions adopted by Groundwater Management Area 11 was submitted by Forestar (USA) Real Estate Group, Inc. and Crown Pine Timber 1, L.P., Inc.

Interested persons are encouraged to attend the hearing, which is not a contested case hearing. Petitioners and Respondents will each have two hours in which to present their testimony. There will be no cross examination of those making presentations and no objections to the testimony or exhibits. Testimony and evidence presented should address the claims asserted in the petitions.

Other interested persons will have 10 business days from the close of the hearing in which to submit written evidence. No time will be allotted for public comment during the hearing. Written evidence may be submitted during the 10-day period to the Board's General Counsel, Texas Water Development Board, 1700 N. Congress Ave., P.O. Box 13231, Austin, Texas 78711-3231.

TRD-201200161
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: January 13, 2012

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)*