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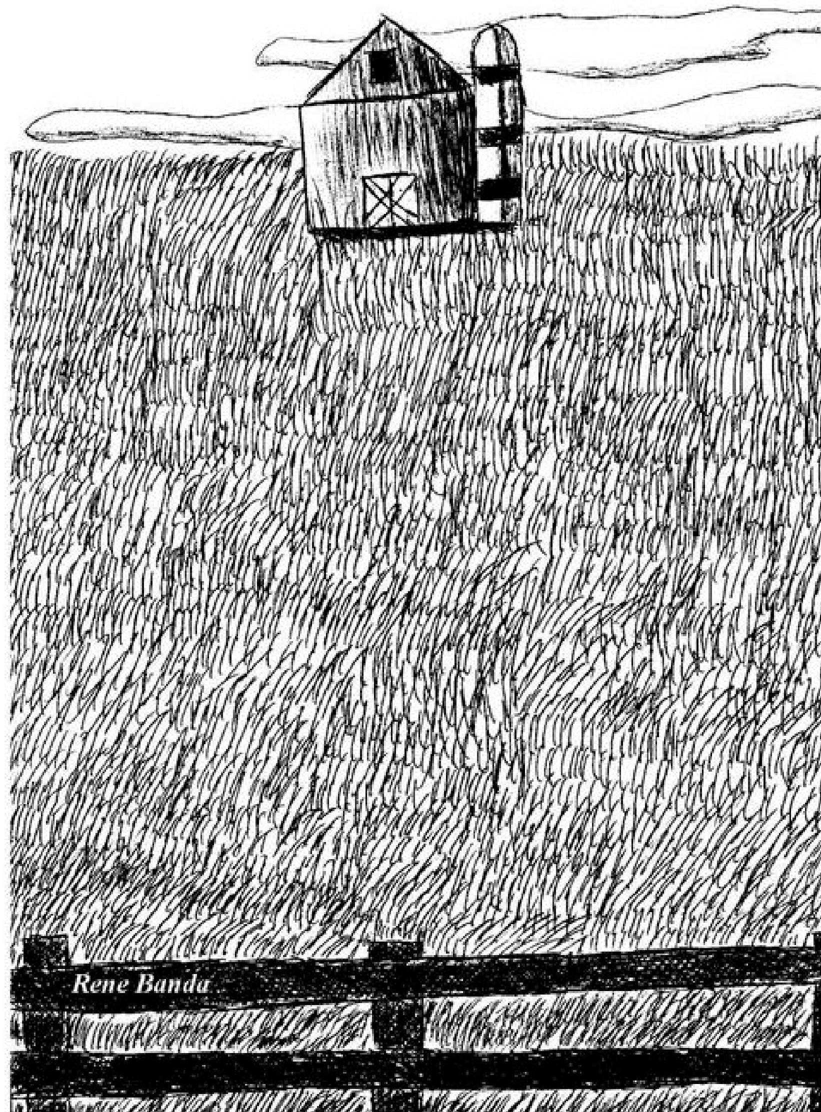

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Open Meetings

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.)

Requests for Opinions

RQ-1159-GA

Requestor:

The Honorable Tan Parker

Chair, Committee on Corrections

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Implementation of Senate Bill 1678, relating to the Major Events Trust Fund (RQ-1156-GA)

Briefs requested by November 13, 2013

RQ-1160-GA

Requestor:

The Honorable Luis V. Saenz

Cameron County District Attorney

964 East Harrison Street

Brownsville, Texas 78520

Re: Whether Family Code section 2.204(c) authorizes a justice of the peace to grant a waiver of the 72-hour waiting period after the issuance of a marriage license (RQ-1160-GA)

Briefs requested by November 18, 2013

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

TRD-201304910
Katherine Cary
General Counsel
Office of the Attorney General
Filed: October 30, 2013

♦ ♦ ♦

Troy Miller
4th Grade

PROPOSED RULES

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

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 26. FOOD AND NUTRITION DIVISION

The Texas Department of Agriculture (TDA) proposes the repeal of Chapter 26, Subchapter A, §§26.1 - 26.9, and new §26.1 and §26.2, concerning the Texas Public School Nutrition Policy (TPSNP). Changes are necessary to harmonize state rules with new federal rules and minimize duplicative and conflicting requirements on schools. The U.S. Department of Agriculture (USDA) has now published an interim final Competitive Food Rule that will apply to foods sold outside of the school reimbursable lunch and breakfast programs beginning July 1, 2014. Texas schools are well-poised to follow these regulations and do so while maintaining compliance and accuracy. However, complying with two standards that sometimes duplicate or conflict with each other will hinder schools working to maximize accountability and efficiency.

TDA sought input from stakeholders, including representatives of constituents, school districts, and other individuals or entities with an interest in child nutrition in Texas in regard to the repeal of the TPSNP. In addition, TDA Food and Nutrition experts have compared and analyzed both policies and noted that the federal rule addresses all nutritional aspects of competitive foods covered by TPSNP. The federal rule also requires that all competitive foods must meet the strict nutrition standards that apply to school meals.

Based on input received from stakeholders and a thorough analysis of the new federal rule, TDA is proposing the repeal of existing Chapter 26, Subchapter A. TDA determined that, due to the release of new strict federal standards for all foods and beverages sold in schools, repeal of the entire subchapter is more efficient and reasonable than to propose amendments for additional state requirements and will lead to less confusion on the part of school districts and the general public. All Texas schools participating in the federal child nutrition programs must comply with all federal policies defined by the U.S. Department of Agriculture's Food and Nutrition Service. As a result of local nutrition and wellness policies, school districts may have stricter nutrition guidelines.

TDA is also proposing new Subchapter A, §26.1 and §26.2, relating to Texas School Nutrition Policies. TDA sought input from stakeholders on the use of deep-fat frying in food preparation. As a result of such input, TDA will maintain the prohibition against deep-fat frying as a method of on-site preparation for foods served as part of reimbursable school meals and for foods sold or provided to students on the school campus during the school day. The sections will be applicable to Texas public, charter and private schools that participate in the National School Lunch Program or School Breakfast Program, and are proposed as new rules.

Angela Olige, administrator for food and nutrition, has determined that for the first five years the proposed repeals and new sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposal.

Ms. Olige has also has determined that for each year of the first five years the repeals and new sections are in effect the public benefit anticipated as a result of enforcing the repeals and new sections will be increased consistency and compliance. There will be no economic cost for micro-businesses, small businesses or individuals who are required to comply with the proposal.

Comments on the proposed repeals and new sections may be submitted to Angela Olige, Administrator for Food and Nutrition, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

SUBCHAPTER A. TEXAS PUBLIC SCHOOL NUTRITION POLICY

4 TAC §§26.1 - 26.9

(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 Department of Agriculture or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of Subchapter A, §§26.1 - 26.9, is proposed under the Texas Agriculture Code, §12.0025, which authorizes the department to administer the National School Lunch Program, the School Breakfast Program, and the Summer Food Service Program; and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The code affected by this proposal is the Texas Agriculture Code, Chapter 12.

§26.1. Statement of Purpose.

§26.2. Definitions.

§26.3. Elementary Schools.

§26.4. Middle/Junior High Schools.

§26.5. High Schools.

§26.6. Foods of Minimal Nutritional Value (FMNV).

§26.7. Exemptions to the Policy.

§26.8. Healthy Nutrition Environment.

§26.9. Compliance and Penalties.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 28, 2013.

TRD-201304892
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 8, 2013
For further information, please call: (512) 463-4075

SUBCHAPTER A. TEXAS SCHOOL NUTRITION POLICIES

4 TAC §26.1, §26.2

New Subchapter A, §26.1 and §26.2, are proposed under the Texas Agriculture Code, §12.0025, which authorizes the department to administer the National School Lunch Program, the School Breakfast Program, and the Summer Food Service Program; and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The code affected by this proposal is the Texas Agriculture Code, Chapter 12.

§26.1. Definitions.

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

(1) ARO--Administrative Review Official.

(2) School Day--The midnight before, to 30 minutes after the end of the official school day.

(3) School Campus--All areas of the property under the jurisdiction of the school that are accessible to students during the school day.

(4) TDA--The Texas Department of Agriculture.

§26.2. Deep Fat Fryer Prohibition.

(a) Texas public, charter and private schools that participate in the National School Lunch Program or School Breakfast Program may not utilize deep-fat frying as a method of on-site preparation for foods served as part of reimbursable school meals or for foods sold or provided to students on the school campus during the school day.

(b) If TDA determines that a school has violated this section, TDA shall disallow meal reimbursement for the day(s) on which the violation occurred and require the school to reimburse the food service account for the disallowed reimbursement.

(c) TDA may interview school staff and collect evidence to determine the longevity and severity of the violation(s).

(d) In the event of a violation of this section, a school must comply with a documented corrective action plan, approved by TDA. TDA will monitor the school to ensure compliance with the corrective action plan.

(e) Notice of Denial. A school district will be notified, in writing, when meal reimbursements are disallowed due to violations of this subchapter. The notice of denial shall state the action being taken pursuant to this section, the basis for the action, and the procedures under which the school district may request an appeal. The notice of denial may be sent to the school district by any or all of the following methods: email, fax, hand delivery, regular mail, or certified mail, return receipt requested. With respect to notice provided by certified mail, return receipt requested, in the absence of official receipt, in any form, from the United States Postal Service reflecting the date of actual or attempted delivery, the notice will be deemed received by the school district five (5) days after being sent to the school district's last known mailing address.

(f) Appeal. A school district may request an appeal for a disallowance of meal reimbursements under this section. The procedures for appeals arising out of TDA's administration of its food and nutrition programs are set out in Chapter 1, Subchapter P, Division 6, §§1.1050 - 1.1053 of this title (relating to Administrative Hearing Procedures for Conducting the Appeals of the Food and Nutrition Programs).

(g) Final order. The written determination made by the ARO is a final order and is the final administrative determination afforded to the school district. The final order shall take effect immediately upon issuance by the ARO.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 28, 2013.

TRD-201304893
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 8, 2013
For further information, please call: (512) 463-4075

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION

16 TAC §25.107

The Public Utility Commission of Texas (commission) proposes an amendment to §25.107, relating to Certification of Retail Electric Providers (REPs). The proposed amendment to the rule will clarify the definition of principal; modify the reporting requirement to extend the relevant time period for complaint history, disciplinary record, and compliance record; add an affidavit reporting requirement identifying all principals and current employees of the applicant REP that experienced a mass transition of the

REP's customers to a provider of last resort (POLR); and provide additional bases for the suspension or revocation of a REP certificate. Additionally, the proposed amendment will standardize the REP Application and Amendment form. Project Number 41615 is assigned to this proceeding.

Janis Ervin, Senior Utility Analyst, Competitive Markets Division, has determined that for each year of the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Ms. Ervin has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the amended section will be greater customer protection as there will be greater scrutiny of REP principals that were associated with REPs that previously defaulted customers to a POLR provider. The amendment clarifies the definition of principal and provides greater reporting requirements in order to protect consumers. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amended section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Ms. Ervin has also determined that for each year of the first five years the proposed amendment is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Wednesday, January 8, 2014. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed amendment. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendment. The commission will consider the costs and benefits in deciding whether to adopt the amendment. All comments should refer to Project Number 41615.

The amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2012) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, specifically, PURA §39.352, which grants the commission the authority to certify a person as a REP if the person demonstrates, among other things, the financial and technical resources to provide continuous and reliable electric service, the managerial and technical ability to supply electricity at retail in accordance with customer contracts, and the resources needed to meet customer protection requirements and which requires a person applying for certification as a REP to comply with all customer protection provisions, disclosure requirements, and marketing guidelines established by the commission and PURA; PURA §17.004, which authorizes the commission to adopt and enforce rules concerning REPs that protect customers against fraudulent, unfair, misleading, deceptive, or anticompetitive practices and that impose minimum service standards relating to customer deposits and termination of service; PURA §§17.051 - 17.053, which authorize the commission to adopt rules for REPs concerning certification, changes in ownership and control, customer service and protection, and reports; and PURA §39.101, which authorizes the commission to adopt and enforce rules that ensure retail customer protections and entitles a customer: to safe, reliable, and reasonably priced electricity, to other information or protections necessary to ensure high-quality service to customers including protections relating to customer deposits and quality of service, and to be protected from unfair, misleading, or deceptive practices, and which requires the commission to ensure that its customer protection rules provide at least the same level of customer protection against potential abuses and the same quality of service that existed on December 31, 1999.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.004, 17.051 - 17.053, 39.101, and 39.352.

§25.107. Certification of Retail Electric Providers (REPs).

(a) (No change.)

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

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

(11) Principal --An executive officer; partner; owner; director; a person with management or supervisory responsibilities; shareholder of a privately held company; shareholder of a publicly traded company who owns more than 5% of a class of equity securities; or an agent, a permanent employee, contractor, consultant, accountant, entity or person [~~A person or a member of a group of persons~~] that controls the person in question.

(12) - (15) (No change.)

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

(f) Financial requirements.

(1) - (5) (No change.)

(6) Proceeds from an irrevocable stand-by letter of credit.

(A) Proceeds from an irrevocable stand-by letter of credit provided under this subsection may be used to satisfy the following obligations of the REP, in the following order of priority:

(i) first, to pay the deposits to retail electric providers that volunteer to provide service in a mass transition event under §25.43 of this title (relating to Provider of Last Resort (POLR)) of low income customers enrolled in the system benefit fund rate reduction program pursuant to §25.454(f) of this title (relating to Rate Reduction Program);

(ii) - (vi) (No change.)

(B) (No change.)

(g) Technical and managerial requirements. A REP must have the technical and managerial resources and ability to provide continuous and reliable retail electric service to customers, in accordance with its customer contracts, PURA, commission rules, ERCOT protocols, and other applicable laws.

(1) (No change.)

(2) An applicant shall include the following in its initial application for REP certification:

(A) (No change.)

(B) Any complaint history, disciplinary record and compliance record during the ten years [60 months] immediately preceding the filing of the application regarding: the applicant; the applicant's affiliates that provide utility-like services such as telecommunications, electric, gas, water, or cable service; the applicant's principals; and any person that merged with any of the preceding persons;

(i) - (iii) (No change.)

(C) - (E) (No change.)

(F) An affidavit stating that the applicant will register with or be certified by ERCOT or other applicable independent organization and will comply with the technical and managerial requirements of this subsection; or that entities with whom the applicant has a contractual relationship are registered with or certified by the independent organization and will comply with all system rules established by the independent organization; [and]

(G) An affidavit identifying all principals and current employees of the applicant that had a relationship with a REP that experienced a mass transition of the REP's customers to POLR. If such a relationship existed, the applicant shall include in the affidavit the name of the REP that experienced a mass transition of the REP's customers to POLR and provide factual statements as to whether and, if so, how the REP that experienced a mass transition of the REP's customers to POLR settled all outstanding obligations including the return of any owed customer deposits; and

(H) [(G)] Other evidence, at the discretion of the applicant, supporting the applicant's plans for meeting requirements of this subsection.

(h) - (i) (No change.)

(j) Suspension and revocation. A certificate granted pursuant to this section is subject to amendment, suspension, or revocation by the commission for a significant violation of PURA, commission rules, or rules adopted by an independent organization. A suspension of a REP certificate requires the cessation of all REP activities associated with obtaining new customers in the state of Texas. A revocation of a REP certificate requires the cessation of all REP activities in the state of Texas, pursuant to commission order. The commission may also impose an administrative penalty on a person for a significant violation of PURA, commission rules, or rules adopted by an independent organization. The commission staff or any affected person may bring a complaint seeking to amend, suspend, or revoke a REP's certificate. Significant violations include the following:

(1) Providing false or misleading information to the commission, including a failure to disclose any information required by this section;

(2) - (13) (No change.)

(14) Failure to serve as a POLR [provider of last resort] if required to do so by the commission;

(15) - (16) (No change.)

(17) Erroneously imposing switch-holds or failing to remove switch-holds within the timeline described in §25.480 of this title (relating to Bill Payment and Adjustments); [and]

(18) Failure to comply with §25.272 of this title; and

(19) [(18)] Other significant violations, including the failure or a pattern of failures to meet the requirements of this section or other commission rules or orders.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 25, 2013.

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Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: December 8, 2013
For further information, please call: (512) 936-7223

TITLE 22. EXAMINING BOARDS

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §361.1

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §361.1, which sets forth the definitions of certain terms used in Title 8, Chapter 1301 of the Texas Occupations Code and the Board's administrative rules.

Background and Justification

The proposed amendments to §361.1 are due to statutory changes brought about by the passage of House Bill 2062 (HB 2062) and Senate Bill 162 (SB 162), during the Regular Session of the 83rd Texas Legislature (2013).

Section-by-Section Summary

HB 2062 amends Texas Occupations Code §1301.053(a) to require a license for the treatment of rainwater to supply a plumbing fixture or appliance. The definition of plumbing in §361.1(38), now renumbered as §361.1(41), is amended to include the treatment of rainwater to supply a plumbing fixture or appliance.

HB 2062 amends the term "water supply protection specialist" to include a person who holds an endorsement by the Board to engage in the treatment of rainwater. The term "water supply protection specialist" in §361.1(55), now renumbered as §361.1(58), is amended accordingly.

HB 2062 amends Texas Occupations Code §1301.002(12) which defines the term "water treatment" to exclude the treatment of rainwater or the repair of systems for rainwater harvesting. Section 361.1(56) now renumbered as §361.1(59) is amended to reflect this statutory change.

SB 162 defines "military service member," "military spouse," and "military veteran." These terms are incorporated in §361.1 as new definitions and are numbered as new §361.1(32), (33), and (34).

Fiscal Note

Lisa G. Hill, Executive Director, has determined that for the first five-year period the proposed amendments are in effect, there will be no additional cost to state or local governments as a result of enforcing or administering the amended rule. Ms. Hill has determined that there will be no economic cost to individuals who would otherwise be subject to this rule. Ms. Hill has also determined there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in effect between small and large businesses.

Public Benefit

Ms. Hill has concluded that for each year of the first five years the amendments are in effect, the anticipated public benefit will be a more clear and precise rule.

Public Comment

The Board invites comments on the proposed amendments from any member of the public. Written comments should be mailed to Lisa Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200; faxed to her attention at (512) 450-0637; or sent by email to info@tsbpe.state.tx.us.

Statutory Authority

The amendments to §361.1 are proposed under and affect Chapter 1301 of the Texas Occupations Code. Texas Occupations Code §1301.251 requires the Board to adopt and enforce rules necessary to administer Chapter 1301 of the Texas Occupations Code.

No other statute, article, or code is affected by the proposed amendments.

§361.1. Definitions.

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

(1) Act--The Plumbing License Law, Title 8, Chapter 1301, Occupations Code, as amended.

(2) Administrative Act--The Administrative Procedure Act, the Texas Government Code, §2001.001, et seq, as amended.

(3) Administrator--The Board-appointed executive director of all Board staff.

(4) Adopted Plumbing Code--A plumbing code, including a fuel gas code adopted by the Board or a political subdivision, including any city, town, village, municipality, public water system, municipal utility district, in compliance with §1301.255 and §1301.551 of the Plumbing License Law.

(5) Advisory Committee--A Board appointed committee subject to §1301.258 of the Plumbing License Law, §361.12 of the Board Rules and Chapter 2110 of the Texas Government Code, of which the primary function is to advise the Board.

(6) Appliance Connection--An appliance connection procedure using only a code approved appliance connector that does not require cutting into or altering the existing plumbing system.

(7) Applicant--An individual seeking to obtain a License, Registration or Endorsement.

(8) Board--The Texas State Board of Plumbing Examiners.

(9) Board Member--An individual appointed by the governor and confirmed by the senate to serve on the Board.

(10) Building Sewer--The part of the sanitary drainage system outside of the building, which extends from the end of the building drain to a public sewer, private sewer, private sewage disposal system, or other point of sewage disposal.

(11) Certificate of Insurance--A form submitted to the Board certifying that the Responsible Master Plumber carries insurance coverage as specified in §1301.522 of the Plumbing License Law and §367.3 of the Board Rules.

(12) Chief Examiner--An employee of the Board who, under the direction of the Administrator, coordinates and supervises the activities of the Board examinations and registrations.

(13) Chief Field Representative--The Director of Enforcement who is an employee of the Board who meets the definition of "Field Representative" and, under the direction of the Executive Director, coordinates and supervises the activities of the Field Representatives.

(14) Cleanout--A fitting, other than a p-trap, approved by the adopted plumbing code and designed to be installed in a sanitary drainage system to allow easy access for cleaning the sanitary drainage system.

(15) Code-Approved Appliance Connector--A semi-rigid or flexible assembly of tube and fittings approved by the adopted plumbing code and designed for connecting an appliance to the existing plumbing system without cutting into or altering the existing plumbing system.

(16) Code Approved Existing Opening--For the purposes of drain cleaning activities described in §1301.002(3) of the Plumbing License Law, a code approved existing opening is any existing cleanout fitting, inlet of any p-trap or fixture, or vent terminating into the atmosphere that has been approved and installed in accordance with the adopted plumbing code.

(17) Complaint--A written charge alleging a violation of state law, Board rules or orders, local codes or ordinances, or standards of competency; or the presence of fraud, false information, or error in the attempt to obtain a License, Registration or Endorsement.

(18) Contested Case--A proceeding, including but not limited to rulemaking, licensing and registering, in which the agency determines the legal right, duties, and privileges of a party after allowing an opportunity for adjudicative hearing of the case.

(19) Continuing Professional Education--Board-approved courses/programs required for a licensee or registrant with an endorsement to renew his or her License, Registration and/or Endorsement.

(20) Direct Supervision--

(A) The on-the-job oversight and direction of a Registered Plumber's Apprentice performing plumbing work by a licensed plumber who is fulfilling his or her responsibility to the client and employer by ensuring the following:

(i) that the plumbing materials for the job are properly prepared prior to assembly according to the material manufacturers recommendations and the requirements of the adopted plumbing code; and

(ii) that the plumbing work for the job is properly installed to protect health and safety by meeting the requirements of the adopted plumbing code and all requirements of local and state ordinances, regulations and laws.

(B) The on-the-job oversight and direction by a licensed Plumbing Inspector of an individual training to qualify for the Plumbing Inspector Examination.

(C) For plumbing work performed only in the construction of a new one-family or two-family dwelling in an unincorporated area of the state, a Responsible Master Plumber is not required to provide for the continuous or uninterrupted on-the-job oversight of a Registered Plumber's Apprentice's work by a licensed plumber, however, the Responsible Master Plumber must:

(i) provide for the training and management of the Registered Plumber's Apprentice by a licensed plumber;

(ii) provide for the review and inspection of the Registered Plumber's Apprentice's work by a licensed plumber to ensure compliance with subparagraph (A)(i) and (ii) of this paragraph; and

(iii) upon request by the Board, provide the name and plumber's license number of the licensed plumber who is providing on-the-job training and management of the Registered Plumber's Apprentice and who is reviewing and inspecting the Registered Plumber's Apprentice's work on the job, or the name and plumber's license number of the licensed plumber who trained and managed the Registered Plumber's Apprentice and who reviewed and inspected the Registered Plumber's Apprentice's work on a job.

(21) Drain Cleaner--An individual who has completed at least 4,000 hours working under the supervision of a Responsible Master Plumber as a registered Drain Cleaner-Restricted Registrant, who has fulfilled the requirements of and is registered with the Board, and who installs cleanouts and removes and resets p-traps to eliminate obstructions in building drains and sewers.

(22) Drain Cleaner-Restricted Registrant--An individual who has worked as a registered Plumber's Apprentice under the supervision of a Responsible Master Plumber, who has fulfilled the requirements of and is registered with the Board, and who clears obstructions in sewer and drain lines through any code-approved existing opening.

(23) Endorsement--A certification issued by the Board in addition to the Master, Plumbing Inspector, or Journeyman Plumber License.

(24) Field Representative--For the purposes of the Board Rules:

(A) "Field Representative" means an employee of the Board who is:

(i) knowledgeable of this Act and of municipal ordinances relating to plumbing;

(ii) qualified by experience and training in good plumbing practice and compliance with this Act;

(iii) designated by the Board to assist in the enforcement of this Act and rules adopted under this Act; and

(iv) licensed by the Board as a plumber.

(B) A field representative may:

(i) make on-site license and registration checks to determine compliance with this Act;

(ii) investigate consumer complaints filed under §1301.303 of the Plumbing License Law;

(iii) assist municipal plumbing inspectors in cooperative enforcement of this Act; and

(iv) issue citations as provided by §1301.502 of the Plumbing License Law.

(25) Journeyman Plumber--An individual licensed under this Act who has met the qualifications for registration as a Plumber's Apprentice or for licensure as a Tradesman Plumber-Limited Licensee, who has completed at least 8,000 hours working under the supervision of a Responsible Master Plumber, who supervises, engages in, or works at the actual installation, alteration, repair, service and renovating of plumbing, and who has successfully fulfilled the examinations and requirements of the Board.

(26) License--A document issued by the Board to certify that the named individual fulfilled the requirements of the Act and of the Board Rules to hold a license issued by the Board.

(27) Licensing and Registering--The process of granting, denying, renewing, revoking, or suspending a License, Registration or Endorsement.

(28) Maintenance Man or Maintenance Engineer--An employee, as opposed to an independent contractor, who performs plumbing maintenance work incidental to and in connection with other duties. "Incidental to and in connection with" includes the repair, maintenance and replacement of existing potable water piping, existing sanitary waste and vent piping, existing plumbing fixtures and existing water heaters. "Incidental to and in connection with" does not include cutting into fuel gas plumbing systems and the installation of gas fueled water heaters. An individual who erects, builds, or installs plumbing not already in existence may not be classified as a maintenance man or maintenance engineer. Plumbing work performed by a maintenance man or maintenance engineer is not exempt from state law and municipal rules and ordinances regarding plumbing codes, plumbing permits and plumbing inspections. Such maintenance individuals shall not engage in plumbing work for the general public.

(29) Master Plumber--An individual licensed under this Act who is skilled in the design, planning, superintending, and the practical installation, repair, and service of plumbing, who is knowledgeable about the codes, ordinances, or rules and regulations governing those matters, who alone, or through an individual or individuals under his supervision, performs plumbing work, and who has successfully fulfilled the examinations and requirements of the Board.

(30) Medical Gas Piping Endorsement--

(A) A document entitling the holder of a Master or Journeyman Plumber License to install piping that is used solely to transport gases used for medical purposes including, but not limited to oxygen, nitrous oxide, medical air, nitrogen, medical vacuum.

(B) A document entitling the holder of a Plumbing Inspector License to inspect medical gas and vacuum system installations.

(31) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement--

(A) A document entitling the holder of a Master or Journeyman Plumber License to install a multipurpose residential fire protection sprinkler system in a one or two family dwelling.

(B) A document entitling the holder of a Plumbing Inspector License to inspect a multipurpose residential fire protection sprinkler system.

(32) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(33) Military spouse--A person who is married to a military service member who is currently on active duty.

(34) Military veteran--A person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(35) [~~(32)~~] One Family Dwelling--A detached structure designed for the residence of a single family that does not have the characteristics of a multiple family dwelling, and is not primarily designed for transient guests or for providing services for rehabilitative, medical, or assisted living in connection with the occupancy of the structure.

(36) [~~(33)~~] Party--Each person named or admitted in association with an action as a party.

(37) [~~(34)~~] Paid Directly--As related to §1301.255(e) of the Plumbing License Law, "paid" and "directly" have the common meanings and "paid directly" means that compensation for plumbing inspections must be paid by the political subdivision to the individual Licensed Plumbing Inspector who performed the plumbing inspections or the plumbing inspection business which utilized the plumbing inspector to perform the inspections.

(38) [~~(35)~~] Person--For the purposes of the Board Rules only, a person means an individual, partnership, corporation, limited liability company, association, governmental subdivision or public or private organization of any character other than an agency.

(39) [~~(36)~~] Petitioner--A person asking the Board to adopt a rule.

(40) [~~(37)~~] Plumber's Apprentice--Any individual other than a Master Plumber, Journeyman Plumber, or Tradesman Plumber-Limited Licensee who, as his or her principal occupation, is engaged in learning and assisting in the installation of plumbing, is registered by the Board, and works under the supervision of a licensed Responsible Master Plumber and the direct supervision of a licensed plumber.

(41) [~~(38)~~] Plumbing--All piping, fixtures, appurtenances, and appliances, including disposal systems, drain or waste pipes, multipurpose residential fire protection sprinkler systems or any combination of these that: supply, distribute, circulate, recirculate, drain, or eliminate water, gas, medical gasses and vacuum, liquids, and sewage for all personal or domestic purposes in and about buildings where persons live, work, or assemble; connect the building on its outside with the source of water, gas, or other liquid supply, or combinations of these, on the premises, or the water main on public property; and carry waste water or sewage from or within a building to the sewer service lateral on public property or the disposal or septic terminal that holds private or domestic sewage. The installation, repair, service, maintenance, alteration, or renovation of all piping, fixtures, appurtenances, and appliances on premises where persons live, work, or assemble that supply gas, medical gasses and vacuum, water, liquids, or any combination of these, or dispose of waste water or sewage. Plumbing includes the treatment of rainwater to supply a plumbing fixture or appliance.

(42) [~~(39)~~] Plumbing Company--A person, as defined in the Board Rules, who engages in the plumbing business.

(43) [~~(40)~~] Plumbing Inspection--Any of the inspections required in §1301.255 and §1301.551 of the Plumbing License Law, including any check of multipurpose residential fire protection sprinkler systems, pipes, faucets, tanks, valves, water heaters, plumbing fixtures and appliances by and through which a supply of water, gas, medical gasses or vacuum, or sewage is used or carried that is performed on behalf of any political subdivision, public water supply, municipal utility district, town, city or municipality to ensure compliance with the adopted plumbing and gas codes and ordinances regulating plumbing.

(44) [~~(41)~~] Plumbing Inspector--Any individual who is employed by a political subdivision or state agency, or who contracts as an independent contractor with a political subdivision or state agency, for the purpose of inspecting plumbing work and installations in connection with health and safety laws, ordinances, and plumbing and gas codes, who has no financial or advisory interests in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Board.

(45) [~~(42)~~] Pocket Card--A card issued by the Board which certifies that the holder has a Master Plumber License, Journeyman Plumber License, Tradesman Plumber-Limited License, Plumbing Inspector License, Residential Utilities Installer Registration, Drain Cleaner Registration, Drain Cleaner-Restricted Registration or a Plumber's Apprentice Registration.

(46) [~~(43)~~] Political Subdivision--A political subdivision of the State of Texas that includes a:

(A) city;

(B) county;

(C) school district;

(D) junior college district;

(E) municipal utility district;

(F) levee improvement district;

(G) drainage district;

(H) irrigation district;

(I) water improvement district;

(J) water control improvement district;

(K) water control preservation district;

(L) freshwater supply district;

(M) navigation district;

(N) conservation and reclamation district;

(O) soil conservation district;

(P) communication district;

(Q) public health district;

(R) river authority; and

(S) any other governmental entity that:

(i) embraces a geographical area with a defined boundary;

(ii) exists for the purpose of discharging functions of government; and

(iii) possesses authority for subordinate self government through officers selected by it.

(47) [~~(44)~~] P-Trap--A fitting connected to the sanitary drainage system for the purpose of preventing the escape of sewer gasses from the sanitary drainage system and designed to be removed to allow for cleaning of the sanitary drainage system. For the purposes of drain cleaning activities described in §1301.002(2) of the Plumbing License Law, a p-trap includes any integral trap of a water closet, bidet, or urinal.

(48) [(45)] Public Water System--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals, but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater, at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if the individual lives in, uses as the individual's place of employment, or works in a place to which drinking water is supplied from the water system.

(49) [(46)] Regularly Employed--Steadily, uniformly, or habitually working in an employer-employee relationship with a view of earning a livelihood, as opposed to working casually or occasionally.

(50) [(47)] Residential Utilities Installer--An individual who has completed at least 2,000 hours working under the supervision of a Responsible Master Plumber as a registered Plumber's Apprentice, who has fulfilled the requirements of and is registered with the Board, and who constructs and installs yard water service piping for one family or two family dwellings and building sewers.

(51) [(48)] Respondent--A person charged in a complaint filed with the Board.

(52) [(49)] Responsible Master Plumber--A person licensed as a Master Plumber who:

(A) allows the person's Master Plumber license to be used by only one plumbing company for the purpose of offering and performing plumbing work under the person's Master Plumber license;

(B) is authorized to obtain permits for plumbing work; assumes responsibility for plumbing work performed under the person's license;

(C) has submitted a certificate of insurance as required by §1301.3576 of the Plumbing License Law and §367.3 of the Board Rules; and

(D) has completed and submitted a certificate of completion of a training program as required by §1301.3576 of the Plumbing License Law and §363.13 of the Board Rules.

(53) [(50)] Rule--An agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the agency and not affecting private rights or procedures.

(54) [(51)] Supervision--The general on-the-job or off-the-job oversight, direction and management of plumbing work and individuals performing plumbing work by a Responsible Master Plumber who is fulfilling his or her responsibility to the client and employer by ensuring the following:

(A) that the operations of the plumbing company that has secured his or her services meets the requirements of all applicable local and state ordinances, regulations and laws; and

(B) that the plumbing work performed under his or her License will protect health and safety by meeting the requirements of the adopted plumbing code and all requirements of local and state ordinances, regulations and laws.

(55) [(52)] System--An interconnection between one or more public or private end users of water, gas, sewer, or disposal systems that could endanger public health if improperly installed.

(56) [(53)] Tradesman Plumber-Limited Licensee--An individual who has completed at least 4,000 hours working under the direct supervision of a Journeyman or Master Plumber as a registered Plumber's Apprentice, who has passed the required examination and fulfilled the other requirements of the Board, who constructs and installs plumbing for one family or two family dwellings under the supervision of a Responsible Master Plumber, and who has not met or attempted to meet the qualifications for a Journeyman Plumber License.

(57) [(54)] Two Family Dwelling--A detached structure with separate means of egress designed for the residence of two families ("duplex") that does not have the characteristics of a multiple family dwelling and is not primarily designed for transient guests or for providing services for rehabilitative, medical, or assisted living in connection with the occupancy of the structure.

(58) [(55)] Water Supply Protection Specialist--A Master or Journeyman Plumber who holds the Water Supply Protection Specialist Endorsement issued by the Board to engage in customer service inspections, as defined by rule of the Texas Commission on Environmental Quality, and the installation, service, and repair of plumbing associated with the treatment, use, and distribution of rainwater to supply a plumbing fixture or appliance.

(59) [(56)] Water Treatment--A business conducted under contract that requires experience in the analysis of water, including the ability to determine how to treat influent and effluent water, to alter or purify water, and to add or remove a mineral, chemical, or bacterial content or substance. The term also includes the installation and service of potable water treatment equipment in public or private water systems and making connections necessary to complete installation of a water treatment system. The term does not include treatment of rainwater or the repair of systems for rainwater harvesting.

(60) [(57)] Work as a Master Plumber--To act as and assume the responsibilities of a Responsible Master Plumber, as defined in this section.

(61) [(58)] Yard Water Service Piping--The building supply piping carrying potable water from the water meter or other source of water supply to the point of connection to the water distribution system at the building.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2013.

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Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Proposed date of adoption: January 13, 2014
For further information, please call: (512) 936-5224

22 TAC §361.6

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §361.6, which specifies certain fees charged by the Board, including fees for initial applications for licenses, endorsements, and registrations, as well as examinations, renewals and late renewal fees.

Background and Justification

The proposed amendments to §361.6 are necessary in order for the Board to utilize revenue, as provided in Article VIII and Article IX of the General Appropriations Act (Senate Bill 1, 83rd Legislature, Regular Session), which is contingent upon the Board assessing fees sufficient to generate $682,394 in additional revenue, during the 2014-2015 biennium. Under the current fee structure, the Board may not generate enough revenue during the 2014-2015 biennium to meet the amount necessary for the Board to access the contingent revenue.

Senate Bill 1 provides additional funding to the Board contingent upon the Board assessing fees sufficient to generate $682,394 in additional revenue, during the 2014-2015 biennium. The fees for initial licenses and registrations in §361.6(a)(1)(A), (B), (C), (J), and (K) are amended to $420, $75, $40, $35, and $15 respectively. The fees for renewals in §361.6(a)(3)(A), (B), (C), (K), (L) and (M) are amended to $420, $75, $40, $75, $35, and $15 respectively.

In addition, and as required by §1301.403(e) of the Plumbing License Law, individuals who fail to renew any of the above stated licenses or registrations by the annual renewal date of the license or registration must pay an additional late fee in order to renew a license. Individuals who renew an expired license or registration within 90 days after the expiration of the license or registration, will pay an additional increased late renewal fee equal to one-half of the renewal fee. Individuals who renew an expired license or registration more than 90 days after the expiration of the license or registration, will pay an additional increased late renewal fee equal to the renewal fee. The additional fees for late renewal in §361.6(a)(4)(A), (i)(I), (i)(II), (ii)(I), (ii)(II), (vi)(I), (vi)(II), (x)(I), (x)(II), (xii)(I), (xii)(II), (xiii)(I) and (xiii)(II) are amended to $210, $420, $37.50, $75, $20, $40, $37.50, $75 $17.50, $35, $7.50, and $15 respectively.

Fiscal Note

Lisa G. Hill, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no additional cost to state or local governments as a result of enforcing or administering the amended section. Ms. Hill has determined that there will be a fiscal impact to individuals who wish to obtain or renew licenses or registrations. The Board licenses individuals and not businesses. Only individuals may hold a plumbing license, endorsement, or registration and be required to pay examination, license, endorsement, registration, and renewal fees. Because the Board does not license businesses or require businesses to pay fees, the rule amendments will have no mandated adverse economic impact on small businesses. Ms. Hill has also determined there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in effect between small and large businesses.

Public Benefit

The public benefit anticipated as a result of adopting these amendments will be the Board's ability to better protect the health, safety, and welfare of the citizens by utilizing additional funding for administration and enforcement of the Plumbing License Law and Board Rules. Administration and enforcement of the Plumbing License Law includes the investigation of consumer complaints, job-site compliance checks, and pursuing action against persons who choose to endanger the health, safety, and welfare of the citizens by violating the Plumbing License Law and Board Rules.

Public Comment

The Board invites comments on the proposed amendments from any member of the public. Written comments should be mailed to Lisa Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200; faxed to her attention at (512) 450-0637; or sent by email to info@tsbpe.state.tx.us.

Statutory Authority

The amendments to §361.6 are proposed under and affect Title 8, Chapter 1301, Texas Occupations Code ("Plumbing License Law" or "Act"), §§1301.251, 1301.253, and 1301.403 and the General Appropriation Act, Article VIII, Board of Plumbing Examiners (Senate Bill 1, 83rd Legislature, Regular Session). Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.253 requires the Board to set fee amounts that are reasonable and necessary to cover the costs of administering the Act. Section 1301.403 sets forth the requirements for renewal of a license. The General Appropriations Act, Article VIII and Article IX (Senate Bill 1, 83rd Legislature, Regular Session), provides additional funding to the Board contingent upon the Board assessing fees sufficient to generate $682,394 in additional revenue, during the 2014-2015 biennium.

No other statute, article, or code is affected by the proposed amendments.

§361.6. Fees.

(a) The Board has established the following fees:

(1) Initial Licenses, Endorsements and Registrations

(A) Responsible Master Plumber--$420 [~~$246~~];

(B) Master Plumber license--$75 [~~$246~~];

(C) Journeyman Plumber license--$40 [~~$43~~];

(D) Medical gas installation endorsement (Master)--$55;

(E) Medical gas installation endorsement (Journeyman)--$14;

(F) Medical gas installation endorsement (Inspector)--$27.50;

(G) Plumbing inspector license--$55;

(H) Water supply protection specialist endorsement (Journeyman)--$14;

(I) Water supply protection specialist endorsement (Master)--$55;

(J) Tradesman Plumber-Limited License--$35 [~~$39~~];

(K) Plumber's Apprentice Registration/Application--$15 [~~$19~~];

(L) Residential Utilities Installer Registration/Application--$18

(M) Drain Cleaner Registration/Application--$18;

(N) Drain Cleaner-Restricted Registration/Application--$18;

(O) Multipurpose Residential Fire Protection Sprinkler Specialist endorsement (Master)--$55;

(P) Multipurpose Residential Fire Protection Sprinkler Specialist endorsement (Journeyman)--$14;

(Q) Multipurpose Residential Fire Protection Sprinkler Specialist endorsement (Inspector)--$27.50.

(2) Examinations

(A) Master Plumber examination--$175;

(B) Journeyman Plumber examination--$40;

(C) Medical gas installation endorsement (Master)--$80;

(D) Medical gas installation endorsement (Journeyman)--$27;

(E) Medical Gas installation endorsement (Inspector)--$40;

(F) Plumbing inspector examination--$55;

(G) Water supply protection specialist endorsement (Journeyman)--$27;

(H) Water supply protection specialist endorsement (Master)--$80;

(I) Tradesman Plumber-Limited Licensee--$36;

(J) Multipurpose Residential Fire Protection Sprinkler Specialist endorsement (Master)--$80;

(K) Multipurpose Residential Fire Protection Sprinkler Specialist endorsement (Journeyman)--$27;

(L) Multipurpose Residential Fire Protection Sprinkler Specialist endorsement (Inspector)--$40.

(3) Renewals

(A) Responsible Master Plumber--$420 [~~$246~~];

(B) Master Plumber license--$75 [~~$246~~];

(C) Journeyman Plumber license--$40 [~~$43~~];

(D) Medical gas installation endorsement (Master)--$55;

(E) Medical gas installation endorsement (Journeyman)--$14;

(F) Medical gas installation endorsement (Inspector)--$27.50;

(G) Plumbing inspector license--$55;

(H) Water supply protection specialist endorsement (Journeyman)--$14;

(I) Water supply protection specialist endorsement (Master)--$55;

(J) Plumbing Inspector with a Master and/or Journeyman License--$55;

(K) Master Plumber with Journeyman Plumber License--$75 [~~$246~~];

(L) Tradesman Plumber-Limited License--$35 [~~$39~~];

(M) Plumber's Apprentice Registration--$15 [~~$19~~];

(N) Residential Utilities Installer Registration--$18;

(O) Drain Cleaner Registration--$18

(P) Drain Cleaner-Restricted Registration--$18;

(Q) Multipurpose Residential Fire Protection Sprinkler Specialist endorsement (Master)--$55;

(R) Multipurpose Residential Fire Protection Sprinkler Specialist endorsement (Journeyman)--$14

(S) Multipurpose Residential Fire Protection Sprinkler Specialist endorsement (Inspector)--$27.50.

(4) Other fees

(A) Late renewal

(i) Responsible Master Plumber:

(I) less than 90 days--one-half renewal fee--$210 [~~$123~~];

(II) more than 90 days--renewal fee--$420 [~~$246~~];

(ii) Master Plumber:

(I) less than 90 days--one-half renewal fee--$37.50 [~~$123~~];

(II) more than 90 days--renewal fee--$75 [~~$246~~];

(iii) Medical gas installation endorsement (Master):

(I) less than 90 days--one half renewal fee--$27.50;

(II) more than 90 days--renewal fee--$55;

(iv) Medical gas installation endorsement (Journeyman):

(I) less than 90 days--one half renewal fee--$7;

(II) more than 90 days--renewal fee--$14;

(v) Medical gas installation endorsement (Inspector):

(I) less than 90 days--one half renewal fee--$13.75;

(II) more than 90 days--renewal fee--$27.50

(vi) Journeyman Plumber:

(I) less than 90 days--one-half renewal fee--$20 [~~$21.50~~];

(II) more than 90 days--renewal fee--$40 [~~$43~~];

(vii) Water supply protection specialist (Journeyman):

(I) less than 90 days--one half renewal fee--$7;

(II) more than 90 days--renewal fee--$14;

(viii) Water supply protection specialist (Master):

(I) less than 90 days--one half renewal fee--$27.50;

(II) more than 90 days--renewal fee--$55;

(ix) Plumbing Inspector:

(I) less than 90 days--one half renewal fee--$27.50;

(II) more than 90 days--renewal fee--$55;

(x) Master Plumber with Journeyman Plumber:

(I) less than 90 days--one half renewal fee--$37.50 [~~$123~~];

(II) more than 90 days--renewal fee--$75 [~~$246~~];

(xi) Plumbing Inspector with Master and/or Journeyman Plumber:

(I) less than 90 days--one half renewal fee--$27.50;

(II) more than 90 days--renewal fee--$55;

(xii) Tradesman Plumber-Limited License:

(I) less than 90 days--one half renewal fee--$17.50 [~~$19.50~~];

(II) more than 90 days--renewal fee--$35 [~~$39~~];

(xiii) Plumber's Apprentice Registration:

(I) less than 90 days--one half renewal fee--$7.50 [~~$9.50~~];

(II) more than 90 days--renewal fee--$15 [~~$19~~];

(xiv) Residential Utilities Installer Registration:

(I) less than 90 days--one half renewal fee--$9;

(II) more than 90 days--renewal fee--$18;

(xv) Drain Cleaner Registration:

(I) less than 90 days--one half renewal fee--$9;

(II) more than 90 days--renewal fee--$18;

(xvi) Drain Cleaner-Restricted Registration:

(I) less than 90 days--one half renewal fee--$9;

(II) more than 90 days--renewal fee--$18;

(xvii) Multipurpose Residential Fire Protection Sprinkler Specialist endorsement (Master):

(I) less than 90 days--one half renewal fee--$27.50;

(II) more than 90 days--renewal fee--$55;

(xviii) Multipurpose Residential Fire Protection Sprinkler Specialist endorsement (Journeyman):

(I) less than 90 days--one half renewal fee--$7;

(II) more than 90 days--renewal fee--$14;

(xix) Multipurpose Residential Fire Protection Sprinkler Specialist endorsement (Inspector):

(I) less than 90 days--one half renewal fee--$13.75;

(II) more than 90 days--renewal fee--$27.50.

(B) Instructor Certification Training (Per Day)--$100.

(C) Duplicate license or registration--$10.

(D) Returned check--$25.

(E) Fees for provisional licenses issued under §1301.358 of the Plumbing License Law are equal to the initial license fees established in paragraph (1) of this subsection.

(b) Methods of payment

(1) Fees paid electronically through the Texas Online website, which may be accessed from the Texas State Board of Plumbing Examiners' website, may be made in the form of credit card or check.

(2) Fees paid by mail or in person may be made in the form of money order, cashier's check, personal check, business check, or the exact amount of cash (cash payments by mail are not recommended).

(3) An individual shall pay the appropriate fee prior to the time of examination. For License, Registration, Endorsement, and renewal, the appropriate fee shall be paid prior to issuance of the License, Registration, Endorsement, or renewal.

(4) The Board, under any special circumstances it finds appropriate, may:

(A) waive any requirements concerning the method or timing of payment of any fee;

(B) refund any fee; or

(C) waive payment of any fee not required by statute.

(5) Any fee paid for a license, endorsement or registration which has been denied or revoked due to a criminal conviction under §363.2 of this title (relating to Consequences to the Applicant With Criminal Conviction) or any violation of the Plumbing License Law or Board Rules shall not be refunded.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2013.

TRD-201304784
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Proposed date of adoption: January 13, 2014
For further information, please call: (512) 936-5224

CHAPTER 363. EXAMINATION AND REGISTRATION

22 TAC §363.1

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §363.1, concerning qualifications and clarification of code references.

Background and Justification

Subsection (f)(3) is amended by the renumbering and the replacement of (3) with (4) thereby amending (4)(E)(i) to reflect that the International Conference of Building Officials (ICBO), Building Officials and Code Administrators International (BOCA) and the Southern Building Code Congress International (SBCCI) have been incorporated into the International Code Council (ICC).

Amended and newly created subsection (f)(3) adds a qualifier for applicants wishing to take the Plumbing Inspector examination mandating that each applicant obtain 24 hours of Board approved training as a Water Supply Protection Specialist prior to being examined as a Plumbing Inspector.

Subsection (g)(2) is amended so that it correctly cites the title of the latest edition of the National Fire Protection Association's Health Care Facilities Code.

Subsection (i) has been amended with the elimination of paragraph (2) and the renumbering of paragraph (3) to paragraph (2) adding greater clarity by specifically including rainwater harvesting as part of the Board approved teaching curriculum for the Water Supply Protection Specialist endorsement.

Subsection (n) has been added due to statutory changes brought about by the passage of Senate Bill 162 (SB 162) and House Bill 2028 (HB 2028) during the Regular Session of the 83rd Texas Legislature (2013). SB 162 and HB 2028 require that state agencies that issue licenses shall, with respect to an applicant who is a military service member or military veteran, credit verified military service, training, or education toward the licensing requirements, other than an examination requirement. Pursuant to SB 162, the statutory change does not apply to an applicant who holds a restricted license issued by another jurisdiction or has an unacceptable criminal history according to the applicable law of the agency.

Fiscal Note

Lisa G. Hill, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no additional cost to state or local governments as a result of enforcing or administering the amended section. Ms. Hill has determined that there will be no economic cost to individuals who would otherwise be subject to this rule. Ms. Hill has also determined there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in effect between small and large businesses.

Public Benefit

Ms. Hill also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of implementing this rule will be to provide an easier transition for veterans, active members of the military, and their families to occupations outside of the armed services. The rule amendments also add greater clarity to the rule.

Public Comment

The Board invites comments on the proposed amendments from any member of the public. Written comments should be mailed to Lisa Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200; faxed to her attention at (512) 450-0637; or sent by email to info@tsbpe.state.tx.us.

Statutory Authority

The amendments to §363.1 are proposed under and affect Chapter 1301 of the Texas Occupations Code. Texas Occupations Code §1301.251 requires the Board to adopt and enforce rules necessary to administer Chapter 1301 of the Texas Occupations Code.

No other statute, article, or code is affected by the proposed amendments.

§363.1. Qualifications.

(a) An applicant may qualify for a Master Plumber License, Journeyman Plumber License, Tradesman Plumber-Limited License, Plumbing Inspector License, Plumber's Apprentice Registration, Residential Utilities Installer Registration, Drain Cleaner Registration or Drain Cleaner-Restricted Registration. A Master or Journeyman Plumber License may contain a Medical Gas Piping Installation Endorsement, Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement, or Water Supply Protection Specialist Endorsement. A Plumbing Inspector License may contain a Medical Gas Piping Endorsement, or a Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement. In order to qualify for any of the licenses or endorsements an applicant must meet all the requirements of the Board, successfully complete the required examination and remit the appropriate fee. In order to qualify for any of the registrations an applicant must meet all the requirements of the Board and remit the appropriate fee.

(b) When a Plumber's Apprentice or Tradesman Plumber-Limited license holder applies to take an examination, he/she must submit the Employer's Certification. This form certifies the Applicant's work experience complies with the eligibility criteria for the examination. If the applicant has met the criteria through employment with one employer, the Employer's Certification must be completed by that employer. However, if the applicant has met the criteria through employment with various employers, then the Employer's Certification must be submitted from each of those employers. Therefore, the Board recommends that the applicant request an employer complete the Employer's Certification annually and each time the Applicant discontinues employment with a particular employer. A Licensee is required to complete the Employer's Certification form within 30 days of a request by any individual who has worked as a Plumber's Apprentice or Tradesman Plumber-Limited license holder under the Licensee's supervision. It is the responsibility of the Applicant to supply the Licensee with the Employer's Certification form.

(1) In accordance with the requirements of §1301.002 and §1301.354, of the Plumbing License Law, a person may receive credit for on-the-job work hours required to qualify for a Tradesman Plumber-Limited or Journeyman Plumber examination, only while the person holds a valid Plumber's Apprentice registration; or

(2) a valid Tradesman Plumber-Limited license.

(c) Master Plumber. Each applicant must:

(1) be licensed either as:

(A) a Journeyman Plumber in Texas or another state with at least 8,000 hours working at the trade under a Responsible Master Plumber and must have held the Journeyman License for at least:

(i) four years; or

(ii) one year and have successfully completed a training program approved by the United States Department of Labor Office of Apprenticeship or another nationally recognized apprentice training program accepted by the board; or

(B) a Master Plumber in another state who has met the requirements in subparagraph (A) of this paragraph;

(2) be a high school graduate or hold a General Equivalency Diploma (GED); and

(3) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas.

(d) Journeyman Plumber.

(1) Each applicant must:

(A) be a high school graduate or hold a General Equivalency Diploma (GED); and

(B) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas.

(C) have either of the following:

(i) a current Plumber's Apprentice Registration or Tradesman Plumber-Limited and at least 8,000 hours of experience working at the trade under the supervision of a Responsible Master Plumber, as verified by employers; or

(ii) a valid Journeyman License from another state and at least 8,000 hours of experience working at the trade under the supervision of a Master Plumber.

(D) complete 48 hours of classroom training provided by a board-approved instructor in a board-approved training program in the areas of health and safety, applicable plumbing codes, and water conservation, as provided by §363.12 of this chapter (relating to Training Programs for Journeyman Plumber and Tradesman Plumber-Limited License Applicants).

(2) At the applicant's request, the Board may credit an applicant for the Journeyman Plumber examination with up to 500 hours of the work experience required before taking an examination if the applicant has completed the classroom portion of a training program:

(A) approved by the United States Department of Labor, Office of Apprenticeship; or

(B) provided by a person approved by the Board and based on course materials approved by the Board.

(3) Notwithstanding the training required by paragraph (1) of this subsection, a Plumber's Apprentice may apply for and take an examination for a license as a Journeyman Plumber if the apprentice has received an associate of applied science degree from a plumbing technology program that:

(A) includes a combination of classroom and on-the-job training; and

(B) is approved by the Board and the Texas Higher Education Coordinating Board.

(4) A Plumber's Apprentice who is enrolled in good standing in a training program approved by the United States Department of Labor, Office of Apprenticeship, may take a Journeyman Plumber examination without completing the classroom training required by paragraph (1)(D) of this subsection.

(e) Tradesman Plumber-Limited.

(1) Each applicant must:

(A) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas; and

(B) have either of the following:

(i) Plumber's Apprentice Registration and have completed at least 4,000 hours of experience working at the trade as a Registered Plumber's Apprentice under the direct supervision of a Tradesman Plumber-Limited, Journeyman Plumber or Master Plumber, and the supervision of a Responsible Master Plumber, as verified by employers; or

(ii) a valid Journeyman or Master License from another state and at least 4,000 hours of experience working at the trade under the supervision of a Master Plumber.

(C) complete 24 hours of classroom training provided by a board-approved instructor in a board-approved training program in the areas of health and safety, applicable plumbing codes, and water conservation, as provided by §363.12 of this chapter.

(2) At the applicant's request, the Board may credit an applicant for the Tradesman Plumber-Limited examination with up to 500 hours of the work experience required before taking an examination if the applicant has completed the classroom portion of a training program:

(A) approved by the United States Department of Labor, Office of Apprenticeship; or

(B) provided by a person approved by the Board and based on course materials approved by the Board.

(3) Notwithstanding the training required by paragraph (1) of this subsection, a plumber's apprentice may apply for and take an examination for a license as a Tradesman Plumber-Limited if the apprentice has received an associate of applied science degree from a plumbing technology program that:

(A) includes a combination of classroom and on-the-job training; and

(B) is approved by the Board and the Texas Higher Education Coordinating Board.

(4) A plumber's apprentice who is enrolled in good standing in a training program approved by the United States Department of Labor, Office of Apprenticeship, may take a Tradesman Plumber-Limited examination without completing the classroom training required by paragraph (1)(C) of this subsection.

(f) Plumbing Inspector. Each applicant must:

(1) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas;

(2) be a high school graduate or hold a General Equivalency Diploma (GED); [~~and~~]

(3) complete the 24 hour Board approved Water Supply Protection Specialist endorsement training program; and

(4) [~~(3)~~] have one of the following:

(A) a Journeyman or Master Plumber License issued in the state of Texas;

(B) a Journeyman or Master Plumber License issued in another state, provided he or she passes the Texas State Board of Plumbing Examiners Journeyman exam;

(C) a Plumbing Inspector license issued by another state with licensing requirements substantially equivalent to the licensing requirements of the Texas State Board of Plumbing Examiners;

(D) a professional engineer or a professional architect license issued in this state; or

(E) a total of 500 hours training or experience in the plumbing industry, that shall be credited by any combination of the following:

(i) 100 hours credit for successful completion of a certification in the Uniform Plumbing Code or the International Plumbing Code, issued by the International Association of Plumbing and Mechanical Officials (IAPMO) or the International Code Council (ICC), [~~International Conference of Building Officials (ICBO), Building Officials and Code Administrators International (BOCA) or Southern Building Code Congress International (SBCCI)~~] plumbing code certification;

(ii) 100 hours credit for successful completion of a Board approved Medical Gas Piping Installation Endorsement Training Program;

(iii) 100 hours credit for successful completion of a Board approved Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement Training Program;

(iv) 50 hours credit for successful completion of a Board approved Water Supply Protection Specialist Endorsement Training Program;

(v) 100 hours credit for successful completion of an approved Backflow Tester Certification program;

(vi) 6 hours credit for successful completion each different Board approved Continuing Professional Education for Licensed Plumbers and Plumbing Inspectors Course;

(vii) actual hours, with a maximum of 100 hours credit for approved, documented and verified plumbing related training academy or educational sessions;

(viii) actual hours, with a maximum of 200 hours credit for on the job work experience in the plumbing trade or approved similar plumbing related trade, as verified by former employers; or

(ix) actual hours, with a maximum of 200 hours credit for documented and verified on the job training in the enforcement of plumbing codes under the direct supervision of a Licensed Plumbing Inspector.

(g) Medical Gas Piping Installation Endorsement. Each applicant must:

(1) hold a current Journeyman, or Master Plumber, or Plumbing Inspector License; and

(2) have successfully completed a Board approved training program in medical gas piping installation which includes the standards contained in the latest edition of the National Fire Protection Association (NFPA) 99 Health Care Facilities Code [~~99C Gas and Vacuum Systems~~].

(h) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement. Each applicant must:

(1) hold a Journeyman, or Master Plumber, or Plumbing Inspector License; and

(2) have successfully completed a training program approved by the board that provides the training necessary for the proper installation of a multipurpose residential fire protection sprinkler system as required by the applicable codes and standards recognized by the state.

(i) Water Supply Protection Specialist Endorsement. Each applicant must:

(1) hold a current Journeyman or Master Plumber License; and

[~~(2) have successfully completed a Board approved training program in backflow prevention; and~~]

(2) [~~(3)~~] complete [~~have successfully completed~~] a Board approved training program based on [~~designed around~~] the Federal Safe Drinking Water Act and the Federal Clean Water Act, on-site wastewater and site evaluations and graywater re-use, water quality training and water treatment, water utilities systems and regulations, water conservation, rainwater harvesting systems, xeriscape irrigation, fire protection systems, backflow prevention, and state laws regulating lead contamination in drinking water.

(j) Residential Utilities Installer. Each Applicant must:

(1) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas;

(2) be registered as a Plumber's Apprentice;

(3) have completed at least 2,000 hours working at the trade as a Registered Plumber's Apprentice under the direct supervision of a Tradesman Plumber-Limited, Journeyman Plumber, or Master Plumber, and the supervision of a Responsible Master Plumber, as verified by employers; and

(4) complete a Board approved training program.

(k) Drain Cleaner. Each Applicant must:

(1) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas;

(2) be registered as a Plumber's Apprentice;

(3) have completed at least 4,000 hours working at the trade as a Drain Cleaner-Restricted Registrant under the supervision of a Responsible Master Plumber, as verified by employers; and

(4) complete a Board approved training program.

(l) Drain Cleaner-Restricted Registrant. Each Applicant must:

(1) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas;

(2) be registered as a Plumber's Apprentice, working under the direct supervision of a Tradesman Plumber-Limited, Journeyman Plumber, or Master Plumber, and under the supervision of a Responsible Master Plumber;

(3) complete a Board approved training program.

(m) Plumber's Apprentice. Each applicant must:

(1) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas; and

(2) be at least sixteen (16) years of age.

(n) The Board shall, with respect to a military service member or military veteran, credit verified military service, training, or education toward the licensing requirements, other than an examination requirement, for a license issued by the Board.

(1) In lieu of the standard method(s) of demonstrating competency for a particular license and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the Board:

(A) education;

(B) continuing education;

(C) examinations (written and/or practical);

(D) letters of good standing;

(E) letters of recommendation; or

(F) work experience.

(2) This subsection does not apply to an applicant who holds a restricted license issued by another jurisdiction.

(3) This subsection does not apply to individuals who have an unacceptable criminal history according to the rules and guidelines implemented by the Board.

(4) The Board shall expedite the issuance of a provisional license or license by endorsement or reciprocity under this chapter to an applicant who:

(A) has verified military experience; and

(B) who holds a current license issued by another jurisdiction that has license requirements that are substantially equivalent to the license requirements of the Board.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2013.

TRD-201304785
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Proposed date of adoption: January 13, 2014
For further information, please call: (512) 936-5224

22 TAC §363.11

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §363.11 that sets forth the criteria for endorsement training programs.

Background and Justification

The proposed amendments to §363.11 are needed to expand and include information regarding the harvesting of rainwater within the training program required for the Water Supply Protection Specialist Endorsement.

Fiscal Note

Lisa Hill, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no additional cost to state or local governments as a result of enforcing or administering the amended section. Ms. Hill has determined that there will be no economic cost to individuals who would otherwise be subject to this rule. Ms. Hill has also determined there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in effect between small and large businesses.

Public Benefit

Ms. Hill has concluded that for each year of the first five years the amendments are in effect, the anticipated public benefit will be to delineate more clearly and precisely the endorsement training requirement for Water Supply Protection Specialist Endorsements.

Public Comment

The Board invites comments on the proposed amendments from any member of the public. Written comments should be mailed to Lisa Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200; faxed to her attention at (512) 450-0637; or sent by email to info@tsbpe.state.tx.us.

Statutory Authority

The amendments to §363.11 are proposed under and affect Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the proposed amendments.

§363.11. Endorsement Training Programs.

(a) General requirements for Course Providers and Course Instructors

(1) Any person who seeks to provide a training program as a prerequisite for qualifying to take an examination to obtain any endorsement issued by the Board may apply to the Board for approval as a Course Provider.

(2) Any person who seeks to provide instruction of such training programs must be employed by an approved Course Provider. He or she may apply to the Board through an approved Course Provider to be approved as a Course Instructor.

(A) Each Course Instructor must be:

(i) a licensed Journeyman or Master Plumber and hold the particular endorsement relevant to the training program that the Course Instructor will teach; or

(ii) a licensed Plumbing Inspector who has completed the training and examination requirements required to obtain the particular endorsement relevant to the training program that the Course Instructor will teach.

(B) Each Course Instructor will be required to successfully complete a Board approved instructor training program of 160 hours which meets the following criteria:

(i) 40 hours to provide the instructor with the basic educational techniques and instructional strategies necessary to plan and conduct effective training programs;

(ii) 40 hours to provide the instructor with the basic techniques and strategies necessary to analyze, select, develop, and organize instructional material for effective training programs;

(iii) 40 hours to provide the instructor with the basic principles, techniques, theories, and strategies to establish and maintain effective relationships with students, co-workers, and other personnel in the classroom, industry, and community; and

(iv) 40 hours to provide the instructor with the basic principles, techniques, theories, and strategies to communicate effectively with the use of instructional media.

(C) To maintain status as an approved Course Instructor of an endorsement training program, the Course Instructor shall undergo one of the instructor training programs required under subparagraph (B) of this paragraph every twelve (12) months such that the entire training (160 hours) is completed within four years.

(3) Course Providers and Course Instructors shall adhere to the instruction criteria approved by the Board in this section, and ensure that only students who receive the specified number of contact hours of instruction (excluding any time spent on breaks from instruction) receive credit for completing the training required by this section.

(4) The training required by this section may be provided in increments, as appropriate, and the Course Provider or Course Instructor shall provide a certificate of completion to the student, upon completion of the training.

(A) The certificate of completion shall state:

(i) the title of the training program related to the particular endorsement;

(ii) the names of the Course Provider and Course Instructor;

(iii) the name and license number of the student; and

(iv) the date that the instruction was completed.

(B) The Course Provider shall maintain a record of the information contained on each certificate of completion for at least two years.

(5) Each Course Provider shall notify the Board at least seven (7) days before conducting training programs or electronically post notice of the class schedule on the provider's website at least seven (7) days before conducting a class. The notice shall contain the date(s), time(s) and place(s) where the class(es) will occur.

(6) Each Course Provider shall perform self-monitoring to ensure compliance with this section and reporting as required by the Board.

(7) The Board may monitor endorsement training programs to ensure compliance with this section.

(8) Any failure on the part of a Course Provider or Course Instructor to abide by the requirements of this section may result in the denial, probation, suspension, or revocation of Board approval as a Course Provider or Course Instructor.

(b) Medical Gas Piping Installation Endorsement training programs

(1) Before a Plumbing Inspector, Journeyman, or Master Plumber may qualify to take the Medical Gas Piping Installation endorsement examination, the applicant must complete a training program approved by the Board which pertains to subject matter applicable to the installation of medical gas piping systems. As a minimum, the training course shall be based on the standards contained in the latest edition of the National Fire Protection Association (NFPA) 99 Health Care Facilities Code.

(2) Course Providers shall provide lesson plans for Board approval. Approved Course Providers of medical gas training shall furnish a program consisting of a classroom presentation of course material, a test of the enrollee's comprehension of the matter, a shop demonstration of the proper brazing procedures by the Course Instructor, and the enrollee's final brazing evidence to the instructor of an accepted vertical and horizontal practice coupon.

(A) A minimum of twenty four (24) hours shall be assigned for the classroom presentation and testing.

(B) In addition, a minimum of four (4) hours shall be assigned to the brazing demonstrations. The student enrolled in medical gas training will have completed a minimum of eight hours of practice brazing coupons in an equipped shop. These coupons will be presented to the Course Instructor for grading.

(C) The aforementioned hours represent the minimum requirements only; additional time may be included in each segment of the program.

(c) Water Supply Protection Specialist Endorsement training programs

(1) Before a Journeyman or Master Plumber may qualify to take the Water Supply Protection Specialist endorsement examination, the applicant must complete a training program approved by the Board, which pertains to subject matter applicable to the protection of public and private potable water supplies, as required by the plumbing codes, laws and regulations of this state. A portion of the training program shall include information specific to rainwater harvesting as outlined in the latest edition of the Texas Water Development Board's Rainwater Harvesting Manual and the latest edition of the Uniform Plumbing Code (UPC) Rainwater Harvesting Seminar Manual.

(2) Any person wishing to offer a Board approved training program in Water Supply Protection Specialist Endorsement to the public must submit a course outline, together with the number of hours of instruction, to the Board for approval.

(3) The training program must be at least 24 hours with a maximum of eight hours of instruction per day and comply with the following minimum guidelines:

(A) a six hour review of the significance of cross-connections, the principles of back pressure and back siphonage, thermal expansion, the acceptable devices and/or requirements for a public water supply system including, but not limited to, approved backflow protection devices, shut-off valves, water meters, and containment vessels;

(B) a two hour review of the applicable standards, codes, and laws, including but not limited to the Plumbing License Law, Board rules, the Texas Commission on Environmental Quality rules relating to a public water supply and water reuse, as described in the Texas Water Development Board's Rainwater Harvesting Manual, and the Texas A&M AgriLife Extension Service recommendations;

(C) a four hour review of the specific parts and terminology, and the concepts and components of a rainwater harvesting system, including proper sizing for all water reuse systems;

(D) a eight hour review of the acceptable type, material, location, limitation, and correct installation of equipment related to the treatment and reuse of water;

(E) four hours devoted to the elements of a proper customer service inspection as required by the Texas Commission on Environmental Quality;

(4) Board approved Course Providers and Course Instructors who are approved to provide and instruct Continuing Professional Education (CPE) courses, under Board Rule §365.14 (relating to Continuing Professional Education Programs), may utilize another governmental or industry recognized entity to provide a portion of the course instruction.

(5) [~~(3)~~] The Board may require resubmission for approval of any previously approved Water Supply Protection Specialist endorsement training program to ensure that the program meets current requirements of the plumbing codes, laws, and regulations of the state which pertain to the protection of public and private potable water supplies.

(d) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement training programs

(1) Before a Plumbing Inspector, Journeyman or Master Plumber may qualify to take the Multipurpose Residential Fire Protection Sprinkler System Inspector examination or Multipurpose Residential Fire Protection Sprinkler Specialist endorsement examination, the applicant must complete a training program which pertains to subject matter applicable to a multipurpose dwelling fire sprinkler system, as required by the National Fire Protection Association Standard 13D.

(2) The training program must incorporate the training criteria included in the American Society of Sanitary Engineering Series 7000, as it relates to plumbing-based residential fire protection systems installers for one and two family dwellings.

(3) The training program must be at least 24 hours in length, using the following minimum guidelines:

(A) 1 hour to review applicable standards, codes, and laws, including the Plumbing License Law, Board Rules and the fire sprinkler rules, 28 TAC §§34.701 et seq., and their integration and identifying the enforcing authorities;

(B) 4 hours to study definitions, to identify as a minimum the various types, specific parts, specific terminology and concepts of the system;

(C) 4 hours to learn the acceptable type, material, location, limitation and correct installation of equipment including but not limited to pipe, fittings, valves, types of sprinkler heads, supports, drains, test connections, automatic by-pass valve, smoke alarm devices, other appurtenances;

(D) 2 hours to learn the acceptable type, configuration, and material which may or may not be required for a water supply including but not limited to backflow preventers, shut off valves, water meters, water flow detectors, tamper switches, test connections, pressure gages, minimum pipe sizes, storage tanks, and wells including the ability to perform a water flow test of a city water supply;

(E) 8 hours to learn which rooms require sprinklers and the correct positioning of a sprinkler head based on its type, listing, temperature rating, and the building structure including but not limited to understanding the concepts of the area of coverage, spacing, distance from walls and ceilings, listing limitations, dead air pockets, manufacturer's requirements and obtaining knowledge of how structural features such as flat, sloped, pocket, or open joist ceilings, close proximity to heat sources and other obstructions such as ceiling fans, surface mounted lights, beams, and soffits may adversely influence the location of a sprinkler head;

(F) 3 hours to learn critical hydraulic concepts for the installer that may adversely affect the original design plan due to field construction changes including but not limited to remote area sprinkler operation, flow versus pressure, elevation pressure loss, sprinkler K-factors, fixture units, minimum pipe diameters, additional pipe lengths and understand which household water appliances affect or do not affect the sprinkler hydraulics/performance; and

(G) 2 hours to learn the required testing, maintenance and documentation including but not limited to the final inspection and tests normally required by the local fire official (AHJ), when permits, working plans, as-built plans or hydraulic calculations are required and who provides for the system maintenance and instructions.

(4) Any person who holds a valid Master or Journeyman Plumber license issued by the Board and a valid RME-General or RME-Dwelling license issued by the State Fire Marshal's Office, Texas Department of Insurance, is exempted from completing the Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement training program described by this section prior to taking the Multipurpose Residential Fire Protection Sprinkler Specialist endorsement examination.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Executive Director
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For further information, please call: (512) 936-5224

CHAPTER 365. LICENSING AND REGISTRATION

22 TAC §365.1

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §365.1, which pertain to the license, endorsement, and registration categories and the scope of work permitted.

Background and Justification

The proposed changes to §365.1 define what plumbing work a Journeyman or Master Plumber who holds a Water Supply Protection Specialist endorsement is permitted to perform.

Fiscal Note

Lisa Hill, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no additional cost to state or local governments as a result of enforcing or administering the amended section. Ms. Hill has determined that there will be no economic cost to individuals who would otherwise be subject to this rule. Ms. Hill has also determined there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in effect between small and large businesses.

Public Benefit

Ms. Hill has concluded that for each year of the first five years the amendments are in effect, the anticipated public benefit will be a more clear and precise rule.

Public Comment

The Board invites comments on the proposed amendments from any member of the public. Written comments should be mailed to Lisa Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200; faxed to her attention at (512) 450-0637; or sent by email to info@tsbpe.state.tx.us.

Statutory Authority

The amendments to §365.1 are proposed under and affect Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the proposed amendments.

§365.1. License, Endorsement and Registration Categories; Description; Scope of Work Permitted.

In accordance with §1301.351, of the Plumbing License Law, a person may not perform plumbing without holding the proper license, endorsement or registration which relates to the type of plumbing to be performed. The scope of work permitted to an individual who holds a license, endorsement or registration issued by the Board is described in paragraphs (1) - (12) of this section.

(1) Responsible Master Plumber (or "RMP")--A person who is licensed as a Master Plumber and meets the requirements of a Responsible Master Plumber under the Plumbing License Law and Board Rules is authorized to:

(A) advertise or otherwise offer to perform or provide plumbing to the general public;

(B) enter into contracts or agreements to perform plumbing;

(C) obtain plumbing permits to perform plumbing work; and

(D) perform and supervise plumbing.

(2) Master Plumber license--Authorizes the individual to perform and supervise plumbing:

(A) only under the general supervision of a Responsible Master Plumber; and

(B) only under contracts or agreements to perform plumbing work secured by a Responsible Master Plumber.

(3) Journeyman Plumber license--Authorizes the individual to perform and supervise plumbing:

(A) only under the general supervision of a Responsible Master Plumber; and

(B) only under contracts or agreements to perform plumbing work secured by a Responsible Master Plumber.

(4) Tradesman Plumber-Limited license--Authorizes the individual to perform and supervise plumbing for only one or two family dwellings:

(A) only under the supervision of a Responsible Master Plumber; and

(B) only under contracts or agreements to perform plumbing secured by a Responsible Master Plumber.

(C) A Tradesman Plumber-Limited license holder may assist in the installation of plumbing other than for one or two family dwellings only under the direct, on-the-job supervision of a licensed Journeyman or Master Plumber.

(5) Plumbing Inspector license--Authorizes the individual to perform plumbing inspections as an employee or independent contractor of a political subdivision or state agency for compliance with health and safety laws and ordinances.

(6) Medical Gas Piping Installation Endorsement--An endorsement to a Journeyman or Master Plumber license that authorizes the individual to install piping that is used solely to transport gases used for medical purposes:

(A) only under the general supervision of a Responsible Master Plumber who holds a Medical Gas Piping Installation Endorsement on his or her Master Plumber license; and

(B) only under contracts or agreements to perform medical gas piping installations secured by a Responsible Master Plumber who holds a Medical Gas Piping Installation Endorsement on his or her Master Plumber license.

(7) Water Supply Protection Specialist--An endorsement to a Journeyman or Master Plumber license that authorizes the individual to perform Customer Service Inspections as defined in the Texas Commission on Environmental Quality Rules and Regulations for Public Water Systems. A Water Supply Protection Specialist Endorsement shall not be used in lieu of a Plumbing Inspector license as required under §1301.351 of the Plumbing License Law to perform plumbing inspections required under §1301.255 and §1301.551 of the Plumbing License Law. The Water Supply Protection Specialist endorsement on a Journeyman or Master Plumber license authorizes the individual to perform, install, service, and repair plumbing associated with the use and distribution of rainwater to supply a plumbing fixture, appliance, or irrigation system:

(A) only under the general supervision of a Responsible Master Plumber who holds a Water Supply Protection Specialist endorsement on his or her Master Plumber license; and

(B) only under contracts or agreements to perform, install, service, and repair plumbing associated with the use and distribution of rainwater to supply a plumbing fixture, appliance, or irrigation system secured by a Responsible Master Plumber who holds a Water Supply Protection Specialist endorsement on his or her Master Plumber license.

(8) Multipurpose Residential Fire Protection Sprinkler Specialist--An endorsement to a Journeyman or Master Plumber license that authorizes the individual to install a multipurpose residential fire protection sprinkler system for only one or two family dwellings:

(A) only under the general supervision of a Responsible Master Plumber who holds a Multipurpose Residential Fire Protection Sprinkler Specialist endorsement on his or her Master Plumber license; and

(B) only under contracts or agreements to perform multipurpose residential fire protection sprinkler system installations secured by a Responsible Master Plumber who holds a Multipurpose Residential Fire Protection Sprinkler Specialist endorsement on his or her Master Plumber license.

(9) Residential Utilities Installer Registration--Authorizes the holder of a Plumber's Apprentice registration to construct and install yard water service piping and building sewers for only one or two family dwellings:

(A) only under the general supervision of a Responsible Master Plumber; and

(B) only under contracts or agreements to perform plumbing work secured by a Responsible Master Plumber.

(10) Drain Cleaner Registration--Authorizes the holder of a Plumber's Apprentice registration or a Tradesman Plumber-Limited license to install cleanouts and remove and reset p-traps for the purposes of eliminating obstructions in building drains and sewers:

(A) only under the general supervision of a Responsible Master Plumber; and

(B) only under contracts or agreements to perform plumbing work secured by a Responsible Master Plumber.

(11) Drain Cleaner-Restricted Registration--Authorizes the holder of a Plumber's Apprentice registration to clear obstructions in sewer and drain lines only through any existing code-approved opening:

(A) only under the general supervision of a Responsible Master Plumber; and

(B) only under contracts or agreements to perform plumbing work secured by a Responsible Master Plumber.

(12) Plumber's Apprentice Registration--Authorizes the individual to assist a person licensed by the Board in the installation of plumbing:

(A) only under the direct, on-the-job supervision of a person licensed by the Board;

(B) only under the general supervision of a Responsible Master Plumber; and

(C) only under contracts or agreements to perform plumbing work secured by a Responsible Master Plumber.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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22 TAC §365.2

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §365.2 which describes certain types and conditions relating to work performed without a license used in Title 8, Chapter 1301 of the Texas Occupations Code and the Board's administrative rules.

Background and Justification

The proposed amendments to §365.2 are due to statutory changes brought about by the passage of House Bill 2062 (HB 2062) during the regular session of the 83rd Texas Legislature (2013).

HB 2062 allows a person to perform water treatment installations, exchanges, services, or repairs without procuring a license other than the treatment of harvested rainwater.

Fiscal Note

Lisa Hill, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no additional cost to state or local governments as a result of enforcing or administering the amended section. Ms. Hill has determined that there will be no economic cost to individuals who would otherwise be subject to this rule. Ms. Hill has also determined there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in effect between small and large businesses.

Public Benefit

Ms. Hill has concluded that for each year of the first five years the amendments are in effect, the anticipated public benefit will be a more clear and precise rule.

Public Comment

The Board invites comments on the proposed amendments from any member of the public. Written comments should be mailed to Lisa Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200; faxed to her attention at (512) 450-0637; or sent by email to info@tsbpe.state.tx.us.

Statutory Authority

The amendments to §365.2 are proposed under and affect Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the proposed amendments.

§365.2. Exemptions.

The following plumbing work shall be permitted without a license but shall be subject to inspection and approval in accordance with local, city or municipal ordinances:

(1) Plumbing work done by a property owner in the property owner's homestead;

(2) Plumbing work that is not performed in conjunction with new construction, repair or remodeling, and is performed on a property that is:

(A) located in a subdivision or on a tract of land that is not required to be platted under §232.0015, Local Government Code; or

(B) not connected to a public water system and is located outside a municipality, or

(C) located outside a municipality and connected to a public water system that does not require a license to perform plumbing; or

(D) located inside a municipality that is within a county that has fewer than 50,000 inhabitants and that:

(i) has fewer than 5,000 inhabitants; and

(ii) by municipal ordinance has authorized a person who is not licensed under this the Plumbing License Law to perform plumbing.

(3) Verification of medical gas and vacuum piping integrity and content;

(4) Work done on existing plumbing by a maintenance man or maintenance engineer, as defined in §361.1 of this title (relating to Definitions), that is incidental or connected to other maintenance duties, provided that such an individual does not engage in cutting into fuel gas plumbing systems, the installation of gas fueled water heaters or plumbing work for the general public;

(5) Plumbing work done by a railroad employee on the premises or equipment of a railroad, provided such an individual does not engage in plumbing work for the general public;

(6) Plumbing work done by a person engaged by a public utility company to:

(A) lay, maintain, or operate its service mains or lines to the point of measurement; and

(B) install, change, adjust, repair, remove or renovate appurtenances, equipment, or appliances;

(7) Appliance installation or appliance service work, other than installation and service work on water heaters, done by bona fide appliance dealers and their employees that do not offer to perform plumbing work to the general public, in connecting appliances to existing openings with a code approved appliance connector without cutting into or altering the existing plumbing system;

(8) Irrigation work done by an individual working and licensed by the Texas Commission on Environmental Quality under Chapter 1903, Occupations Code, as an irrigator or installer;

(9) LP Gas service and installation work done by an individual working and licensed by the Texas Railroad Commission under Chapter 113 of the Natural Resources Code as a LP Gas Installer; [~~and~~]

(10) Water Treatment Specialists licensed by the Texas Commission on Environmental Quality under §341.034 of the Health and Safety Code may engage in residential, commercial or industrial

water treatment activities including making connections necessary to complete the installation of a water treatment system;[.]

(11) Water well pump installation and service work performed by an individual licensed by the Texas Commission on Environmental Quality under Chapter 1902 of the Occupations Code;[.]

(12) Residential potable water supply or residential sanitary sewer connections performed by an organization certified by the Texas Commission on Environmental Quality to perform self-help project assistance on a Self-Help Project which complies with §1301.057 of the Occupations Code (Plumbing License Law); and[.]

(13) Water treatment installations, exchanges, services, or repairs.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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22 TAC §365.5

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §365.5 to address the renewal of expedited licenses and registrations issued to military spouses.

Background and Justification

The proposed amendments are due in part to statutory changes brought about by the passage of Senate Bill 162 (SB 162) during the Regular Session of the 83rd Texas Legislature (2013).

SB 162 requires that state agencies that issue licenses shall, as soon as practicable, determine the requirements for a military spouse who holds a license to renew that license. A provision of the statute requires that the agency shall notify the license holder of the requirements for renewing the license in writing or by electronic means.

Fiscal Note

Lisa G. Hill, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no additional cost to state or local governments as a result of enforcing or administering the amended section. Ms. Hill has determined that there will be no economic cost to individuals who would otherwise be subject to this rule. Ms. Hill has also determined there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in effect between small and large businesses.

Public Benefit

Ms. Hill also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of implementing the amendments will be to expedite the renewal of the licenses and registrations of military spouses, who remain an ongoing priority for the state.

Public Comment

The Board invites comments on the proposed amendments from any member of the public. Written comments should be mailed to Lisa Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200; faxed to her attention at (512) 450-0637; or sent by email to info@tsbpe.state.tx.us.

Statutory Authority

The amendments to §365.5 are proposed under and affect Chapter 1301 of the Texas Occupations Code. Texas Occupations Code §1301.251 requires the Board to adopt and enforce rules necessary to administer Chapter 1301 of the Texas Occupations Code.

No other statute, article, or code is affected by the proposed amendments.

§365.5. Renewals.

(a) The Board shall inform a licensee or registrant of the impending expiration of a license, registration or endorsement by sending [written] notice by written or electronic means at least 30 days before its expiration date to the licensee's last known mailing address according to Board records.

(b) A licensee or registrant may renew an unexpired license, registration or endorsement before its expiration date by meeting all renewal requirements and paying the fee required by the Board.

(c) The licensee's or registrant's failure to receive the notice of expiration will not alter the licensee's or registrant's responsibility to renew the license or registration each year or endorsement every three years by its expiration date.

(d) Any Journeyman Plumber, Master Plumber, Tradesman Plumber-Limited Licensee, Drain Cleaner, Drain Cleaner-Restricted Registrant, Residential Utilities Installer, or Plumbing Inspector wishing to renew a license or registration must have proof submitted to the Board of successful completion of the required continuing professional education (CPE) course or courses, subject to the additional requirement in subsection (e) of this section.

(e) Any license holder with a medical gas endorsement must complete a Board approved medical gas continuing professional education class within the three-year period of the endorsement. The classroom hours shall consist of instruction of the most current edition of the National Fire Protection Association (NFPA) 99, Health Care Facilities Code and the changes therein. No license holder with a medical gas endorsement may count the same medical gas continuing professional education class twice towards meeting the continuing professional education requirements for renewal of the medical gas endorsement on a plumbing license.

(f) Any license or endorsement holder who lives in a county having no city with a population in excess of 100,000, or resides out of state, or who submits written proof to the Board from a physician stating the medical reason that the licensee is unable to attend a CPE class, may fulfill the continuing professional education requirements by completing a correspondence course approved by the Board.

(g) A person who holds a license and is:

(1) a member of the United States armed forces, a reserve component of the United States armed forces or the state military forces;

(2) is ordered to active duty by proper authority; and

(3) submits documentation acceptable to the Board which demonstrates the person was unable to renew the license in a timely manner due to the active duty service is:

(A) exempt from paying a late renewal fee; and

(B) entitled to an additional amount of time, equal to the total number of years or parts of years that the person serves on active duty, to complete any continuing education requirements and any other requirements related to the renewal of the person's license.

(h) Under §1301.404(f) of the Plumbing License Law, the following individuals may be credited as having fulfilled their continuing professional education (CPE) requirements for the current CPE course year, in order to renew a license issued by the Board:

(1) Any CPE Course Instructor who is fully approved under Board Rule §365.14 (relating to Continuing Professional Education Programs); and

(2) any employee of the Board who:

(A) monitors a current CPE class for compliance with the Plumbing License Law and these sections; or

(B) reviews all approved Course Materials under Board Rule §365.14 and completes the current Course Instructor Certification Workshop conducted by the Board.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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22 TAC §365.16

The Texas State Board of Plumbing Examiners (Board) proposes new §365.16 that establishes the expedited licensing procedure for military spouses.

Background and Justification

The new rule is due to statutory changes brought about by the passage of Senate Bill 162 (SB 162), during the Regular Session of the 83rd Texas Legislature (2013).

SB 162 requires that state agencies that issue licenses shall, as soon as practicable after a military spouse files an application for a license, process the application and issue a license to a qualified military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the licensing requirements in Texas. A license issued to a military spouse may not be a provisional license and must confer the same rights, privileges, and responsibilities as other licenses issued by this Board.

Fiscal Note

Lisa G. Hill, Executive Director, has determined that for the first five-year period the new rule is in effect, there will be no additional cost to state or local governments as a result of enforcing or administering the new rule. Ms. Hill has determined that there will be no economic cost to individuals who would otherwise be subject to this new rule. Ms. Hill has also determined there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in effect between small and large businesses.

Public Benefit

Ms. Hill also has determined that for each year of the first five years the new rule is in effect the public benefit anticipated as a result of implementing this rule will be to expedite the processing of licenses and registrations of qualified applicants.

Public Comment

The Board invites comments on the proposed new rule from any member of the public. Written comments should be mailed to Lisa Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200; faxed to her attention at (512) 450-0637; or sent by email to info@tsbpe.state.tx.us.

Statutory Authority

New §365.16 is proposed under and affects Chapter 1301 of the Texas Occupations Code. Texas Occupations Code §1301.251 requires the Board to adopt and enforce rules necessary to administer Chapter 1301 of the Texas Occupations Code.

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

§365.16. Expedited Licensing Procedure for Military Spouses.

(a) The Board shall process the applications of military spouses as soon as practicable.

(b) The Board shall issue a license or registration to a military spouse applicant who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for a Board issued license or registration.

(c) The licenses or registrations issued to military spouses shall confer the same rights, privileges, and responsibilities as other licenses or registrations issued by the Board.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 367. ENFORCEMENT

22 TAC §367.2

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §367.2 concerning standards of conduct for licensees and registrants.

Background and Justification

The proposed amendments are due to statutory changes brought about by the passage of House Bill 2062 (HB 2062) during the Regular Session of the 83rd Texas Legislature (2013).

HB 2062 requires that a person who has performed plumbing services provide the customer an invoice or completed contract document on completion of the job, regardless of whether the person charged a fee for performing the services. It also added treatment of rainwater to the list of services a Water Supply Protection Specialist may perform, thus the need for inspectors to be trained in this area before performing these types of inspections.

Fiscal Note

Lisa G. Hill, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no additional cost to state or local governments as a result of enforcing or administering the amended section. Ms. Hill has determined that there will be no economic cost to individuals who would otherwise be subject to this rule. Ms. Hill has also determined there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in effect between small and large businesses.

Public Benefit

Ms. Hill also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated is better regulation of the plumbing profession.

Public Comment

The Board invites comments on the proposed amendments from any member of the public. Written comments should be mailed to Lisa Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200; faxed to her attention at (512) 450-0637; or sent by email to info@tsbpe.state.tx.us.

Statutory Authority

The amendments to §367.2 are proposed under and affect Chapter 1301 of the Texas Occupations Code. Texas Occupations Code §1301.251 requires the Board to adopt and enforce rules necessary to administer Chapter 1301 of the Texas Occupations Code.

No other statute, article, or code is affected by the proposed amendments.

§367.2. Standards of Conduct.

(a) Offer to Perform Services. The Licensee and Registrant:

(1) shall accurately and truthfully represent to any prospective client or employer, his or her capabilities and qualifications to perform the services to be rendered;

(2) shall not offer to perform, nor perform, technical services for which he or she is not qualified by education or experience, without retaining the services of another who is so qualified; [~~and~~]

(3) shall not evade responsibility to a client or employer; and[~~.~~]

(4) shall give the customer an invoice or completed contract document on completion of the plumbing job, regardless of whether he or she charged a fee for performing the services.

(b) Conflicts of Interest. The Licensee and Registrant:

(1) shall not agree to perform services if any significant financial or other interest exists that may be in conflict with:

(A) the obligation to render a faithful discharge of such services; or

(B) would impair independent judgment in rendering such services;

(2) shall withdraw from employment when it becomes apparent that it is not possible to faithfully discharge the duty and performance of services owed the client or employer, but then only upon reasonable notice to the client or employer; and

(3) shall not accept remuneration from any person other than the client or employer for a particular project, nor have any other financial interest in other service or phase of service to be provided for the project, unless the client or employer has full knowledge and so approves.

(c) Representations. The Licensee and Registrant:

(1) shall not indulge in advertising that is false, misleading, deceptive, or which does not clearly display the licensees' state license number;

(2) shall not misrepresent the amount or extent of prior education or experience to any employer or client, or to the Board;

(3) shall, when providing estimates for costs or completion times of a proposed project, represent to a prospective client or employer as accurately and truthfully as is reasonably possible the costs and completion time of the proposed project; and

(4) shall not hold out as being engaged in partnership or association with any person unless a partnership or association exists in fact.

(d) Compliance with Board Orders. The Licensee and Registrant shall comply fully with all Board Orders.

(e) Responsibilities of Plumbing Licensees and Registrants.

(1) Licensees and Registrants must abide by all laws and rules regulating plumbing, including the Standards of Conduct set forth in this section, within any geographic location in this state when performing or offering to perform plumbing work or plumbing inspections.

(2) In areas where no plumbing code is adopted one of the state approved codes shall be followed by the Licensee and Registrant.

(f) In addition to complying with the requirements of subsections (a) - (e) of this section, each Licensed Plumbing Inspector shall also comply with the following:

(1) A Plumbing Inspector shall not have any financial or advisory interest in any plumbing company.

(2) All compensation paid for a plumbing inspection shall be paid directly to the individual Licensed Plumbing Inspector or qualified plumbing inspection business by the political subdivision for which the plumbing inspection is performed.

(A) The political subdivision may determine the qualifications for the plumbing inspection business.

(B) The plumbing inspection business must utilize only licensed Plumbing Inspectors to perform plumbing inspections, as required by §§1301.002(8), 1301.255(e), 1301.351(b) and 1301.551(d) of the Act and the Board Rules.

(C) Qualifications for plumbing inspectors shall be determined by the Board, as provided in the Act and the Board Rules.

(3) A Plumbing Inspector shall not accept any compensation or anything of value from any contractor or owner whose work is being inspected by the Plumbing Inspector.

(4) Prior to the performance of any Plumbing Inspection, the Plumbing Inspector must have submitted to the Board written proof of employment or contract for the purposes of performing plumbing inspections by each political subdivision that the Plumbing Inspector is employed by, or under contract.

(5) A Plumbing Inspector may be employed by or contract with any political subdivision throughout the state and a Plumbing Inspector's authority to enforce the Act, Board Rules and local ordinances lies only within the jurisdiction of the political subdivision/s that the Plumbing Inspector is employed by or under contract.

(6) A Plumbing Inspector shall not, in any manner, represent or indicate that the Plumbing Inspector is employed by or a representative of the Board or the State of Texas unless, in fact, the Plumbing Inspector is employed by the Board or the State of Texas.

(7) Each Plumbing Inspector shall enforce the Plumbing License Law, Board Rules, and the adopted plumbing code within the Plumbing Inspector's jurisdiction. The enforcement shall be applied in a consistent and equitable manner to all persons within the Plumbing Inspector's jurisdiction.

(8) Prior to performing an inspection of a multipurpose residential fire protection sprinkler system installation, a Plumbing Inspector must:

(A) complete the Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement training program; and

(B) successfully pass the Multipurpose Residential Fire Protection Sprinkler System Inspector examination.

(9) Prior to performing medical gas piping installation inspections a Plumbing Inspector must:

(A) complete the Medical Gas Piping Installation Endorsement training program; and

(B) successfully pass the Inspector Medical Gas Piping Endorsement examination.

(10) Prior to performing rainwater harvesting system inspections, a Plumbing Inspector must complete the 24 hour Water Supply Protection Specialist endorsement training program.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2013.

TRD-201304790
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Proposed date of adoption: January 13, 2014
For further information, please call: (512) 936-5224

22 TAC §367.7

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §367.7 which concerns violations of standards and practices.

Background and Justification

The proposed amendments to §367.7 are due to statutory changes brought about by the passage of House Bill 2062 (HB 2062) during the Regular Session of the 83rd Texas Legislature (2013).

HB 2062 amends Texas Occupations Code §1301.303(a) to allow the Board to investigate an alleged violation of Texas Occupations Code Chapter 1301 by an owner of a plumbing company who is subject to this chapter.

Fiscal Note

Lisa G. Hill, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no additional cost to state or local governments as a result of enforcing or administering the amendments. Ms. Hill has determined that there will be no economic cost to individuals who would otherwise be subject to this rule. Ms. Hill has also determined there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in effect between small and large businesses.

Public Benefit

Ms. Hill has concluded that for each year of the first five years the amendments are in effect, the anticipated public benefit will be to provide the Board with greater enforcement authority to regulate the plumbing profession.

Public Comment

The Board invites comments on the proposed amendments from any member of the public. Written comments should be mailed to Lisa Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200; faxed to her attention at (512) 450-0637; or sent by email to info@tsbpe.state.tx.us.

Statutory Authority

The amendments to §367.7 are proposed under and affect Chapter 1301 of the Texas Occupations Code. Texas Occupations Code §1301.251 requires the Board to adopt and enforce rules necessary to administer Chapter 1301 of the Texas Occupations Code.

No other statute, article, or code is affected by the proposed amendments.

§367.7. Violations of Standards and Practices.

(a) The Board may take disciplinary actions against a licensee, registrant, or an owner of a plumbing company subject to this chapter, as provided by Subchapter I (relating to Disciplinary Procedures), Subchapter J (relating to Other Penalties and Enforcement Provisions), Subchapter N (relating to Administrative Penalty) of the Plumbing License Law and Chapter 367 (relating to Enforcement) of the Board Rules, for any violation of the Plumbing License Law or Board Rules.

(b) A person commits a Class C misdemeanor by:

(1) Violating the act or the rules adopted under it;

(2) Performing non-exempt plumbing work without holding a valid license, registration or endorsement issued through the Board;

(3) Employing an unlicensed or unregistered individual to perform activities that by law require the skills and supervision of an individual registered or licensed by the Board without providing for that individual's supervision as specified by the Act and Board Rules.

(4) Proclaiming through advertising or by producing another's plumbing license, registration or license or registration number or by other means claiming that:

(A) an individual is a licensed plumber or is registered with the Board when in fact that individual is not a plumber licensed or registered by the Board, or

(B) that a person or plumbing company has secured the services of a Responsible Master Plumber as specified in §367.3 of this title, when in fact that company has not;

(5) Acting, serving, or representing oneself as a Plumbing Inspector, or conducting plumbing inspections as defined in the Act and Board Rules without holding a valid Plumbing Inspector License and without being employed by, or an independent contractor for a political subdivision or state agency.

(c) In addition to any other disciplinary action the Board may take, a person who violates any provision of the act or these rules or any other order of the Board is subject to a civil penalty, under §1301.507 of the Plumbing License Law, of not less than $50 or more than $1,000 for each violation and for each day of violation after notification.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2013.

TRD-201304791
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Proposed date of adoption: January 13, 2014
For further information, please call: (512) 936-5224

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

The Texas Department of Insurance proposes the repeal of §3.3053, concerning non-duplication of benefits provision, and Subchapter V, 28 TAC §§3.3501 - 3.3511, concerning group coordination of benefits. Repeal of §3.3053 and Subchapter V are necessary because the department is proposing a new Subchapter V, 28 TAC §§3.3501 - 3.3510 (relating to Coordination of Benefits), which contains more specific guidelines relating to coordination of benefits (COB). The department adopted §3.3053 to be effective in 1977 and amended it to be effective in 1983 and 1984. Repeal of §3.3053 is necessary because it is outdated and does not address current industry practices and procedures. Repeal of Subchapter V is necessary because the department adopted the current coordination of benefits subchapter in 1994, but it is no longer current with existing practices in the industry. The proposed new Subchapter V, 28 TAC §§3.3501 - 3.3510, is also published in this issue of the *Texas Register.*

FISCAL NOTE. Jan Graeber, director and chief actuary, Rate and Form Review Office, has determined that during each year of the first five years that the proposed repeal is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the sections. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Graeber has also determined that for each year of the first five years the repeal of the sections is in effect, the public benefit anticipated as a result of administration and enforcement of the repealed sections will be the elimination of outdated regulations. There is no economic cost to persons who are required to comply with the proposed repeal. There is no anticipated difference in cost of compliance between small and large businesses. The department has identified estimated costs to implement the proposed new Subchapter V, 28 TAC §§3.3501 - 3.3510, concerning the COB. Those estimates are addressed in that proposal, also published in this issue of the *Texas Register.*

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Under Government Code §2006.002(c), TDI has determined that this proposed repeal will not have an adverse economic effect on small or micro business carriers because it is simply a repeal of outdated rules. Under Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and so does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. If you wish to comment on this proposal you must do so in writing no later than 5:00 p.m. on December 9, 2013. Send your comments to Sara Waitt, general counsel, by email at: chiefclerk@tdi.texas.gov, or by mail at: Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy must be simultaneously submitted to Jan Graeber, director and chief actuary, Rate and Form Review Office, by email at: LHLcomments@tdi.texas.gov, or by mail at: Mail Code 106-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The commissioner will consider the adoption of this proposal in a public hearing under Docket No. 2756 scheduled for November 21, 2013 at 9:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. Written and oral comments presented at the hearing will be considered.

SUBCHAPTER S. MINIMUM STANDARDS AND BENEFITS AND READABILITY FOR INDIVIDUAL ACCIDENT AND HEALTH INSURANCE POLICIES

28 TAC §3.3053

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

STATUTORY AUTHORITY. The repeal of §3.3053 is proposed under Insurance Code §§1201.006, 1201.101, 1251.008, 1701.055(b), 1701.060 and §36.001. Section 1201.006 provides that the commissioner may adopt reasonable rules as necessary to implement the purposes and provisions of Chapter 1201. Section 1201.101(a) provides that the commissioner must adopt reasonable rules establishing specific standards for the content of an individual accident and health insurance policy and the manner of sale of an individual accident and health insurance policy, including disclosures required to be made in connection with the sale. Section 1201.101(b) provides that rules adopted under Section 1201 must establish standards for policy readability and full and fair policy disclosures. Section 1201.101(c)(10) provides that standards established under Section 1201 may include standards that address reductions. Section 1251.008 provides that the commissioner may adopt rules necessary to administer Chapter 1251. Section 1701.055(b) provides that a form filed under Chapter 1701 that contains a COB provision may not be approved for use in this state unless the form provides for the order of benefits determination for insured dependent children, and it further provides that an order of benefits determination provision may not be approved if the provision violates this code, a rule of the commissioner, or any other law; or contains a provision, title, or heading that is unjust, encourages misrepresentation, or is deceptive. Section 1701.060(a) provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria under which each type of form submitted to the department under this chapter will be reviewed and approved by the commissioner or exempted under §1701.005(b); and particular types of forms designated by the commissioner may be given a summary review and approval if considered appropriate by the commissioner to expedite review and approval of those forms. Section 1701.060(b) provides that a rule adopted under this chapter may not be repealed or amended until after the anniversary of the date the rule was adopted unless the commissioner determines that repeal or amendment is in the significant and material interests of the citizens of this state or is necessary as a result of legislative enactment. Section 36.001 provides that the commissioner of insurance 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.

CROSS REFERENCE TO STATUTE. The proposed repeal affects the following statutes: Insurance Code §§1201.006, 1201.101, 1251.008, 1701.055, and 1701.060.

§3.3053. Non-duplication of Benefits Provision.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 28, 2013.

TRD-201304890
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 8, 2013
For further information, please call: (512) 463-6327

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SUBCHAPTER V. GROUP COORDINATION OF BENEFITS

28 TAC §§3.3501 - 3.3511

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

STATUTORY AUTHORITY. The repeal of §§3.3501 - 3.3511 is proposed under Insurance Code §§1201.006, 1201.101, 1251.008, 1701.055(b), 1701.060 and §36.001. Section 1201.006 provides that the commissioner may adopt reasonable rules as necessary to implement the purposes and provisions of Chapter 1201. Section 1201.101(a) provides that the commissioner must adopt reasonable rules establishing specific standards for the content of an individual accident and health insurance policy and the manner of sale of an individual accident and health insurance policy, including disclosures required to be made in connection with the sale. Section 1201.101(b) provides that rules adopted under Section 1201 must establish standards for policy readability and full and fair policy disclosures. Section 1201.101(c)(10) provides that standards established under Section 1201 may include standards that address reductions. Section 1251.008 provides that the commissioner may adopt rules necessary to administer Chapter 1251. Section 1701.055(b) provides that a form filed under Chapter 1701 that contains a COB provision may not be approved for use in this state unless the form provides for the order of benefits determination for insured dependent children, and it further provides that an order of benefits determination provision may not be approved if the provision violates this code, a rule of the commissioner, or any other law; or contains a provision, title, or heading that is unjust, encourages misrepresentation, or is deceptive. Section 1701.060(a) provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria under which each type of form submitted to the department under this chapter will be reviewed and approved by the commissioner or exempted under §1701.005(b); and particular types of forms designated by the commissioner may be given a summary review and approval if considered appropriate by the commissioner to expedite review and approval of those forms. Section 1701.060(b) provides that a rule adopted under this chapter may not be repealed or amended until after the anniversary of the date the rule was adopted unless the commissioner determines that repeal or amendment is in the significant and material interests of the citizens of this state or is necessary as a result of legislative enactment. Section 36.001 provides that the commissioner of insurance 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.

CROSS REFERENCE TO STATUTE. The proposed repeal affects the following statutes: Insurance Code §§1201.006, 1201.101, 1251.008, 1701.055, and 1701.060.

§3.3501. Purpose and Applicability.

§3.3502. Identification of Form.

§3.3503. Definitions.

§3.3504. Allowable Expenses.

§3.3505. Claim Determination Period.

§3.3506. Use of the Terms "Plan," "Primary Plan," "Secondary Plan," and "This Plan" in Policies, Certificates, and Contracts.

§3.3507. Prototype COB Contract Provisions and Prohibited Provisions.

§3.3508. Rules for Coordination of Benefits and Order of Benefits.

§3.3509. Procedure To Be Followed by Secondary Plan.

§3.3510. Miscellaneous Provisions.

§3.3511. Effective Date; Compliance by Existing Contracts.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 28, 2013.

TRD-201304891
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 8, 2013
For further information, please call: (512) 463-6327

SUBCHAPTER V. COORDINATION OF BENEFITS

28 TAC §§3.3501 - 3.3510

The Texas Department of Insurance proposes new Subchapter V, 28 TAC §§3.3501 - 3.3510, concerning coordination of benefits (COB). This new subchapter is proposed to replace one that is being proposed for repeal in this issue of the *Texas Register.* This proposed new subchapter and the separate repeal of the current subchapter are necessary to permit carriers to include COB provisions that are consistent with modern market conditions and to maintain, by regulation, a consistent order in which plans with COB provisions must pay their claims. The department adopted the current COB subchapter in 1994. Because the adoption of the existing COB subchapter occurred nearly 20 years ago, this proposal is necessary to address current industry matters and procedures involving a person covered under more than one plan.

Proposing a new subchapter to replace the outdated current subchapter will provide greater efficiency in the processing of claims when a person is covered under more than one plan. This proposal does not propose to adopt the National Association of Insurance Commissioner's (NAIC) Coordination of Benefits Model Regulation, but it is consistent with it, including modifications to the NAIC model adopted in 2013. A majority of the states have adopted versions of the model regulation, and rules that are consistent with the NAIC model will promote market efficiency, especially in the context of multistate plans and carriers operating in multiple states.

COB regulations are also necessary to implement the requirements for a form filed with the department that contains a COB provision. Insurance Code §1701.055(b) provides that a form filed under Chapter 1701 with a coordination of benefits provision may not be approved for use in this state unless the form provides for the order of benefits determination for insured dependent children. Section 1701.055(b) further provides that an order of benefits determination provision may not be approved if the provision violates the Insurance Code, a rule of the commissioner, or any other law; or contains a provision, title, or heading that is unjust, encourages misrepresentation, or is deceptive. Insurance Code §1701.060(a) further provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria under which each type of form submitted to the department under Chapter 1701 will be reviewed and approved by the commissioner.

Proposed new §3.3501 provides the purpose of the subchapter. Proposed new §3.3502 provides the policies, evidences of coverage, and contracts to which this subchapter applies. In addition to the subchapter applying to group, blanket, or franchise accident and health insurance policies under Insurance Code Chapter 1251; and group health maintenance organization evidences of coverage under Insurance Code §843.002, this proposed new subchapter for COB includes individual health maintenance organization evidences of coverage under Insurance Code §843.002; individual accident and health insurance policies under Insurance Code §1201.001; individual and group preferred provider benefit plans and exclusive provider benefit plans under Insurance Code Chapter 1301; group insurance contracts, individual insurance contracts, and subscriber contracts that pay or reimburse for the cost of dental care; and the medical care components of individual and group long-term care contracts, such as skilled nursing care subject to Insurance Code Chapter 1651. Generally, proposed new §3.3502 makes the subchapter applicable to major medical plans regulated by the department and exempts plans that are not regulated by the department or which are generally purchased with the intent that they not coordinate with other coverage. Unlike the current COB rule, this proposal applies to individual plans and permits coordination with individual coverages.

Some individuals have more than one health plan for their health care needs. For this reason, it is necessary to include individual health plans in the proposed new COB subchapter so that each plan pays its share of the expenses for the care received by the person with more than one health plan. While in the past, individuals have not generally maintained more than one major medical insurance policy, changes in the market will likely result in this occurring more often in the future. For instance, under federal law, 42 USC §300gg-14 extended the age of dependent coverage until the child turns 26 years of age. As a result, individuals up to age 26 are permitted to maintain coverage under their parents' health plans. Also, beginning in 2014, under 42 USC §300gg-1, and subject to certain requirements, each health insurance issuer that offers health insurance coverage in the individual or group market in a state must accept every employer and individual in the state that applies for coverage on a guaranteed issue basis. Without COB provisions applicable to individual coverage, individuals might have an incentive to purchase multiple individual medical policies to have the same claims paid multiple times. For this reason, the proposed new COB subchapter establishes reduction standards that also apply to individual accident and health insurance policies under Insurance Code §1201.101(c)(10).

Insurance Code §1301.134 concerns coordinating payments for preferred provider benefit plans and determining the appropriate payment each health maintenance organization or insurer should make to the physician or health care provider. Insurance

Code §1301.134(h) provides that the provisions of §1301.134 may not be waived, voided, or nullified by contract. For this reason, it is necessary for the proposed new COB subchapter to apply to preferred provider benefit plans, and equally to exclusive provider benefit plans.

The proposed new subchapter for COB would also apply to group insurance contracts, individual insurance contracts, and subscriber contracts that pay or reimburse for the cost of dental care. Title 42 USC §300gg-6(a) requires, effective January 1, 2014, that a health insurance issuer that offers health insurance coverage in the individual or small group market ensure that such coverage includes the essential health benefits package required under 42 USC §18022. Pediatric services, including oral and vision, are included as part of the essential health benefit package under 42 USC §18022(b)(1)(J). For this reason, it is necessary for the proposed new COB subchapter to include provisions to clarify that dental benefits that are either embedded in a health benefit plan or attached to a health benefit plan must follow the COB rules.

The proposed new COB subchapter would also apply to the medical care components of individual and group long-term care contracts, such as skilled nursing care subject to Insurance Code Chapter 1651. Insurance Code §1651.051(c)(10) provides that the standards for the provisions of long-term care benefit plans must address reductions. Title 28 TAC §3.3826(a)(6) implements Insurance Code §1651.051(c)(10) to provide that:

(a) No policy or certificate may be delivered or issued for delivery in this state as a long-term care insurance policy or certificate if such policy or certificate limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:

(6) expenses for services or items available or paid under another long-term care insurance or health insurance policy.

However, 28 TAC §3.3826(a)(6) does not provide for the order of payment when a long-term care insurance plan coordinates its payment when there are expenses for services or items paid under another long-term care insurance or health insurance policy. As previously discussed, Insurance Code §1701.055(b) provides that a form filed under Chapter 1701 with a COB provision may not be approved for use in this state unless the form provides for the order of benefits determination for insured dependent children. Insurance Code §1701.055(b) further provides that an order of benefits determination provision may not be approved if the provision violates the Insurance Code, a rule of the commissioner, or any other law. Thus, it is necessary for this proposed new COB subchapter to apply to the medical care components of individual and group long-term care contracts, such as skilled nursing care.

Proposed new §3.3503 provides the definitions of the following words and terms used in the subchapter: "allowable expense," "allowed amount," "birthday," "carrier," "certificate holder," "claim," "closed panel plan," "Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)," "contract," "coordination of benefits," "custodial parent," "group-type contract," "high-deductible health plan," "hospital indemnity benefits," "plan," "policyholder," "primary plan," and "secondary plan." These definitions are necessary for the proper application of the requirements of the subchapter. The term "plan" is defined to identify those products with which coordination is permitted and not permitted. The term is generally defined to include major medical products whether or not they are regulated by the department, and exclude products that are subject to other coordination requirements or which are generally not intended to be subject to coordination. For example, Insurance Code Chapter 1203 provides the instances in which certain COB provisions are prohibited.

Proposed new §3.3504 establishes a general prohibition for when a carrier may not coordinate benefits to reduce the benefits paid under a plan regulated by the proposed new subchapter. This section is necessary to clarify that a carrier is not required to coordinate benefits to reduce the amount it pays, but if it does coordinate benefits, it must comply with the requirements of the subchapter. This section is also consistent with Insurance Code §1701.055(b) which provides that a form filed under Chapter 1701 with a COB provision may not be approved for use in this state unless the form provides for the order of benefits determination for insured dependent children. An order of benefits determination provision may not be approved if the provision violates the Insurance Code, a rule of the commissioner, or any other law; or contains a provision, title, or heading that is unjust, encourages misrepresentation, or is deceptive.

Proposed new §3.3505 provides examples of expenses that are allowable expenses and expenses that are not allowable expenses. This section is essential to the proposed subchapter as it identifies those expenses that will be considered in the calculation of how much a secondary carrier may reduce what it otherwise would have paid.

Proposed new §3.3506 describes the use of the term "plan" in contracts. This section is necessary to clarify the parts of a plan that may be coordinated, to require that carriers explain to consumers what plans may be coordinated, and to permit limited COB provisions.

Proposed new §3.3507 provides the rules for determining the order of benefit payments when a person is covered by two or more plans. This section is essential to the rule as it determines which plan must pay full benefits and which is permitted to reduce its benefits in various situations.

Proposed new §3.3508 provides the procedure to be followed by a secondary plan in determining the amount to be paid by the secondary plan on a claim when coordinating benefits. This section is essential to the rule as it determines how much the secondary plan may reduce the benefits it would ordinarily have paid.

Proposed new §3.3509 provides miscellaneous provisions concerning the COB that are necessary to clarify and resolve particular issues. Proposed new §3.3510 explains the model COB provision form for use in contracts. Proposed new §3.3510 also explains the model form written in plain language to describe the COB process to the covered person. While these forms are not required to be used, this section is necessary to explain the forms and their permissible use.

FISCAL NOTE. Jan Graeber, director and chief actuary, Rate and Form Review Office, has determined that for each year of the first five years the proposed new sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Graeber has also determined that for each year of the first five years the proposed subchapter is in effect, there are public benefits anticipated as a re-

sult of the enforcement and administration of this proposal, as well as potential costs of compliance for carriers that coordinate benefits. The department has drafted this proposal to maximize public benefits consistent with the authorizing statutes while mitigating costs.

The anticipated public benefits are the establishment of regulatory standards for the consistent COB, including standards for the determination of allowable expenses, and the order of benefit payments. This proposal further provides the public with the benefit of establishing procedures to coordinate benefits for primary and secondary plans to follow.

On January 24, 2013, the department posted a call for comments on its website that included a request for comments regarding the costs of implementing the proposed new subchapter. As a result, the department received general input on the cost of compliance, but did not receive specific cost estimates.

The department has identified three categories of labor reasonably necessary to implement the proposed changes to the subchapter. Carriers may calculate the total cost of labor for each category by multiplying the number of estimated hours for each cost component by the median hourly wage for each category of labor. The median hourly wage for each category of labor is published online by the Texas Workforce Commission as follows:

(i) a general operations manager or functional director: $43.55 (http://www.texasindustryprofiles.com/apps/win/eds.php?geocode=4801000048&indclass=1&incode=000000&occcode=11-1021&compare=2)

(ii) a computer programmer: $40.33 (http://www.texasindustryprofiles.com/apps/win/eds.php?occgroup=15&occcode=15-1131)

(iii) an administrative assistant: $22.98 (http://www.texasindustryprofiles.com/apps/win/eds.php?occgroup=43&occcode=43-0000)

The department estimates that a carrier's overall printing, copying, mailing, and transmitting costs will likely be impacted as a result of implementation of the proposed new subchapter. According to the United States Postal Service business price calculator, available at dbcalc.usps.gov, the current cost to mail machinable letters in a standard business mail envelope with a weight limit of 3.3 ounces to a standard five-digit ZIP code in the United States is $1.06 cents. With the weight limit of 3.3 ounces, approximately 18 pages could be sent per envelope for $1.06 cents. This estimate is based on an anticipated use of six pages of standard printing paper, with a total weight of one ounce. Additionally, this estimate does not take into consideration future rate increases for the price of a stamp. The department has determined that the cost of a standard business envelope is 1.6 cents. The department further estimates that the cost of printing or copying is between 6 and 8 cents per page.

It is not feasible for the department to estimate the total increased printing, copying, mailing, and transmitting costs attributable to compliance with the proposed new subchapter because there are numerous factors involved that are not suited to reliable quantification by the department. The department estimates that each carrier has the information necessary to determine its individual printing, copying, mailing, and transmitting costs necessary to meet the requirements of the new proposed subchapter.

Sections 3.3501 - 3.3510: Requirements for Coordination of Benefits. This rule proposal contains new requirements for carriers that use COB that will likely necessitate revisions to the COB language contained in most insurance policies and certificates. This could result in administrative costs to update policy documents and any current enrollee materials. Administrative expenditures could also include mailing costs to distribute the materials. However, the department expects that insurers will avoid most mailing costs as a result of compliance by providing the new policy language and materials with the policy or certificate at issuance or renewal or with updated enrollee materials that are prepared for distribution.

The department estimates that preparation of the required changes to policies and enrollee materials will likely require a one-time cost of approximately two to 10 hours of administrative staff time. The cost to the insurer will vary depending on whether the insurer decides to have an administrative assistant, a general operations manager, or a combination of both positions, perform this function. Proposed §3.3510(d) contains a model COB provision for use in contracts which could reduce the amount of time necessary to make changes. Proposed §3.3510(a) provides that the use of this model form is subject to proposed new §3.3509 and §3.3507.

Proposed new §3.3510(e) contains a model plain language description of the COB process that explains to the covered person how health plans will implement COB in certificates which could also reduce the amount of time necessary to prepare changes to existing enrollee materials.

The department expects that carriers could also incur a cost for developing a new consumer explanatory booklet. A carrier has the option to provide consumers with an explanatory booklet since it is not required by this rule proposal. The department estimates that preparation of the booklet will likely require a one-time cost of approximately two to 10 hours of administrative staff time. The cost to the carrier will vary depending on whether the carrier elects to have an administrative assistant, a general operations manager, or a combination of both positions, perform this function.

The department expects that a carrier will incur a cost for printing the consumer explanatory booklet. The department estimates that this cost will be approximately six to eight cents per page for printing and paper and that each booklet will consist of three printed pages. It is likely that the carrier has the information necessary to determine its individual printing costs, including the number of pages that will need to be printed and in-house or out-of-house printing costs. A carrier's potential printing costs may vary if the carrier does not use in-house printing. The total cost could also vary depending on the carrier's administrative processes.

The department estimates that some carriers might find it necessary to employ a computer programmer to assist with the computer system modifications regarding the order of payment of benefits when a person is covered by two or more plans. The department estimates that the number of hours necessary to determine the order of benefits will vary from carrier to carrier with a range from five to 40 hours of computer programmer labor. Some additional training for claims payment staff may also be necessary. The cost to the carrier will vary depending on whether the carrier uses the services of a general operations manager, another employee, or some other training method, to train the claims staff on the new payment requirements.

The department notes that the use of COB provisions is voluntary on the part of carriers. Those carriers that do not cur-

rently coordinate benefits will incur no costs as a result of this rule proposal. Many of the requirements of the proposed rule may also be substantially less costly than the estimates in this proposal where carriers already coordinate benefits in ways that comply with the proposed requirements. Because the proposed subchapter permits carriers to consider provider discounts when coordinating benefits, carriers offering preferred provider benefit plans may have substantially reduced claims costs due to the proposed requirements.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Government Code §2006.002(c) requires that if a proposed rule may have an adverse economic impact on small businesses, state agencies must prepare an economic impact statement that assesses the potential impact of the proposed rule on small businesses. The state agencies must also prepare a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(2) defines a "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than $6 million in annual gross receipts. Government Code §2006.001(1) defines a "micro business" similarly to a "a small business" but specifies that a micro business may not have more than 20 employees. Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined under Government Code §2006.002(b) - (d).

The department believes that the economic impact of the proposal will benefit small and micro business carriers because it permits carriers to reduce claims costs in ways that were not permitted previously. However, as required by Government Code §2006.002(c), the department has determined that the proposal may have an adverse economic effect on approximately 21 to 31 small or micro businesses that are required to comply with the proposed rules. The department does not have precise information regarding the number of small or micro life, accident, and health insurers doing business in Texas. However, for the purpose of this estimate, the department assumes that between 10 to 15 percent of the estimated 208 life, accident, and health insurers and health maintenance organizations (174 life, accident, and health insurers and 34 health maintenance organizations) currently active in the Texas market as of August 12, 2013, are small or micro businesses that coordinate benefits.

The cost of compliance with the proposal will not vary between large businesses and small or micro businesses. The department's cost analysis and resulting estimated costs for insurers in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro businesses. It is the department's position that to waive or modify the requirements of the proposed subchapter for small and micro businesses would result in a disparate effect on policyholders and other persons affected by this proposal.

The purpose of the proposed rule is to establish current industry procedures to permit carriers with a COB provision to pay their claims. The other regulatory methods considered by the department to accomplish the objectives of the proposal and to minimize any adverse impact on small and micro businesses include: (i) not proposing the amendments; (ii) proposing different requirements for small and micro businesses; and (iii) excluding small and micro businesses from applicability under the new subchapter included in this proposal.

Not proposing the new subchapter. As previously noted, the purpose of this rule proposal is to establish current industry procedures to permit carriers with a COB provision to pay their claims. The department adopted the current COB subchapter in 1994, nearly 20 years ago. If the department did not propose this rule, no rules could be adopted to address current industry standards for when a person is covered under more than one plan. For this reason, the department has rejected this option.

Proposing different requirements for small and micro businesses. Many changes have been made to earlier drafts of the proposed new subchapter based on input from stakeholders and stakeholder groups, including groups that have small business members. The department believes that proposing different standards than those included in this proposal would not provide a better option for small or micro businesses. Also, the department believes that the potential harm of lessened regulatory requirements to consumers and lessened confusion within the industry about which COB requirements would apply in particular cases would outweigh the potential benefit to small or micro businesses. Although the proposed requirements include model contract provisions and a consumer explanatory booklet, carriers are not required to use these documents under the proposal. Also, the policy documents might not reflect all of the regulatory requirements. Consumers would not know the different regulations that a small or micro business would follow. For these reasons, the department has rejected this option.

Excluding small and micro businesses from applicability under the proposed new subchapter. If small and micro businesses were excluded from the applicability section under this proposed new subchapter, they would not be subject to the requirements for the COB if their plans include a COB provision. The department believes that the lack of these consumer protections and the lack of consistency within the industry would create potential harm for consumers that would outweigh the potential benefit to small or micro businesses. In addition, excluding small and micro businesses from the applicability section under this proposed new subchapter would not comply with Insurance Code §1701.055(b), which provides that a form filed under Chapter 1701 with a COB provision may not be approved for use in this state unless the form provides for the order of benefits determination for insured dependent children. Insurance Code §1701.055(b) further provides that an order of benefits determination provision may not be approved if the provision violates the Insurance Code, a rule of the commissioner, or any other law. It is necessary for this proposed new COB subchapter to apply to small and micro businesses. For these reasons, the department has rejected this option.

In accord with Government Code §2006.002(c-1), the department has determined that, although the proposal might have an adverse economic effect on small or micro businesses required to comply with the proposal, the proposal does not require a regulatory flexibility analysis under Government Code §2006.002(c)(2). Section 2006.002(c)(2) requires that a state agency, before adopting a rule that may have an adverse economic effect on small businesses, prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Government Code Section 2006.002(c-1) requires that the regulatory flexibility analysis consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses. An agency is not required to consider alternatives that, while possi-

bly minimizing adverse impacts on small and micro businesses would not be protective of the health, safety, and environmental and economic welfare of the state. Under this proposal, the department has determined that inconsistent COB requirements for small or micro business carriers would not be protective of the economic welfare of the state.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and so does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 9, 2013, to Sara Waitt, General Counsel, by email at: chiefclerk@tdi.texas.gov, or by mail at: Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Jan Graeber, director and chief actuary, Rate and Form Review Office, by email at: LHLcomments@tdi.texas.gov, or by mail at: Mail Code 106-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The commissioner will consider the adoption of the proposed new subchapter in a public hearing under Docket No. 2755 scheduled for November 21, 2013, at 9:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. Written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The new sections are proposed under Insurance Code §§843.151, 1201.006, 1201.101, 1251.008, 1301.007, 1651.004, 1651.051, 1701.055(b), 1701.060, and §36.001. Section 843.151(1) provides that the commissioner may adopt reasonable rules as necessary and proper to implement Chapter 843 and Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapters 222, 251, and 258, as applicable to a health maintenance organization, and Chapters 1271 and 1272, including rules to ensure that enrollees have adequate access to health care services. Section 843.151(2) provides that the commissioner may adopt reasonable rules as necessary and proper to meet the requirements of federal law and regulations. Section 1201.006 provides that the commissioner may adopt reasonable rules as necessary to implement the purposes and provisions of Chapter 1201. Section 1201.101(a) provides that the commissioner must adopt reasonable rules establishing specific standards for the content of an individual accident and health insurance policy and the manner of sale of an individual accident and health insurance policy, including required disclosures in connection with the sale. Section 1201.101(b) provides that rules adopted under Section 1201 must establish standards for policy readability and full and fair policy disclosures. Section 1201.101(c)(10) provides that standards established under Section 1201 may include standards that address reductions. Section 1251.008 provides that the commissioner may adopt rules necessary to administer Chapter 1251. Section 1301.007 requires the commissioner to adopt rules as necessary to implement Chapter 1301 and ensure reasonable accessibility and availability of preferred provider services to residents of this state. Section 1651.004(a) provides that in addition to other rules required or authorized by Chapter 1651, the department may adopt reasonable rules that are necessary and proper to carry out Chapter 1651. Section 1651.004(b) provides that rules adopted under this section must include requirements no less favorable than the minimum standards for long-term care benefit plans adopted in any model laws or regulations relating to minimum standards for benefits for long-term care benefit plans and under federal law. Section 1651.051(a) requires the commissioner to establish by rule: (1) specific standards for provisions of long-term care benefit plans; and (2) standards for full and fair disclosure setting forth the manner, content, and required disclosures for the marketing and sale of those benefit plans. Section 1651.051(b)(1) - (3) provides that the standards are in addition to and must be in accord with applicable laws of this state, including Chapter 1201; applicable federal law; and any rules, regulations, and standards required by federal law. Section 1651.051(c)(10) provides that the standards must address benefit limitations, exceptions, and reductions. Section 1701.055(b) provides that a form filed under Chapter 1701 that contains a COB provision may not be approved for use in this state unless the form provides for the order of benefits determination for insured dependent children, and it further provides that an order of benefits determination provision may not be approved if the provision violates this code, a rule of the commissioner, or any other law; or contains a provision, title, or heading that is unjust, encourages misrepresentation, or is deceptive. Section 1701.060(a) provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria under which each type of form submitted to the department under this chapter will be reviewed and approved by the commissioner or exempted under §1701.005(b); and particular types of forms designated by the commissioner may be given a summary review and approval if considered appropriate by the commissioner to expedite review and approval of those forms. Section 36.001 provides that the commissioner of insurance 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.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §§843.151, 1201.006, 1201.101, 1251.008, 1301.007, 1651.004, 1651.051, 1701.005, and 1701.060.

§3.3501. Purpose.

(a) The purpose of this subchapter is to:

(1) permit carriers to include a coordination of benefits (COB) provision in their plans;

(2) identify plans with which COB is allowed;

(3) establish an order in which plans with a COB provision must pay their claims;

(4) reduce duplication of benefits by permitting a reduction of the benefits to be paid by plans that do not have to pay their benefits first; and

(5) provide greater efficiency in the processing of claims when a person is covered under more than one plan.

(b) Severability. If a court of competent jurisdiction holds that any provision of this subchapter or its application to any person or circumstance is invalid for any reason, the invalidity does not affect other provisions or applications of this subchapter that can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable.

§3.3502. Applicability.

(a) This subchapter applies to:

(1) group, blanket, or franchise accident and health insurance policies as described by Insurance Code Chapter 1251;

(2) individual and group health maintenance organization evidences of coverage as defined by Insurance Code §843.002;

(3) individual accident and health insurance policies as defined by Insurance Code §1201.001;

(4) individual and group preferred provider benefit plans and exclusive provider benefit plans as described by Insurance Code Chapter 1301;

(5) group insurance contracts, individual insurance contracts, and subscriber contracts that pay or reimburse for the cost of dental care; and

(6) the medical care components of individual and group long-term care contracts, such as skilled nursing care subject to Insurance Code Chapter 1651.

(b) This subchapter does not apply to:

(1) the Texas Health Insurance Pool as described in Insurance Code Chapter 1506;

(2) workers compensation insurance coverage;

(3) hospital indemnity coverage benefits or other fixed indemnity coverage;

(4) accident only coverage;

(5) specified disease or specified accident coverage;

(6) school accident-type coverages that cover students for accidents only, including athletic injuries, either on a "24-hour" or a "to and from school" basis;

(7) benefits provided in long-term care insurance policies for nonmedical services, for example, personal care, adult day care, homemaker services, assistance with activities of daily living, respite care, custodial care, or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services;

(8) Medicare supplement policies;

(9) a state plan under Medicaid;

(10) a governmental plan, which, by law, provides benefits that are in excess of those of any private insurance plan or other nongovernmental plan; or

(11) an individual accident and health insurance policy that is designed to fully integrate with other policies through a variable deductible.

(c) Except as provided in subsection (d) of this section, this subchapter applies to individual and group plans that are delivered, issued for delivery, or renewed on or after (date to be determined, approximately 180 days from the date of adoption).

(d) A contract delivered, issued for delivery, or renewed before the effective date of this subchapter must be brought into compliance with this subchapter on the next anniversary date or renewal date of the contract, or the expiration of any applicable collective bargaining contract pursuant to which it was written. This subchapter does not apply to individual policies issued before the effective date of the rule that are noncancellable or guaranteed renewable.

§3.3503. Definitions.

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

(1) Allowable expense--Except as otherwise provided in §3.3505 of this title (relating to Allowable Expenses), or where a statute requires a different definition, any health care expense, including coinsurance or copayments and without reduction for any applicable deductible, that is covered in full or in part by any of the plans covering the person.

(2) Allowed amount--The amount of a billed charge that a carrier determines to be covered for services provided by a noncontracted health care provider or physician. The allowed amount includes the carrier's payment and any applicable deductible, copayment, or coinsurance amounts for which the insured is responsible.

(3) Birthday--Refers only to the month and day in a calendar year and does not include the year in which the individual is born.

(4) Carrier--An entity authorized under the Insurance Code to provide coverage subject to this subchapter, including an insurer, health maintenance organization, group hospital service corporation, or stipulated premium company.

(5) Certificate holder--An insured or enrollee who is covered other than as a dependent under a group plan or a group-type plan.

(6) Claim--A request that benefits be provided or paid. The benefits claimed may be in the form of:

(A) services, including supplies;

(B) payment for all or a portion of the expenses incurred;

(C) a combination of subparagraphs (A) and (B) of this paragraph; or

(D) an indemnification.

(7) Closed panel plan--A plan that provides health benefits to covered persons primarily in the form of services through a panel of health care providers and physicians that have contracted with or are employed by the plan, and that excludes benefits for services provided by other health care providers or physicians, except in cases of emergency or referral by a panel member.

(8) Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)--Coverage provided under a right of continuation under federal law.

(9) Contract--Refers to an insurance policy, insurance certificate, or health maintenance organization evidence of coverage.

(10) Coordination of benefits (COB)--A provision establishing an order in which plans pay their claims and permitting secondary plans to reduce their benefits so that the combined benefits of all plans do not exceed total allowable expenses.

(11) Custodial parent--

(A) the parent with the right to designate the primary residence of a child by a court order under the Family Code or other applicable law; or

(B) in the absence of a court order, the parent with whom the child resides more than one-half of the calendar year without regard to any temporary visitation.

(12) Group-type contract--A contract that is not available to the public and is obtained and maintained only because of membership in or a connection with a particular organization or group, including blanket coverage.

(13) High-deductible health plan--A high-deductible health plan under Section 223 of the Internal Revenue Code of 1986, as amended by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and Insurance Code Chapter 1653.

(14) Hospital indemnity benefits--Benefits not related to expenses incurred. This term does not include reimbursement-type benefits even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim.

(15) Plan--A form of coverage with which coordination is allowed. For purposes of this subchapter:

(A) plan includes:

(i) any contract to which this subchapter applies;

(ii) limited benefit policies under §3.3079 of this title (relating to Minimum Standards for Limited Benefit Coverage);

(iii) uninsured arrangements of group or group-type coverage;

(iv) the medical benefits coverage in automobile insurance contracts; and

(v) Medicare or other governmental benefits, as permitted by law; and

(vi) group insurance contracts, individual insurance contracts, and subscriber contracts that pay or reimburse for the cost of dental care.

(B) plan does not include:

(i) the Texas Health Insurance Pool as described in Insurance Code Chapter 1506;

(ii) workers' compensation insurance coverage;

(iii) hospital confinement indemnity coverage or other fixed indemnity;

(iv) specified disease coverage;

(v) supplemental benefit coverage under §3.3080 of this title (relating to Supplemental Coverage) and as described in Insurance Code Chapter 1203;

(vi) accident-only coverage;

(vii) specified accident coverage;

(viii) school accident-type coverages that cover students for accidents only, including athletic injuries, either on a "24-hour basis" or on a "to and from school" basis;

(ix) benefits provided in long-term care insurance contracts for nonmedical services, for example, personal care, adult day care, homemaker services, assistance with activities of daily living, respite care, and custodial care or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services;

(x) Medicare supplement policies;

(xi) a state plan under Medicaid;

(xii) a governmental plan which, by law, provides benefits that are in excess of those of any private insurance plan or other nongovernmental plan; or

(xiii) an individual accident and health insurance policy that is designed to fully integrate with other policies through a variable deductible.

(16) Policyholder--The primary insured named in an individual health insurance policy or evidence of coverage.

(17) Primary plan--A plan whose benefits for a person's health care coverage must be determined without taking the existence of any other plan into consideration. A plan is a primary plan if:

(A) the plan either has no order of benefit determination rules, or its rules differ from those permitted by this subchapter; or

(B) all plans that cover the person use the order of benefit determination rules required by this subchapter, and under those rules, the plan determines its benefits first.

(18) Secondary plan--A plan that is not a primary plan.

§3.3504. General Prohibition.

A carrier may not coordinate benefits to reduce the benefits paid under a plan regulated by this subchapter in the absence of a COB provision in the contract that meets the requirements of this subchapter. Despite §11.511(1)(B) of this title (relating to Optional Provisions), and subject to the requirements of Insurance Code Chapter 1203 and this subchapter, an HMO group plan may coordinate benefits with an individual or conversion plan.

§3.3505. Allowable Expenses.

(a) If a covered person advises a plan that all plans covering the person are high-deductible health plans and the person intends to contribute to a health savings account established in accord with Section 223 of the Internal Revenue Code of 1986, the primary high-deductible plan's deductible is not an allowable expense, except for any health care expense incurred that may not be subject to the deductible as described in Section 223(c)(2)(C) of the Internal Revenue Code of 1986.

(b) An expense or a portion of an expense that is not covered by any of the plans is not an allowable expense.

(c) Any expense that a health care provider or physician is prohibited from charging a covered person by law or in accord with a contractual agreement is not an allowable expense.

(d) If a person is confined in a private hospital room, the difference between the cost of a semi-private room in the hospital and the private room is not an allowable expense, unless one of the plans provides coverage for private hospital room expenses.

(e) If a person is covered by two or more plans that do not have negotiated fees and that compute their benefit payments on the basis of usual and customary fees, allowed amounts, relative value schedule reimbursement, or other similar reimbursement methodology, any amount charged by the health care provider or physician in excess of the highest reimbursement amount for a specified benefit is not an allowable expense.

(f) If a person is covered by two or more plans that provide benefits or services based on negotiated fees, any amount in excess of the highest of the negotiated fees is not an allowable expense.

(g) If a person is covered by one plan that does not have negotiated fees and that calculates its benefits or services based on usual and customary fees, allowed amounts, relative value schedule reimbursement, or other similar reimbursement methodology and another plan that provides its benefits or services based on negotiated fees, the primary plan's payment arrangement must be the allowable expense for all plans. However, if the health care provider or physician has contracted with the secondary plan to provide the benefit or service for a specific negotiated fee or payment amount that is different than the primary plan's payment arrangement and if the health care provider's or

physician's contract permits, that negotiated fee or payment must be the allowable expense used by the secondary plan to determine its benefits.

(h) The definition of "allowable expense" may exclude certain types of coverage or benefits such as dental care, vision care, prescription drugs, or hearing aids. A plan that limits the application of COB to certain coverages or benefits may limit the definition of "allowable expenses" in its contract to expenses that are similar to the expenses that it provides. When COB is restricted to specific coverages or benefits in a contract, the definition of "allowable expense" must include similar expenses to which COB applies.

(i) When a plan provides benefits in the form of services, the reasonable cash value of each service will be considered as both an allowable expense and a benefit paid.

(j) The amount of the reduction of benefits under a primary plan may be excluded from allowable expense when a covered person's benefits are reduced under a primary plan because:

(1) the covered person does not comply with the plan provisions concerning second surgical opinions or prior authorization of admissions or services; or

(2) the covered person has a lower benefit because the covered person did not use a preferred health care provider or preferred physician.

§3.3506. Use of the Term "Plan" in Contracts.

(a) Separate parts of a plan for members of a group that are provided through alternative contracts that are intended to be part of a coordinated package of benefits are considered one plan, and there is no COB among the separate parts of the plan.

(b) If a plan coordinates benefits, its contract must state the types of coverage that will be considered in applying the COB provision of that contract. Whether the contract uses the term "plan" or some other term such as "program," the contractual definition may be no broader than the definition of "plan" in this subchapter. The model COB contract provisions provide an example of how to define "plan" in §3.3510(d) of this title (relating to Model COB Contract Provisions).

(c) A contract may apply one COB provision to certain benefits, such as dental benefits, coordinating only with like benefits, and may apply other separate COB provisions to coordinate other benefits.

§3.3507. Rules for COB and Order of Benefits.

(a) Coverage by two or more plans. When a person is covered by two or more plans, the rules for determining the order of benefit payments will be determined as provided in paragraphs (1) - (5) of this subsection.

(1) The primary plan must pay or provide its benefits as if the secondary plan or plans did not exist.

(2) A plan may take into consideration the benefits paid or provided by another plan only when, under this subchapter, it is secondary to that other plan.

(3) If the primary plan is a closed panel plan and the secondary plan is not, the secondary plan shall pay or provide benefits as if it were the primary plan when a covered person uses a noncontracted health care provider or physician, except for emergency services or authorized referrals that are paid or provided by the primary plan.

(4) When multiple contracts providing coordinated coverage are treated as a single plan under this subchapter, this section applies only to the plan as a whole, and coordination among the component contracts is governed by the terms of the contracts. If more than one carrier pays or provides benefits under the plan, the carrier designated as primary within the plan must be responsible for the plan's compliance with this subchapter.

(5) If a person is covered by more than one secondary plan, the order of benefit determination rules of this subchapter decide the order in which secondary plans' benefits are determined in relation to each other. Each secondary plan must take into consideration the benefits of the primary plan or plans and the benefits of any other plan, that, under the rules of this subchapter, has its benefits determined before those of that secondary plan.

(b) Exception. Except as provided by subsection (c) of this section and §3.3509(b) of this title (relating to Miscellaneous Provisions), a plan that does not contain order of benefit determination provisions that are consistent with this subchapter is always the primary plan unless the provisions of both plans state that the complying plan is primary.

(c) Coverage by membership in a group. Coverage that is obtained by virtue of membership in a group and designed to supplement a part of a basic package of benefits may provide that the supplementary coverage must be excess to any other parts of the plan provided by the contract holder. Examples of these types of situations are major medical coverages that are superimposed over base plan hospital and surgical benefits, and insurance-type coverages that are written in connection with a closed panel plan to provide out-of-network benefits.

(d) Order of benefit determination. Each plan determines its order of benefits using the first of the following rules that apply.

(1) Nondependent or dependent.

(A) Subject to subparagraph (B) of this paragraph, the plan that covers the person other than as a dependent, for example, as an employee, member, subscriber, policyholder, certificate holder, or retiree, is the primary plan, and the plan that covers the person as a dependent is the secondary plan.

(B) If the person is a Medicare beneficiary, and as a result of the provisions of Title XVIII of the Social Security Act and implementing regulations, Medicare is:

(i) secondary to the plan covering the person as a dependent; and

(ii) primary to the plan covering the person as other than a dependent, for example, a retired employee;

(C) If subparagraph (B) of this paragraph applies, then the order of benefits is reversed so that the plan covering the person as an employee, member, subscriber, policyholder, certificate holder, or retiree is the secondary plan and the other plan covering the person as a dependent is the primary plan.

(2) Dependent child covered under more than one plan. Unless there is a court order stating otherwise, plans covering a dependent child must determine the order of benefits using the following rules that apply.

(A) For a dependent child whose parents are married or are living together, whether or not they have ever been married:

(i) the plan of the parent whose birthday falls earlier in the calendar year is the primary plan; or

(ii) if both parents have the same birthday, the plan that has covered the parent longest is the primary plan.

(B) For a dependent child whose parents are divorced or are not living together, whether or not they have ever been married:

(i) if a court order states that one of the parents is responsible for the dependent child's health care expenses or health care coverage, and the plan of that parent has actual knowledge of those terms, that plan is primary. If the parent with responsibility has no health care coverage for the dependent child's health care expenses, and that parent's spouse does, then the spouse's plan is the primary plan. This clause must not apply with respect to any plan year during which benefits are paid or provided before the entity has actual knowledge of the court order provision.

(ii) if a court order states that both parents are responsible for the dependent child's health care expenses or health care coverage, the provisions of subparagraph (A) of this paragraph must determine the order of benefits.

(iii) if a court order states that the parents have joint custody without specifying that one parent has responsibility for the health care expenses or health care coverage of the dependent child, the provisions of subparagraph (A) of this paragraph must determine the order of benefits.

(iv) if there is no court order allocating responsibility for the child's health care expenses or health care coverage, the order of benefits for the child is as follows:

(I) the plan covering the custodial parent;

(II) the plan covering the custodial parent's spouse;

(III) the plan covering the non-custodial parent; then

(IV) the plan covering the non-custodial parent's spouse.

(C) For a dependent child covered under more than one plan of individuals who are not the parents of the child, the order of benefits must be determined, as applicable, under subparagraph (A) or (B) of this paragraph as if the individuals were parents of the child.

(D) For a dependent child who has coverage under either or both parents' plans and has his or her own coverage as a dependent under a spouse's plan, subsection (e) of this section applies.

(E) In the event the dependent child's coverage under the spouse's plan began on the same date as the dependent child's coverage under either or both parents' plans, the order of benefits must be determined by applying the birthday rule in subparagraph (A) of this paragraph to the dependent child's parent(s) and the dependent's spouse.

(3) Active employee, retired, or laid-off employee.

(A) The plan that covers a person as an active employee who is neither laid off nor retired, or as a dependent of an active employee, is the primary plan. The plan that covers that same person as a retired or laid-off employee or as a dependent of a retired or laid-off employee is the secondary plan.

(B) If the plan that covers the same person as a retired or laid-off employee or as a dependent of a retired or laid-off employee does not conform to the requirements of subparagraph (A) of this paragraph, and as a result, the plans do not agree on the order of benefits, this paragraph does not apply.

(C) This paragraph does not apply if paragraph (1) of this subsection can determine the order of benefits.

(4) COBRA or state continuation coverage.

(A) If a person whose coverage is provided under COBRA or under a right of continuation under state or other federal law is covered under another plan, the plan covering the person as an employee, member, subscriber, or retiree or covering the person as a dependent of an employee, member, subscriber, or retiree is the primary plan, and the plan covering that same person pursuant to COBRA or under a right of continuation pursuant to state or other federal law is the secondary plan.

(B) If the plan that covers the same person under COBRA or under a right of continuation does not conform to the requirements of subparagraph (A) of this paragraph, and as a result, the plans do not agree on the order of benefits, this paragraph does not apply.

(C) This paragraph does not apply if paragraph (1) of this subsection can determine the order of benefits.

(e) Length of time. If subsection (d) of this section does not determine the order of benefits, the plan that has covered the person for the longer period of time is the primary plan. The plan that has covered the person for the shorter period of time is the secondary plan.

(1) To determine the length of time a person has been covered under a plan, two successive plans must be treated as one if the covered person was eligible under the second plan within 24 hours after the first plan ended.

(2) The start of a new plan does not include:

(A) a change in the amount or scope of a plan's benefits;

(B) a change in the entity that pays, provides, or administers the plan's benefits; or

(C) a change from one type of plan to another, such as, from a single employer plan to a multiple employer plan.

(3) The person's length of time covered under a plan is measured from the person's first date of coverage under that plan. If that date is not readily available for a group plan, the date the person first became a member of the group must be used as the date from which to determine the length of time the claimant's coverage under the present plan has been in force.

(f) Sharing equally between the plans. If subsections (a) - (e) of this section do not determine the order of benefits, the allowable expenses must be shared equally between the plans.

§3.3508. Procedure to be Followed by Secondary Plan.

In determining the amount to be paid by the secondary plan on a claim, should the plan wish to coordinate benefits, the secondary plan must calculate the benefits it would have paid on the claim in the absence of other health care coverage and apply that calculated amount to any allowable expense under its plan that is unpaid by the primary plan. The secondary plan may reduce its payment by the amount that, when combined with the amount paid by the primary plan, results in the total benefits paid or provided by all plans for the claim equaling 100 percent of the total allowable expense for that claim. In addition, the secondary plan must credit to its plan deductible any amounts it would have credited to its deductible in the absence of other health care coverage.

§3.3509. Miscellaneous Provisions.

(a) A secondary plan that provides benefits in the form of services may recover the reasonable cash value of providing the services from the primary plan, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan. This subsection does not require a plan to reimburse a covered person in cash for the value of services provided by a plan that provides benefits in the form of services.

(b) A plan with order of benefit determination rules that comply with this subchapter may coordinate its benefits with a noncompliant plan that is "excess" or "always secondary" or that uses order of benefit determination rules that are inconsistent with those contained in this subchapter on the following basis:

(1) if the complying plan is the primary plan, it must pay or provide its benefits first;

(2) if the complying plan is the secondary plan, it must pay or provide its benefits first, but the amount of the benefits payable must be determined as if the complying plan were the secondary plan. In such a situation, the payment must be the limit of the complying plan's liability; and

(3) if the noncompliant plan does not provide the information needed by the complying plan to determine its benefits within a reasonable time after it is requested to do so, the complying plan must assume that the benefits of the noncompliant plan are identical to its own, and must pay its benefits accordingly. If, within two years of payment, the complying plan receives information as to the actual benefits of the noncompliant plan, it must adjust payments accordingly.

(c) If a noncomplying plan reduces its benefits so that the covered person receives less in benefits than the covered person would have received had the complying plan paid or provided its benefits as the secondary plan and the noncomplying plan paid or provided its benefits as the primary plan, and applicable state law allows the right of subrogation, as provided in this section, then the complying plan must advance to the covered person, or to an assignee on behalf of the covered person, an amount equal to the difference. However, the complying plan may not advance more than the complying plan would have paid had it been the primary plan less any amount it previously paid for the same expense or service. In consideration of such advance, the complying plan must be subrogated to all rights of the covered person against the noncomplying plan, in accord with applicable subrogation provisions. The advance by the complying plan must also be without prejudice to any claim it may have against the noncomplying plan in the absence of subrogation.

(d) A carrier to which this subchapter is applicable is required to provide reasonable information to a secondary carrier that is needed to determine the benefits to be paid under this subchapter seven days after it is requested. Provisions for COB or subrogation may each be included in health care benefits contracts without compelling the inclusion or exclusion of the other.

(e) A plan must, in its explanation of benefits provided to covered persons, include the following language: "If you are covered by more than one health benefit plan, you should file all your claims with each plan."

(f) If the plans cannot agree on the order of benefits within 30 calendar days after the plans have received all of the information needed to pay the claim, the plans must immediately pay the claim in equal shares and determine their relative liabilities following payment, except that no plan will be required to pay more than it would have paid had it been the primary plan.

(g) Despite the provisions of this subchapter, a carrier must comply with the prompt pay requirements of Chapter 21, Subchapter T of this title (relating to Submission of Clean Claims).

(h) A contract may not reduce benefits on the basis that:

(1) another plan exists and the covered person did not enroll in that plan;

(2) a person is or could have been covered under another plan, except with respect to Part B of Medicare; or

(3) a person has elected an option under another plan providing a lower level of benefits than another option that could have been elected.

(i) No plan may contain a provision that its benefits are "always excess" or "always secondary" to any plan as defined in this subchapter, except in accord with the rules permitted by this subchapter.

(j) Under the terms of a closed panel plan, benefits are not payable if the covered person does not use the services of a closed panel plan health care provider or physician. COB does not occur if a covered person is enrolled in two or more closed panel plans and obtains services from a health care provider or physician in one of the closed panel plans because the other closed panel plan whose health care providers or physicians were not used has no liability. However, COB may occur during the plan year when the covered person receives emergency services that would have been covered by both plans, and the secondary plan must comply with §3.3508 of this title (relating to Procedure to be Followed by Secondary Plan) to determine the amount it should pay for the benefit.

(k) No plan may use a COB provision, or any other provision that allows it to reduce its benefits based on the existence of any other coverage its insured or enrollee may have that does not meet the definition of plan under this subchapter.

§3.3510. Model COB Contract Provisions.

(a) Subsection (d) of this section contains an optional model COB provision form for use in contracts. The use of this model form is subject to the provisions of §3.3509 of this title (relating to Miscellaneous Provisions) and the provisions of §3.3507 of this title (relating to Rules for COB and Order of Benefits).

(b) Subsection (e) of this section contains an optional model plain language description of the COB process that explains to the covered person how health plans will implement COB. It is not intended to replace or change the provisions that are set forth in the contract. Its purpose is to explain the process by which two or more plans will pay for or provide benefits.

(c) A COB provision or a plain language description does not have to use the words and format shown in the model forms. Changes may be made to fit the language and style of the rest of the contract or to reflect the difference among plans that provide services, pay benefits for expenses incurred, and indemnify. No substantive changes are allowed.

(d) The model COB contract provisions are as follows:
Figure: 28 TAC §3.3510(d)

(e) The model COB notice publication is as follows:
Figure: 28 TAC §3.3510(e)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 39. PUBLIC NOTICE

SUBCHAPTER H. APPLICABILITY AND GENERAL PROVISIONS

30 TAC §§39.411, 39.412, 39.419, 39.420

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes amendments to §§39.411, 39.419, and 39.420; and new §39.412.

If adopted, the commission will submit §§39.411(e)(11), (15) and (16), (f)(4) and (8), 39.412(a) - (d), 39.419(e)(1), and 39.420(e)(4) to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

In *Massachusetts v. EPA* (549 U.S. 497 (2007)) the Supreme Court of the United States ruled that greenhouse gases (GHGs) fit within the Federal Clean Air Act (FCAA or Act) definition of air pollutant. This ruling gave EPA the authority to regulate GHGs from new motor vehicles and engines if EPA made a finding under FCAA, §202(a) that six key GHGs taken in combination endanger both public health and welfare, and that combined emissions of GHGs from new motor vehicles and engines contribute to pollution that endangers public health and welfare. EPA issued its "Endangerment Finding" for GHGs on December 15, 2009, (Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, Final Rule, as published in the December 15, 2009, issue of the *Federal Register* (74 FR 66496)). Based on the Endangerment Finding, EPA subsequently adopted new emissions standards for motor vehicles (the "Tailpipe Rule" as published in the May 7, 2010, issue of the *Federal Register* (75 FR 25324)). The rule established standards for light-duty motor vehicles to improve fuel economy thereby reducing emissions of GHGs. The standards were effective January 2, 2011. EPA also reconsidered its interpretation of the timing of applicability of Prevention of Significant Deterioration (PSD) under the FCAA (the "Timing Rule" as published in the April 2, 2010, issue of the *Federal Register* (75 FR 17004)). EPA's interpretation of the FCAA is that PSD requirements for stationary sources of GHGs take effect when the first national rule subjects GHGs to regulation under the Act. EPA determined that once GHGs were actually being controlled under any part of the Act they were subject to regulation under the PSD program. Specifically, EPA took the position that beginning on January 2, 2011, GHG control requirements would be required under the PSD and Title V permitting programs because national standards for GHGs under the Tailpipe Rule were effective on January 2, 2011.

EPA's regulation of GHGs under the FCAA presented substantial difficulties for the EPA and states, particularly with regard to the PSD program. For instance, the most common of the GHGs, carbon dioxide (CO_2), is emitted in quantities that dwarf the Act's major source thresholds for program applicability. As a result, under EPA's Timing Rule, PSD requirements could have expanded from approximately 500 issued permits annually to more than 81,000 nationwide, as published in the June 3, 2010, issue of the *Federal Register* (75 FR 31514, 31537 and 31538). To avoid this result, EPA excluded much of this new construction activity from the PSD program by altering the Act's statutory emission rate applicability thresholds for GHGs. This "Tailoring Rule," as published in the June 3, 2010, issue of the *Federal Register* (75 FR 31514) newly defined the statutory term "subject to regulation" and established higher GHGs emission thresholds for applicability of PSD and Title V permitting than specified in the FCAA. The Tailoring Rule also phased in permitting requirements in a multi-stepped process.

Before the *Massachusetts* decision in 2007, EPA took the position that GHGs are not regulated under the FCAA, and GHGs unquestionably were not regulated when EPA approved Texas' SIP in 1992. Texas has had an approved SIP since 1972, as published in the May 31, 1972, issue of the *Federal Register* (37 FR 10842). In 1983, Texas was delegated authority to implement the PSD program, as published in the February 9, 1983, issue of the *Federal Register* (48 FR 6023). Following this delegation, Texas submitted several SIP revisions to enable it to administer the PSD program (collectively the "PSD SIP submission"). EPA approved Texas' PSD SIP in 1992, granting the state full authority to implement the PSD program, as published in the June 24, 1992, issue of the *Federal Register* (57 FR 28093).

The Texas PSD SIP submission and approval proceedings produced a well-developed record on how Texas would address the applicability of newly-regulated pollutants under the PSD program. During the SIP submission process, Texas consistently explained to EPA that the PSD provisions in the SIP are not prospective rulemaking, and do not incorporate future EPA interpretations of the Act or its regulations.

EPA's GHGs regulations created practical difficulties about how EPA could apply its Tailoring Rule in states with approved SIPs. In August 2010, Texas advised EPA that it could not retroactively reinterpret its SIP to cover GHGs, which were not regulated at the time Texas' SIP was approved in 1992 and were, in fact, a composite pollutant defined for the first time in the Tailoring Rule. Texas also explained that the PSD program only encompassed National Ambient Air Quality Standard (NAAQS) pollutants, but confirmed as a regulatory matter that the approved PSD program encompasses all federally regulated new source review (NSR) pollutants, including any pollutant that otherwise is subject to regulation under the FCAA, as stated in 30 TAC §116.12(14)(D).

Following promulgation of the Tailoring Rule, EPA issued a proposed "Finding of Substantial Inadequacy and SIP Call," as published in the September 2, 2010, issue of the *Federal Register* (75 FR 53892). This action proposed finding the SIPs of 13 states, including Texas', "substantially inadequate" because these SIPs did not apply PSD requirements to GHGs-emitting sources. EPA proposed to require these states (through their SIP-approved PSD programs) to regulate GHGs as defined in the Tailoring Rule. EPA also proposed a Federal Implementation Plan (FIP) that would apply specifically to states that did not or could not agree to reinterpret their SIPs to impose the Tailoring Rule and did not meet SIP submission deadlines. EPA finalized its GHG SIP Call in the December 12, 2010, issue of the *Federal Register* (75 FR 77698) and required Texas to submit revisions to its SIP by December 1, 2011.

EPA published an interim final rule partially disapproving Texas' SIP; imposing the GHGs FIP effective as of its date of publication, as published in the December 30, 2010, issue of the *Federal Register* (75 FR 82430). EPA stated that FCAA, §110(k)(6) authorized it to change its previous approval of Texas' PSD SIP into a partial approval and partial disapproval. EPA's basis was

that it had erroneously approved Texas' PSD SIP submission because the SIP did not appropriately address the applicability of newly-regulated pollutants to the PSD program in the future. EPA further stated that its action was independent of the GHG SIP Call because that action was aimed at a narrower issue of applicability to GHGs, whereas its decision retroactively disapproving Texas' PSD SIP submission was addressed to Texas' purported failure to address, or assure the legal authority for, application of PSD to all pollutants newly subject to regulation. EPA published the final rule retroactively disapproving Texas' PSD SIP in part and promulgating the FIP as published in the May 3, 2011, issue of the *Federal Register* (76 FR 25178).

The effect of EPA's FIP is that major source preconstruction permitting authority is divided between two authorities - EPA for GHGs and the state of Texas for all other pollutants. Currently, major construction projects and expansions in Texas that require PSD permits must file applications with both EPA Region 6 (for GHGs) and TCEQ (for all non-GHG pollutants).

House Bill (HB) 788, 83rd Legislature, 2013, added new Texas Health and Safety Code (THSC), §382.05102. The new section grants TCEQ authority to authorize emissions of GHGs consistent with THSC, §382.051, to the extent required under federal law. THSC, §382.05102 directs the commission to adopt implementing rules, including a procedure to transition GHG PSD applications currently under EPA review to the TCEQ. Upon adoption, the rules must be submitted to EPA for review and approval into the Texas SIP. THSC, §382.05102 excludes permitting processes for GHGs from the contested case hearing procedures in THSC, Chapter 382; Texas Water Code, Chapter 5; and Texas Government Code, Chapter 2001. THSC, §382.05102 also requires that the commission repeal the rules adopted under this authority and submit a SIP revision to EPA, if (at a future date) GHG emissions are no longer required to be authorized under federal law.

The commission is initiating this rulemaking to fulfill the directive from the legislature. The legislature found that "in the interest of the continued vitality and economic prosperity of the state, the Texas Commission on Environmental Quality, because of its technical expertise and experience in processing air quality permit applications, is the preferred authority for emissions of {GHGs}."

Texas has challenged in federal court EPA's GHG regulations as well as EPA's SIP Call and FIP. Implementation of HB 788 through this rulemaking is not adverse to Texas' claims in its ongoing challenges to EPA's actions regarding GHGs generally or relating to the SIP. The commission's action to conduct rulemaking for submittal and approval by EPA is consistent with Texas' position that state law does not give EPA the authority to automatically change state regulations.

Concurrently with this proposal, the commission is proposing new and amended rules to 30 TAC Chapters 55 (Requests for Reconsideration and Contested Case Hearings; Public Comment), 101 (General Air Quality Rules), 106 (Permits by Rule), 116 (Control of Air Pollution by Permits for New Construction or Modification), and 122 (Federal Operating Permits Program) to implement HB 788. Except where specifically noted, all proposed changes to Chapters 39, 55, 101, 106, 116 and 122 are necessary to achieve the goal of implementation of HB 788, obtaining SIP approval of certain rules, and rescission of the FIP.

Specific Changes to Chapters 39 and 55

The proposed rulemaking in Chapters 39 and 55 would make two changes to the commission's rules that are distinguishable from current public participation rules and the Texas SIP. First, PSD GHG permit applications would not be subject to an opportunity to request a contested case hearing or reconsideration of the executive director's decision. Second, based on EPA interpretation of its rules, there may be no requirement for the commission to prepare an air quality analysis for proposed emissions of GHG, and, if so, there will be no such analysis available for public comment.

HB 788 specifically excludes PSD GHG permit applications from the requirements relating to a contested case hearing. Requests for reconsideration were added by HB 801 (76th Legislature, 1999) as an alternative to the opportunity to request a contested case hearing. However, this remedy is not independent of the right to request a contested case hearing. Absent a right to request a contested case hearing, there is no independent right to request reconsideration of the executive director's decision. The commission interprets HB 788 to require that all other HB 801 requirements, discussed later in this preamble, apply to GHG permit applications.

The majority of the existing public participation and notice requirements in Chapters 39 and 55, which implement both federal and state law, will apply to the PSD GHG applications. Many of these requirements were clarified in or added by HB 801. The Chapter 39 amendments are proposed as revisions to the SIP, but the Chapter 55 amendment is not required for the SIP. The public participation and notice requirements include newspaper publication of Notice of Receipt of Application and Intent to Obtain Permit (NORI) and Notice of Application and Preliminary Decision (NAPD), each with particular language; sign posting; alternate language newspaper publication and sign posting (where applicable); placement of a copy of the application, the executive director's preliminary decision (draft permit), preliminary determination summary in a public place for review and copying; providing opportunity for and mandatory attendance at a public meeting (which is mandatory when requested by a member of the public for any PSD permit application or by a legislator who represents the general area where the facility is or is proposed to be located); and notice to certain affected agencies and representatives, including EPA Region 6, local air pollution control agencies with jurisdiction, the chief executives of the city and county where the source would be located, and any State or Federal Land Manager, and Indian Governing Body. In addition, the executive director's draft permit and preliminary decision and preliminary determination summary are available electronically on the commission's Web site at the time of publication of the Notice of Application and Preliminary Decision. Finally, the executive director is required to respond to comments submitted by preparing a Response to Comments (RTC), which is mailed to commenters and posted on the commission's Web site, with the executive director's decision. Some of these requirements and procedures were changed in rulemaking and described in the preamble adopted June 2, 2010. Background information regarding the commission's public participation rules for PSD permits can be found in the preamble adopting new and amended rules as published in the June 18, 2010, issue of the *Texas Register* (35 TexReg 5198 - 5255, 5274 - 5277, and 5344 - 5348).

Further, based on EPA's interpretation of its rules that no air quality analysis is required for a PSD GHG permit application, there will be no such analysis available for comment for these applications reviewed by the TCEQ. Even if the air quality analysis is a requirement under FCAA, §110, the exclusion of this analysis

does not affect attainment and maintenance of the NAAQS. This is because the permit application review must include an evaluation that the proposed emissions will comply with the NAAQS, and there are no NAAQS established for GHGs. Therefore, the rule amendments will provide that an air quality analysis will be available for public comment, if applicable.

At this time, the commission expects to issue two separate notices, for both NORI and NAPD, for applications filed requesting both a PSD GHG permit and a new permit or a permit amendment for air contaminants that are not GHG.

In addition to the changes discussed earlier, the commission is proposing new §39.412. As discussed earlier, major construction projects and expansions in Texas that require PSD permits must currently file applications with both EPA Region 6 (for GHGs) and TCEQ (for all contaminants that are not GHG). After jurisdiction for issuance of PSD GHG permits is transferred to Texas, applicants who have already filed an application with EPA for a PSD GHG only permit and for which notice of draft permit was published as required by EPA, may wish to have EPA transfer that application or file an application with TCEQ for initial issuance of a PSD GHG permit. Transfer of an application from EPA will be considered filing an application with the commission. In those circumstances, which are expected to be limited in number, applicants may choose an alternative notice option that is proposed in new §39.412.

As is the case with the commission's existing rules for notice of PSD permits, this proposed new section, together with certain existing rules that are proposed for SIP approval by EPA, also complies with the federal notice requirements. First, 40 Code of Federal Regulations (CFR) §51.161 concerns the public availability of information for review and commenting for permits generally, including: 1) a 30-day public comment period; 2) notice by prominent advertisement in at least one location in the area affected by the source or proposed source; 3) placement of a copy of the application in a location in the area affected and a copy of the TCEQ's air quality analysis; and 4) submittal of a copy of the notice to the EPA Regional Administrator and any other affected agency. These requirements are met in proposed §39.412(b)(2)(B)(vi), (C), (3)(A), and (5), respectively.

Second, 40 CFR §51.166(q) adds additional notice requirements for PSD permit applications. 40 CFR §51.166(q)(1) provides that the TCEQ is required to notify applicants with regard to completeness (or deficiency) of applications; this met by §116.114(a)(1), which is not proposed for amendment in this rulemaking.

Eight additional requirements are enumerated in 40 CFR §51.166(q)(2)(i) - (viii), some of which overlap with 40 CFR §51.161 The commission's rules meet these requirements as follows. For 40 CFR §51.166(q)(2)(i), §116.114(a)(2), which is not proposed for amendment in this rulemaking, satisfies the requirement for the TCEQ to make a preliminary determination on the application. For 40 CFR §51.166(q)(2)(ii), §39.412(b)(3) satisfies the requirement for a copy of the application and the preliminary determination to be made available in a public place.

For 40 CFR §51.166(q)(2)(iii), §39.412(b)(2), particularly §39.412(b)(2)(B)(iii) - (v), satisfies the requirement for notice by prominent advertisement in a newspaper of general circulation in the area affected by the source or proposed source of the location of the source or proposed source that the application and preliminary decision are available for review and comment, as well as the opportunity to request a public meeting or a notice and comment hearing and to submit written public comment. The discussion regarding the addition of §39.411(f)(3) in 2010, which requires the public place to have internet access, also applies to the commission's basis for including that requirement in §39.412; that discussion can be found in the June 18, 2010, issue of the *Texas Register* (35 TexReg 5198). 40 CFR §51.166(q)(2)(iii) also requires the notice to include degree of increment consumption, which is not included in §39.412 because there is no increment established for GHG.

For 40 CFR §51.166(q)(2)(iv), §39.412(b)(5), which references §39.605, meets the requirement to notify EPA and other affected agencies. Additional discussion of the commission's adoption of §39.605 can be found in the preamble for the rule amendments adopted in June 2010 *(See* the June 18, 2010, issue of the *Texas Register* (35 TexReg 5198)).

For 40 CFR §51.166(q)(2)(v), §39.412(b)(2)(B)(v), as well as §39.411(g) and §55.154(c)(3), which are not proposed for amendment in this rulemaking, meet the requirement for the executive director to hold a public meeting or notice and comment hearing in response to a request from an interested person regarding a PSD application.

For 40 CFR §51.166(q)(2)(vi), §55.156(b) and (g), which are not proposed for amendment in this rulemaking, satisfy the requirement regarding the executive director's response to timely submitted written comments and at any public hearing. The use of the term "public hearing" in 40 CFR §51.166(q)(2)(vi) is understood to be EPA's notice and comment style hearing, not a contested case hearing which is available for certain applications under the Texas Clean Air Act. The FCAA and EPA's implementing regulations do not provide for a bench trial-type proceeding, which is what a contested case hearing is analogous to. A public meeting is conducted by TCEQ in the same way that a notice and comment hearing is conducted, and is an equivalent opportunity for the public to participate in the permitting process for air quality permit applications. These explanations were provided in the preambles to Chapters 39 and 55, respectively, in the June 2010 rulemaking that amended the public participation requirements for air quality permit applications *(See* the June 18, 2010, issue of the *Texas Register* (35 TexReg 5198)). Finally, §55.156(g) and §116.114(c), which are not proposed for amendment in this rulemaking, satisfy the requirement that the commission make all comments available for public inspection.

For 40 CFR §51.166(q)(2)(vii), §55.156(g) satisfies the requirement that the executive director or commission make a final determination on the application.

Finally, for 40 CFR §51.166(q)(2)(viii), §55.156(g) and §116.114(c), which are not proposed for amendment in this rulemaking, satisfy the requirement that the applicant be notified in writing of the final permit application determination and to make that information and the executive director's RTC publicly available. In addition, compliance with 40 CFR §51.166(q)(2)(vi) and (viii) is addressed in §39.420(c), which is not proposed for amendment in this rulemaking; §39.420(c) requires the commission to make available comments and the final determination on the application for public inspection in the same locations where the preconstruction information was made available. As stated in the June 2010 preamble for public participation rule amendments, the commission interprets this as a requirement that the executive director's RTC, which is a summary of the comments submitted on an application and the agency's response to those comments, and the issued permit, be made available in the local area. The commission adopted §39.420(c)(2) which

makes available all RTCs on its Web site, and also requires the draft permit preliminary determination summary, and air quality analysis, where available, be electronically available for PSD permit applications. The posting of RTCs was established by the commission in January 2010. This rule change was in addition to the commission's long-standing practices of maintaining a copy of the final permit at the commission's headquarters in Austin and at the appropriate regional offices, and, as required by rule, by mailing a copy of the RTC to all commenters, as well as any other interested persons who have asked to be included on a mailing list for a particular application. This rule change not only satisfied but exceeds the federal rule, and thus is at least as stringent. The commission concurrently adopted similar rule amendments regarding RTCs in §55.156(g).

Federal Clean Air Act §110(l) Analysis

Removal or reduction of a SIP requirement must be analyzed under FCAA, §110(l). This rulemaking would not be backsliding under the Texas SIP. Although the SIP has long contained the Texas statutory requirement for a contested case hearing for PSD permit applications, no such counterpart exists in EPA's regulations, and the exemption from the requirement for a contested case hearing for PSD GHG permits does not remove any federal public participation requirements that are in the commission's rules. Further, the exclusion of a contested case hearing opportunity does not affect attainment and maintenance of the NAAQS. Public participation through opportunity to comment on the draft permit (as well as the application) and seek judicial review remains. In summary, the amendments to §§39.411, 39.419, and 39.420 and new §39.412 meet the public participation requirements in federal rule and the Texas SIP.

Any PSD GHG permit issued by the executive director will be subject to the Motion to Overturn Process in 30 TAC §50.139, or, if issued by the commission, will be subject to a Motion for Rehearing. Both of these administrative remedies are subject to appeal to Texas District Court for persons who participated in the steps of the administrative process by submitting comments and filing the appropriate challenge with the commission. As discussed in the preamble for the most recent rule amendments regarding public participation for air quality permit applications, as published in the June 18, 2010, issue of the *Texas Register* (35 TexReg 5198), access to judicial review for air quality permits is governed by THSC, §382.032. Generally, a person must comply with the requirement to exhaust the available administrative remedies prior to filing suit in district court. In addition, EPA has approved the Texas Title V Operating Permit Program, which required the submission of a Texas Attorney General opinion regarding sufficient access to courts, in compliance with Article III of the United States Constitution. The Attorney General Opinion specifically states that "{a}ny provisions of State law that limit access to judicial review do not exceed the corresponding limits on judicial review imposed by the standing requirement of Article III of the United States Constitution. The state statutory authority cited in support of the Texas Title V Operating Permit Program includes THSC, §382.032, which is the underlying authority for the appeal of Texas' air quality permit actions, including the PSD permitting program. Therefore, the Texas Attorney General statement regarding equivalence of judicial review based on THSC, §382.032 in accordance with Article III of the United States Constitution is also applicable for every action of the commission subject to the Texas Clean Air Act, including PSD permit decisions.

Therefore, there will be no backsliding from any FCAA requirements if the amendments to Chapter 39 are adopted and approved as part of the Texas SIP.

Section by Section Discussion

§39.411, Text of Public Notice

Proposed subsection (e)(15) would be added to provide that notice for an air quality application for a permit under Chapter 116, Subchapter B, Division 6 that would authorize only emissions of GHGs as defined in the proposed amendment to §101.1 must include a statement that any person is entitled to request a public meeting or a notice and comment hearing, as applicable from the commission. The pollutant GHGs are defined as carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. To accommodate this additional type of permit, subsection (e)(11) would be amended to add a reference to subsection (e)(15), and existing subsection (e)(15) would be renumbered as subsection (e)(16).

The proposed amendment to §39.411(f)(4) would add the phrase "if applicable" to indicate that certain items may not be available for public comment. At this time, EPA has indicated that no air quality analysis is required for PSD GHG permits. In "PSD and Title V Permitting Guidance for Greenhouse Gases," (dated March 2011) prepared by EPA's Office of Air Quality Planning and Standards, EPA stated that monitoring for GHGs is not required because EPA regulations provide an exemption in 40 CFR §52.21(i)(5)(iii) and §51.166(i)(5)(iii) for pollutants that are not listed in the appropriate section of the regulations, and GHGs are not currently included in that list. However, 40 CFR §52.21(m)(1)(ii) and §51.166(m)(1)(ii) of EPA's regulations apply to pollutants for which no NAAQS exists. These provisions call for collection of air quality monitoring data "as the Administrator determines is necessary to assess ambient air quality for that pollutant in any (or the) area that the emissions of that pollutant would affect. "In the case of GHGs, the exemption in 40 CFR §52.21(i)(5)(iii) and §51.166(i)(5)(iii) is controlling since GHGs are not currently listed in the relevant paragraph. Nevertheless, EPA does not consider it necessary for applicants to gather monitoring data to assess ambient air quality for GHGs under 40 CFR §52.21(m)(1)(ii) and §51.166(m)(1)(ii), or similar provisions that may be contained in state rules based on EPA's rules. GHGs do not affect "ambient air quality" in the sense that EPA intended when these parts of EPA's rules were initially drafted. Considering the nature of GHGs emissions and their global impacts, EPA stated that it is not "practical or appropriate to expect permitting authorities to collect monitoring data for the purpose of assessing ambient air impacts of GHGs." The "PSD and Title V Permitting Guidance for Greenhouse Gases," (dated March 2011) guidance is available on the EPA's Web site: *http://www.epa.gov/nsr/ghgdocs/ghgpermittingguidance.pdf.*

Furthermore, consistent with EPA's statement in the Tailoring Rule, EPA stated it is not necessary for applicants or permitting authorities to assess impacts from GHGs in the context of the additional impacts analysis or Class I area provisions of the PSD regulations for the following policy reasons. Although it is EPA's position that GHG emissions contribute to global warming and other climate changes that result in impacts on the environment, including impacts on Class I areas and soils and vegetation due to the global scope of the problem, climate change modeling and evaluations of risks and impacts of GHG emissions is typically conducted for changes in emissions orders of magnitude larger than the emissions from individual projects that might be analyzed in PSD permit reviews. Quantifying the ex-

act impacts attributable to a specific GHG source obtaining a permit in specific places and points would not be possible with current climate change modeling. Given these considerations, GHG emissions would serve as the more appropriate and credible proxy for assessing the impact of a given facility. Thus, EPA believes that the most practical way to address the considerations reflected in the Class I area and additional impacts analysis is to focus on reducing GHG emissions to the maximum extent. In light of these analytical challenges, EPA has stated that compliance with the best available control technology analysis is the best technique that can be employed at present to satisfy the additional impacts analysis and Class I area requirements of the rules related to GHGs. TCEQ intends to implement PSD GHG permitting requirements consistent with EPA's recognition of the unique nature of GHG emissions.

Because both 40 CFR §52.21(i) and (m) are part of the Texas SIP, the commission is proposing implementation of the exemption for preparation of an air quality analysis for GHG by excluding it as a requirement in its internal permit application review and permit issuance procedures. In addition, the commission is proposing to indicate in its procedural rules that the air quality analysis will be prepared and made available for review and comment, where applicable. This requirement will continue to be applicable for PSD permit application reviews for contaminants other than GHG. Among the existing rules regarding availability of an air quality analysis for review and comment, only §39.411(f)(4) and §39.419(e)(1) do not include the "if applicable text" and thus both are proposed to be amended.

Finally, the commission is proposing to correct typographical errors including clarifying the title of a referenced chapter in subsection (b), the spelling of the word "commission's" in subsection (b)(4)(B), and to clarify the title of referenced divisions in subsection (f)(8).

§39.412, Combined Notice for Certain Greenhouse Gases Permit Applications

Proposed new §39.412 would provide the option to publish Notice of Receipt of Application and Intent to Obtain Permit combined with the Notice of Application and Preliminary Decision, instead of publishing these separately as required by §39.418 and §39.419. Proposed subsection (a) provides that this option would apply only to permit applications transferred from EPA or filed with the commission for initial issuance of a PSD permit to authorize only GHG which, prior to receipt of the application with the commission, was filed with EPA and for which notice of draft permit was published as required by EPA.

Proposed subsection (b) lists the specific requirements for the combined notice when this option is chosen. Subsection (b)(1) lists the portions of the general notice requirements in §39.405 that apply.

The specific publication requirements are in subsection (b)(2). Subsection (b)(2)(A) specifies that the Combined Notice must meet certain requirements in §39.411(e) for the text of the notice. Proposed subsection (b)(2)(B) includes eight specific notice content requirements. Proposed subsection (b)(2)(B)(i) would require the notice to include a list of the individual GHGs proposed to be emitted. Proposed subsection (b)(2)(B)(ii) requires the notice to include a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit, and a statement that the executive director's draft permit and preliminary decision, preliminary determination summary, and air quality analysis, if applicable, are available electronically on the commission's Web site. Subsection (b)(2)(B)(iii) - (vi) would require the combined notice to include other information that is currently required and will continue to apply to all PSD applications, including that the executive director's documents are available electronically on the commission's Web site; the location of the public place at which a copy of the complete application and other documents are available for review and copying; a brief description of the public comment procedures, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the Combined Notice; and that 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 facility is to be located, there is substantial public interest in the proposed activity or at the request of any interested person. In addition, subsection (b)(2)(B)(vi) - (viii) would require the notice state that the comment period will be for at least 30 days following the last publication of the combined notice, together with the deadline to file comments or request a public meeting; any comments submitted to EPA regarding the application will not be included in the executive director's RTC unless the comments are timely submitted to the commission; and, if executive director prepares an RTC as required by §55.156, the chief clerk will make the executive director's RTC available on the commission's Web site.

Proposed subsection (b)(2)(C) would require the combined notice meet the requirements of newspaper publication in §39.603(c) and (d) and that publication must be within 33 days after the chief clerk has mailed the preliminary decision concurrently with the notice to the applicant.

Proposed subsection (b)(3)(A) and (B) requires the applicant to make a copy of the application and certain other documents, as applicable, available for review and copying at a public place with internet access in the county in which the facility is located or proposed to be located and that the copy of the application must be updated as changes are made, if any, to the application so that the entire application must be available for review and copying.

Proposed subsection (b)(3)(C) would require the applicant make available on the first day of newspaper publication of the combined notice required by this section a copy of the executive director's preliminary decision, draft permit, preliminary determination summary and air quality analysis, if applicable. These must remain available until the commission has taken action on the application. Finally, proposed subsection (b)(3)(D) provides that if the application is submitted with confidential information the applicant must indicate in the public file that there is additional information in a confidential file marked as confidential by the applicant.

Proposed subsection (b)(4) would require the applicant to comply with the sign posting requirements of §39.604(a) and (c) - (e), except that the sign or signs must be in place on the first day of publication of the combined notice. The signs must remain in place and legible throughout the public comment period. The applicant would be required to provide verification that the sign posting was conducted according to §39.604.

Proposed subsection (b)(5) would require the applicant to comply with §39.605 regarding providing notice to certain other governmental agencies.

Proposed subsection (c) would provide that the chief clerk shall be responsible for mailing the combined notice as required by

§39.602, and for transmitting the executive director's RTC as provided for in §39.420(c)(1)(A) - (B), (2), and (d).

Proposed subsection (d) would provide that the public comment period shall automatically be extended to the close of any public meeting or notice and comment hearing.

Proposed subsection (e) would provide that final action on an application may be taken under Chapter 50 after the deadline for submitting public comment. This subsection would not be submitted to EPA as a SIP revision because it is not a requirement of the FCAA.

§39.419, Notice of Application and Preliminary Decision

The proposed amendment to §39.419(e)(1) adds the phrase "if applicable" to indicate that certain items may not be available for public comment, for the same reasons as the changes discussed earlier regarding the proposed amendment to §39.411(f)(4).

§39.420, Transmittal of the Executive Director's Response to Comments and Decision

Proposed §39.420(e)(4) provides that, after the close of the comment period and when required by and subject to §55.156, the chief clerk will not include instructions for requesting that the commission reconsider the executive director's decision and for requesting a contested case hearing for applications for a PSD permit that would authorize only GHGs as defined in the proposed amendment to §101.1.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst in the Strategic Planning and Assessment Section, 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 pertain to the public notice and hearing requirements for GHG emissions permitting requirements under the PSD air permit program.

The proposed rules would amend Chapter 39 to implement the notice requirements of HB 788, 83rd Legislature, 2013 and are part of a larger rulemaking involving Chapters 55, 101, 106, 116, and 122. This fiscal note only addresses the proposed rules for Chapter 39.

HB 788 exempts GHG PSD air permits from the requirements of a contested case hearing. The proposed rules revise the required public notice text to specify that a PSD GHG permit application is subject to a request for a public meeting and a notice and comment hearing but not a contested case hearing. In addition, the proposed rules include a change to reflect that an air quality analysis for GHG emissions is not required for a GHG permit since no NAAQS have been set for GHGs. The proposed rules also specify the public notice requirements that will apply to a PSD GHG permit application that was initially filed with EPA, but is later transferred to or filed with TCEQ after notice of the draft permit was published. In those cases, permit applicants may publish a combined, one-time NORI and NAPD. Normally, these notices are published separately. The proposed rules also make minor grammatical corrections.

The proposed rules are not expected to have any fiscal impact on state agencies or local government entities that do not participate in the types of activities that require a PSD permit. If a local government or state agency is required to have a PSD permit for GHG emissions, then that governmental entity could experience cost benefits from not having to participate in a contested case hearing in that the lack of a hearing will tend to result in faster permit issuance for permit applicants who otherwise might have had their permit delayed by a contested case hearing. The proposed rules would not have a fiscal impact on current costs for publishing notice for a public hearing, a notice and comment hearing, or on the need for an air quality analysis. For applications originally submitted to the EPA, a combined NORI and NAPD notice will not result in a significant change in costs to the applicant.

Public Benefits and Costs

Ms. Chamness 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.

The proposed rules are not expected to have a direct fiscal impact on individuals but may have cost benefits for large businesses that require a PSD permit for GHG emissions as the proposed rules may result in faster PSD GHG permit issuance times for permit applicants who otherwise might have had their permit delayed by a contested case hearing.

By not specifying that a PSD GHG permit is subject to a contested case hearing, the permitting process is expected to become shorter, less burdensome, and less costly for an applicant. However, determining the significance of any savings from not being subject to a contested case hearing is case-specific and depends upon a variety of factors including the savings generated by not having to pay consultants, attorneys, or experts to defend a permit.

For applications originally submitted to the EPA, a combined NORI and NAPD notice will not result in a significant change in costs to the applicant. For applications submitted directly to the TCEQ, the proposed rules would not impact the cost of notice for a public hearing or a notice and comment hearing. In addition, the proposed rules would not generate savings on air quality analysis costs since GHG analysis has not been required before, nor is it required under the proposed rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Small businesses should experience the same types of benefits as a large business (if they become subject to PSD GHG permit requirements) because the proposed rules would eliminate the requirement for a contested case hearing and provide for a shorter permitting process.

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 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 specific intent of the proposed rulemaking is to make the necessary procedural rule amendments necessary to implement HB 788 in Chapter 116 which is concurrently proposed to be amended to add six GHGs to the pollutants subject to the commission's PSD permitting program, consistent with federal law, as well establish the emissions thresholds for applicability of the program consistent with federal requirements in the GHG Tailoring Rule.

Additionally, even if the rules met the definition of a major environmental rule, 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 proposed rules would implement requirements of the FCAA. Under 42 United States Code (USC), §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, attain, maintain, and enforce the NAAQS within the state. One of the requirements of 42 USC, §7410 is for states to include programs for the regulation of the modification and construction of any stationary source within the area covered by the plan as necessary to assure that the NAAQS are achieved, including a permit program as required in FCAA, Parts C and D, or NSR. This rulemaking will amend rules for public participation for PSD GHG permit applications such that those applications are not subject to requests for reconsideration or contested case hearing to implement HB 788 and to ensure that the rules can be a federally approved part of the Texas SIP.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633, 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded, "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the Legislative Budget Board, the commission believes that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the proposed rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA, and thus allow EPA to lift its federal permitting program on GHG sources in Texas. In fact, the proposed rules create no additional impacts because owners and operators of major GHG sources in Texas must currently obtain a PSD permit from EPA and the proposed rules merely supplant EPA as the authority for PSD GHG permitting in Texas. For these reasons, the proposed rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *(Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue,* 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ). Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied);* and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978)).

The commission's interpretation of the RIA requirements is also supported by a change made to the 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" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The proposed rules do not exceed an express requirement in federal or state law. This rulemaking implements relevant pro-

visions of THSC, §382.05102, as added by HB 788 83rd Legislature, 2013. The proposed rules implement requirements of the FCAA, specifically to adopt and implement SIPs, including a requirement to adopt and implement permit programs. The specific intent of the proposed rulemaking is to amend rules for public participation for PSD GHG permit applications such that those applications are not subject to requests for reconsideration or contested case hearing to implement HB 788 and to ensure that the rules can be a federally approved part of the Texas SIP. The proposed rules do not exceed a requirement of a delegation agreement or any contract between the state and a federal agency, because there is no agreement applicable to this rulemaking. The proposed rules were not developed solely under the general powers of the agency, but are authorized by specific sections of 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. Therefore, this proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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 Texas Constitution §17 or §19, Article I; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for the proposed rulemaking under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking, as discussed elsewhere in this preamble, is to amend rules for public participation for PSD GHG permit applications such that those applications are not subject to requests for reconsideration or contested case hearing to implement HB 788 and to ensure that the rules can be federally approved as part of the Texas SIP.

The proposed rules will not create any additional burden on private real property. The proposed 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 proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the 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 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 the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Advisory Committee and determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed rules update procedural rules that govern the submittal of air quality PSD GHG permit applications. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking 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.

Effect on Sites Subject to the Federal Operating Permits Program

The proposed rules, if adopted, will not require any revisions to federal operating permits.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 5, 2013, at 2:00 p.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 Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-040-116-AI. The comment period closes December 9, 2013. 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 Tasha Burns, Operational Support, Air Permits Division at (512) 239-5868.

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.05102, which relates to the permitting authority of the commission for greenhouse gas emissions; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.0517, concerning Determination of Administrative Completion of Application, which specifies when the commission shall determine applications are administratively complete; THSC, §382.0518, concerning Preconstruction Permit, which authorizes the commission to issue preconstruction permits; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which requires an applicant for a permit issued under THSC, §382.0518 to publish notice of intent to obtain a permit. Additional relevant sections are Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and Texas Government Code, §2001.006, concerning Actions Preparatory to Implementation of Statute or Rule, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation. The amendments are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state. The proposed amendments implement House Bill 788 (82nd Legislature, 2013), THSC, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05102, 382.0515, 382.0517, 382.0518, and 382.056; and Texas Government Code, §2001.004 and §2001.006; and FCAA, 42 USC, §§7401 *et seq.*

§39.411. Text of Public Notice.

(a) Applicants shall use notice text provided and approved by the agency. The executive director may approve changes to notice text before notice being given.

(b) When Notice of Receipt of Application and Intent to Obtain Permit by publication or by mail is required by Subchapters H and K of this chapter (relating to Applicability and General Provisions and Public Notice of Air Quality Permit Applications) for air quality permit applications, those applications are subject to subsections (e) - (h) of this section. When notice of receipt of application and intent to obtain permit by publication or by mail is required by Subchapters H - J and L of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, and Public Notice of Injection Well and Other Specific Applications), Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits), or for Subchapter M of this chapter (relating to Public Notice for Radioactive Material Licenses), the text of the notice must include the following information:

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to the commission's [~~commissions's~~] decision that are raised during the comment period can be considered if a contested case hearing is granted;

(5) a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case hearing, reconsideration of the executive director's decision, a notice and comment hearing, or a statement that later notice will describe procedures for public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. The notice should include a statement that 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 facility is to be located or there is substantial public interest in the proposed activity;

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(10) for notices of municipal solid waste applications, a statement that a person who may be affected by the facility or proposed facility is entitled to request a contested case hearing from the commission. This statement must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; and

(11) any additional information required by the executive director or needed to satisfy public notice requirements of any federally authorized program; or

(12) for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted; and

(13) for Class 3 modifications of hazardous industrial solid waste permits, the statement "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(c) Unless mailed notice is otherwise provided for under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters G - J and L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (11) of this section;

(2) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted, or a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(3) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications and Other Authorizations), a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(4) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(5) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's preliminary decision are available for review and copying;

(6) the deadline to file comments or request a public meeting. The notice should include a statement that 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 facility is to be located or there is substantial public interest in the proposed activity; and

(7) for radioactive material licenses under Chapter 336 of this title, if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted.

(d) When notice of a public meeting or notice of a hearing by publication or by mail is required by Subchapters G - J and L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (3), (6) - (8), and (11) of this section;

(2) the date, time, and place of the meeting or hearing, and a brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures; and

(3) for notices of public meetings only, a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted and a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(e) When Notice of Receipt of Application and Intent to Obtain Permit by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the information in this subsection.

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to:

(i) all comments regarding applications for Prevention of Significant Deterioration and Nonattainment permits under Chapter 116, Subchapter B of this title (relating to New Source Review Permits) and Plant-wide Applicability Limit permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) filed on or after the effective date of this section;

(ii) all comments regarding applications subject to the requirements of Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction, filed on or after the effective date of this section; and

(iii) for all other air quality permit applications, comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any air quality permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to the commission's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(5) a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case hearing, reconsideration of the executive director's decision, a notice and comment hearing, or a statement that later notice will describe procedures for public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. Where applicable, the notice should include a statement that 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 facility is to be located if there is substantial public interest in the proposed activity when requested by

any interested person for the following applications that are filed on or after the effective date of this section:

(A) air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment in Chapter 116, Subchapter B of this title;

(B) applications for the establishment or renewal of, or an increase in, a plant-wide applicability limit subject to Chapter 116 of this title; and

(C) applications subject to the requirements of Chapter 116, Subchapter E of this title, whether for construction or reconstruction;

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(10) at a minimum, a listing of criteria pollutants for which authorization is sought in the application which are regulated under national ambient air quality standards (NAAQS) or under state standards in Chapters 111, 112, 113, 115, and 117 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter, Control of Air Pollution from Sulfur Compounds, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, Control of Air Pollution from Volatile Organic Compounds, and Control of Air Pollution from Nitrogen Compounds);

(11) If notice is for any air quality permit application except those listed in paragraphs [~~paragraph~~] (12) and (15) of this subsection, the following information must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice:

(A) a statement that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a contested case hearing from the commission within the following specified time periods;

(i) for air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title a statement that a request for a contested case hearing must be received by the commission by the end of the comment period or within 30 days after the mailing of the executive director's response to comments;

(ii) for air quality permit applications subject to the requirements of Chapter 116, Subchapter E of this title, whether for construction or reconstruction, a statement that a request for a contested case hearing must be received by the commission by the end of the comment period or within 30 days after the mailing of the executive director's response to comments;

(iii) for renewals of air quality permits that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted and the application does not involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History), a statement that a request for a contested case hearing must be received by the commission before the close of the 15-day comment period provided in response to the last publication of Notice of Receipt of Application and Intent to Obtain Permit; or

(iv) for all air quality permit applications other than those in clauses (i) - (iii) of this subparagraph, a statement that a request for a contested case hearing must be received by the commission before the close of the 30-day comment period provided in response to the last publication of Notice of Receipt of Application and Intent to Obtain Permit. If no hearing requests are received by the end of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, there is no further opportunity to request a contested case hearing. If any hearing requests are received before the close of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments;

(B) a statement that a request for a contested case hearing must be received by the commission;

(C) a statement that a contested case hearing request must include the requester's location relative to the proposed facility or activity;

(D) a statement that a contested case hearing request should include a description of how the requestor will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity;

(E) a statement that only relevant and material issues raised during the comment period can be considered if a contested case hearing request is granted; and

(F) if notice is for air quality permit applications described in subparagraph (A)(iv) of this paragraph, a statement that when no hearing requests are timely received the applicant shall publish a Notice of Application and Preliminary Decision that provides an opportunity for public comment and to request a public meeting.

(12) if notice is for air quality applications for a permit under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities), filed on or before January 1, 2018, a Multiple Plant Permit under Chapter 116, Subchapter J of this title (relating to Multiple Plant Permits), or for a Plant-wide Applicability Limit under Chapter 116 of this title, a statement that any person is entitled to request a public meeting or a notice and comment hearing, as applicable from the commission;

(13) notification that a person residing within 440 yards of a concrete batch plant without enhanced controls under a standard permit adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits) is an affected person who is entitled to request a contested case hearing;

(14) the statement: "The facility's compliance file, if any exists, is available for public review in the regional office of the Texas Commission on Environmental Quality;" [~~and~~]

(15) if notice is for air quality application for a permit under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review) that would authorize only emissions of greenhouse gases as defined in §101.1 of this title (relating to Definitions), a statement that any person is entitled to request a public meeting or a notice and comment hearing, as applicable, from the commission; and

(16) [(15)] any additional information required by the executive director or needed to satisfy federal public notice requirements.

(f) The chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.602 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the information in this subsection:

(1) the information required by subsection (e) of this section;

(2) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(3) the location, at a public place in the county with internet access in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's draft permit and preliminary decision are available for review and copying;

(4) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's draft permit and, where applicable, preliminary decision, preliminary determination summary, and air quality analysis may be submitted, or a statement in the notice for any air quality permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(5) the deadline to file comments or request a public meeting. The notice should include a statement that 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 facility is to be located or there is substantial public interest in the proposed activity. The notice must include a statement that the comment period will be for at least thirty days following publication of the Notice of Application and Preliminary Decision;

(6) if the application is subject to final approval by the executive director under Chapter 50 of this title, a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(7) If the executive director prepares a Response to Comments as required by §55.156 of this title (relating to Public Comment Processing), the chief clerk will make the executive director's response to public comments available on the commission's Web site;

(8) in addition to the requirements in paragraphs (1) - (7) of this subsection, for air quality permit applications filed on or after the effective date of this section for permits under Chapter 116, Subchapter B, Divisions 5 of this title (relating to Nonattainment Review Permits) and 6 of this title [(relating to Prevention of Significant Deterioration Review and Nonattainment Review)]:

(A) as applicable, the degree of increment consumption that is expected from the source or modification;

(B) a statement that the state's air quality analysis is available for comment;

(C) the deadline to request a public meeting;

(D) a statement that the executive director will hold a public meeting at the request of any interested person; and

(E) a statement that the executive director's draft permit and preliminary decision, preliminary determination summary, and air quality analysis are available electronically on the commission's Web site at the time of publication of the Notice of Application and Preliminary Decision; and

(9) in addition to the requirements in paragraphs (1) - (7) of this subsection, for air quality permit applications filed on or after the effective date of this section for permits under Chapter 116, Subchapter E of this title:

(A) the deadline to request a public meeting;

(B) a statement that the executive director will hold a public meeting at the request of any interested person; and

(C) a statement that the executive director's draft permit and preliminary decision are available electronically on the commission's Web site at the time of publication of the Notice of Application and Preliminary Decision.

(g) When notice of a public meeting by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications filed on or after the effective date of this section, the text of the notice must include the information in this subparagraph. Air quality permit applications filed before the effective date of this section are governed by the rules in Subchapters H and K of this chapter as they existed immediately before the effective date of this section, and those rules are continued in effect for that purpose.

(1) the information required by subsection (e)(1) - (3), (4)(A), (6), (8), (9), and (15) of this section;

(2) the date, time, and place of the public meeting, and a brief description of the nature and purpose of the meeting, including the applicable rules and procedures; and

(3) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's draft permit and preliminary decision, and, as applicable, preliminary determination summary, and air quality analysis may be submitted and a statement in the notice for any air quality permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(h) When notice of a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings) by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the following information:

(1) the information required by subsection (e)(1) - (3), (6), (9) and (15) of this section; and

(2) the date, time, and place of the hearing, and a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

§39.412. Combined Notice for Certain Greenhouse Gases Permit Applications.

(a) This section applies to a permit application transferred from the United States Environmental Protection Agency (EPA) or filed with the commission for initial issuance of a Prevention of Significant Deterioration (PSD) permit to authorize only emissions of Greenhouses Gases, as defined in §101.1 of this title (relating to Definitions) which, prior to receipt of the application with the

commission, was filed with EPA and for which notice of draft permit was published as required by EPA.

(b) In lieu of compliance with all other applicable requirements of this chapter regarding PSD permit applications, an applicant may fulfill the requirements of this chapter by:

(1) Complying with the requirements of §39.405(f)(3), (h)(1) - (4), (6), (8) - (11), (i) and (j) of this title (relating to General Notice Provisions);

(2) Publishing Notice of Receipt of Application and Intent to Obtain Permit combined with Notice of Application and Preliminary Decision (Combined Notice) as follows:

(A) The published Combined Notice must comply with §39.411(e)(1) - (3), (4)(A)(i), (5)(A), (6) - (9), and (16) of this title (relating to Text of Public Notice);

(B) The published Combined Notice must include the following information:

(i) a list of the individual Greenhouse Gases proposed to be emitted;

(ii) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit, and a statement that the executive director's draft permit and preliminary decision, preliminary determination summary, and air quality analysis, if applicable, are available electronically on the commission's Web site;

(iii) the location, at a public place with internet access in the county in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's draft permit and preliminary decision are available for review and copying;

(iv) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's draft permit and preliminary decision, preliminary determination summary, and air quality analysis, if applicable may be submitted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the Combined Notice;

(v) a statement that 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 facility is to be located, there is substantial public interest in the proposed activity or at the request of any interested person;

(vi) a statement that the comment period will be for at least 30 days following the last publication of the Combined Notice together with the deadline to file comments or request a public meeting;

(vii) a statement that any comments submitted to EPA regarding the application will not be included in the executive director's response to comments unless the comments are timely submitted to the commission; and

(viii) a statement if the executive director prepares a Response to Comments as required by §55.156 of this title (relating to Public Comment Processing), the chief clerk will make the executive director's response to public comments available on the commission's Web site; and

(C) The Combined Notice must meet the requirements of §39.603(c) and (d) of this title (relating to Newspaper Notice) and is required to be published within 33 days after the chief clerk has mailed the preliminary decision concurrently with the notice to the applicant;

(3) Making a copy of the application and certain other documents, as applicable, available for review and copying according to the following requirements:

(A) A copy of the application must be available at a public place with internet access in the county in which the facility is located or proposed to be located;

(B) The copy of the application must be updated as changes are made, if any, to the application; and the entire application must be available for review and copying;

(C) A copy of the executive director's preliminary decision, draft permit, preliminary determination summary and air quality analysis, if applicable, must be made available on the first day of newspaper publication of the Combined Notice required by this section and must remain available until the commission has taken action on the application; and

(D) If the application is submitted with confidential information indicate in the public file that there is additional information in a confidential file marked as confidential by the applicant;

(4) Complying with the requirements of §39.604(a) and (c) - (e) of this title (relating to Sign-Posting), except that the sign or signs must be in place on the first day of publication of the Combined Notice. The signs must remain in place and legible throughout the public comment period. The applicant shall provide verification that the sign posting was conducted according to §39.604 of this title; and

(5) Complying with §39.605 of this title (relating to Notice to Affected Agencies).

(c) The chief clerk shall be responsible for the following additional requirements.

(1) Mailing the Combined Notice as required by §39.602 of this title (relating to Mailed Notice).

(2) Transmitting the executive director's response to comments as provided for in §39.420(c)(1)(A) - (B), (2), and (d) of this title (relating to Transmittal of the Executive Director's Response to Comments and Decision).

(d) The public comment period shall automatically be extended to the close of any public meeting or notice and comment hearing.

(e) After the deadline for submitting public comment, final action on an application may be taken under Chapter 50 of this title (relating to Action on Applications and Other Authorizations).

§39.419. Notice of Application and Preliminary Decision.

(a) After technical review is complete, the executive director shall file the preliminary decision and the draft permit with the chief clerk, except for air applications under subsection (e) of this section. The chief clerk shall mail the preliminary decision concurrently with the Notice of Application and Preliminary Decision. Then, when this chapter requires notice under this section, notice must be given as required by subsections (b) - (e) of this section.

(b) The applicant shall publish Notice of Application and Preliminary Decision at least once in the same newspaper as the Notice of Receipt of Application and Intent to Obtain Permit, unless there are different requirements in this section or a specific subchapter in this chapter for a particular type of permit. The applicant shall also publish the notice under §39.405(h) of this title (relating to General Notice Provisions), if applicable.

(c) Unless mailed notice is otherwise provided under this section, the chief clerk shall mail Notice of Application and Preliminary

Decision to those listed in §39.413 of this title (relating to Mailed Notice).

(d) The notice must include the information required by §39.411(c) of this title (relating to Text of Public Notice).

(e) For air applications the following apply.

(1) Air quality permit applications that are filed on or after the effective date of this section, are subject to this paragraph. Applications filed before the effective date of this section are governed by the rules as they existed immediately before the effective date of this section, and those rules [~~rule~~] are continued in effect for that purpose. After technical review is complete for applications subject to the requirements of requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title (relating to New Source Review Permits), the executive director shall file the executive director's draft permit and preliminary decision, the preliminary determination summary and air quality analysis, as applicable, with the chief clerk and the chief clerk shall post these on the commission's Web site. Notice of Application and Preliminary Decision must be published as specified in Subchapter K of this chapter (relating to Public Notice of Air Quality Permit Applications) and, as applicable, under §39.405(h) of this title, unless the application is for any renewal application of an air quality permit that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted and the application does not involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History).

(2) If notice under this section is required, the chief clerk shall mail notice according to §39.602 of this title (relating to Mailed Notice).

(3) If the applicant is seeking authorization by permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), any application submitted on or before January 1, 2018, shall be subject to the public notice and participation requirements in Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities).

§39.420. Transmittal of the Executive Director's Response to Comments and Decision.

(a) Except for air quality permit applications, when required by and subject to §55.156 of this title (relating to Public Comment Processing), after the close of the comment period, the chief clerk shall transmit to the people listed in subsection (b) of this section the following information:

(1) the executive director's decision;

(2) the executive director's response to public comments;

(3) instructions for requesting that the commission reconsider the executive director's decision; and

(4) instructions for requesting a contested case hearing.

(b) The following persons shall be sent the information listed in subsection (a) of this section:

(1) the applicant;

(2) any person who requested to be on the mailing list for the permit action;

(3) any person who submitted comments during the public comment period;

(4) any person who timely filed a request for a contested case hearing;

(5) Office of the Public Interest Counsel; and

(6) Office of Public Assistance.

(c) When required by and subject to §55.156 of this title, for air quality permit applications, after the close of the comment period, the chief clerk shall:

(1) transmit to the people listed in subsection (d) of this section the following information:

(A) the executive director's decision;

(B) the executive director's response to public comments;

(C) instructions for requesting that the commission reconsider the executive director's decision; and

(D) instructions, which include the statements in clause (ii) of this subparagraph, for requesting a contested case hearing for applications:

(i) for the following types of applications:

(I) permit applications which are subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title (relating to New Source Review Permits) as described in §39.402(a)(2) of this title (relating to Applicability to Air Quality Permits and Permit Amendments);

(II) permit and permit amendment applications which are not subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title, and for which hearing requests were received by the end of the 30-day comment period following the final publication of Notice of Receipt of Application and Intent to Obtain Permit, and these requests were not withdrawn as described in:

(-a-) §39.402(a)(1), (3), (11) and (12) of this title; and

(-b-) §39.402(a)(4) and (5) of this title;

(III) applications described in §39.402(7) of this title; and

(ii) the following statements must be included:

(I) a statement that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a contested case hearing from the commission;

(II) that a contested case hearing request must include the requestor's location relative to the proposed facility or activity;

(III) that a contested case hearing request should include a description of how and why the requestor will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity;

(IV) that only relevant and material disputed issues of fact raised during the comment period can be considered if a contested case hearing request is granted; and

(V) that a contested case hearing request may not be based on issues raised solely in a comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment; and

(2) for applications subject to the requirements of requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title, make available by electronic means on the commission's Web site the executive director's draft permit and preliminary decision, the executive director's response to public comments, and as applicable, preliminary determination summary and air quality analysis.

(d) The following persons shall be sent the information listed in subsection (c) of this section:

(1) the applicant;

(2) any person who requested to be on the mailing list for the permit action;

(3) any person who submitted comments during the public comment period;

(4) any person who timely filed a request for a contested case hearing;

(5) Office of the Public Interest Counsel; and

(6) Office of Public Assistance.

(e) For air quality permit applications which meet the following conditions, items listed in subsection (c)(1)(C) and (D) of this section are not required to be included in the transmittals:

(1) applications for which no timely hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain a Permit;

(2) applications for which one or more timely hearing requests are submitted in response to the Notice of Receipt of Application and Intent to Obtain Permit and for which this is the only opportunity to request a hearing, and all of the requests are withdrawn before the date the preliminary decision is issued; [or]

(3) the application is for any renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted unless the application involves a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History); or [.]

(4) applications for a Prevention of Significant Deterioration permit that would authorize only emissions of greenhouse gases as defined in §101.1 of this title (relating to Definitions);

(f) For applications for which all timely comments and requests have been withdrawn before the filing of the executive director's response to comments, the chief clerk shall transmit only the items listed in subsection (a)(1) and (2) of this section and the executive director may act on the application under §50.133 of this title (relating to Executive Director Action on Application or WQMP Update).

(g) For post-closure order applications under Subchapter N of this chapter (relating to Public Notice of Post-Closure Orders), the chief clerk shall transmit only items listed in subsection (a)(1) and (2) of this section to the people listed in subsection (b)(1) - (3), (5), and (6) of this section.

(h) For applications for air quality permits under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities), the chief clerk will not transmit the item listed in subsection (a)(4) of this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state 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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For further information, please call: (512) 239-0779

CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENT
SUBCHAPTER F. REQUESTS FOR RECONSIDERATION OR CONTESTED CASE HEARING

30 TAC §55.201

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes an amendment to §55.201.

Background and Summary of the Factual Basis for the Proposed Rule

In *Massachusetts v. EPA* (549 U.S. 497 (2007)) the Supreme Court of the United States ruled that greenhouse gases (GHGs) fit within the Federal Clean Air Act (FCAA or Act) definition of air pollutant. This ruling gave United States Environmental Protection Agency (EPA) the authority to regulate GHGs from new motor vehicles and engines if EPA made a finding under FCAA, §202(a) that six key taken in combination endanger both public health and welfare, and that combined emissions of GHGs from new motor vehicles and engines contribute to pollution that endangers public health and welfare. EPA issued its "Endangerment Finding" for GHGs on December 15, 2009 (Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, Final Rule, as published in the December 15, 2009, issue of the *Federal Register* (74 FR 66496)). Based on the Endangerment Finding, EPA subsequently adopted new emissions standards for motor vehicles (the "Tailpipe Rule" as published in the May 7, 2010, issue of the *Federal Register* (75 FR 25324)). The rule established standards for light-duty motor vehicles to improve fuel economy thereby reducing emissions of GHGs. The standards were effective January 2, 2011. EPA also reconsidered its interpretation of the timing of applicability of Prevention of Significant Deterioration (PSD) under the FCAA (the "Timing Rule" as published in the April 2, 2010, issue of the *Federal Register* (75 FR 17004)). EPA's interpretation of the FCAA is that PSD requirements for stationary sources of GHGs take effect when the first national rule subjects GHGs to regulation under the Act. EPA determined that once GHGs were actually being controlled under any part of the Act they were subject to regulation under the PSD program. Specifically, EPA took the position that beginning on January 2, 2011, GHG control requirements would be required under the PSD and Title V permitting programs because national standards

for GHGs under the Tailpipe Rule were effective on January 2, 2011.

EPA's regulation of GHGs under the FCAA presented substantial difficulties for the EPA and states, particularly with regard to the PSD program. For instance, the most common of the GHGs, carbon dioxide (CO_2), is emitted in quantities that dwarf the Act's major source thresholds for program applicability. As a result, under EPA's Timing Rule, PSD requirements could have expanded from approximately 500 issued permits annually to more than 81,000 nationwide, as published in the June 3, 2010, issue of the *Federal Register* (75 FR 31514, 31537 and 31538). To avoid this result, EPA excluded much of this new construction activity from the PSD program by altering the Act's statutory emission rate applicability thresholds for GHGs. This "Tailoring Rule," as published in the June 3, 2010, issue of the *Federal Register* (75 FR 31514) newly defined the statutory term "subject to regulation" and established higher GHGs emission thresholds for applicability of PSD and Title V permitting than specified in the FCAA. The Tailoring Rule also phased in permitting requirements in a multi-stepped process.

Before the *Massachusetts* decision in 2007, EPA took the position that GHGs are not regulated under the FCAA, and GHGs unquestionably were not regulated when EPA approved Texas' State Implementation Plan (SIP) in 1992. Texas has had an approved SIP since 1972, as published in the May 31, 1972, issue of the *Federal Register* (37 FR 10842). In 1983, Texas was delegated authority to implement the PSD program, as published in the February 9, 1983, issue of the *Federal Register* (48 FR 6023). Following this delegation, Texas submitted several SIP revisions to enable it to administer the PSD program (collectively the "PSD SIP submission"). EPA approved Texas' PSD SIP in 1992, granting the state full authority to implement the PSD program, as published in the June 24, 1992, issue of the *Federal Register* (57 FR 28093).

The Texas PSD SIP submission and approval proceedings produced a well-developed record on how Texas would address the applicability of newly-regulated pollutants under the PSD program. During the SIP submission process, Texas consistently explained to EPA that the PSD provisions in the SIP are not prospective rulemaking, and do not incorporate future EPA interpretations of the Act or its regulations.

EPA's GHGs regulations created practical difficulties about how EPA could apply its Tailoring Rule in states with approved SIPs. In August 2010, Texas advised EPA that it could not retroactively reinterpret its SIP to cover GHGs, which were not regulated at the time Texas' SIP was approved in 1992 and were, in fact, a composite pollutant defined for the first time in the Tailoring Rule. Texas also explained that the PSD program only encompassed National Ambient Air Quality Standard (NAAQS) pollutants, but confirmed as a regulatory matter that the approved PSD program encompasses all federally regulated new source review (NSR) pollutants, including any pollutant that otherwise is subject to regulation under the FCAA, as stated in 30 TAC §116.12(14)(D).

Following promulgation of the Tailoring Rule, EPA issued a proposed "Finding of Substantial Inadequacy and SIP Call," as published in the September 2, 2010, issue of the *Federal Register* (75 FR 53892). This action proposed finding the SIPs of 13 states, including Texas', "substantially inadequate" because these SIPs did not apply PSD requirements to GHGs-emitting sources. EPA proposed to require these states (through their SIP-approved PSD programs) to regulate GHGs as defined in the Tailoring Rule. EPA also proposed a Federal Implementation Plan (FIP) that would apply specifically to states that did not or could not agree to reinterpret their SIPs to impose the Tailoring Rule and did not meet SIP submission deadlines. EPA finalized its GHG SIP Call in the December 12, 2010, issue of the *Federal Register* (75 FR 77698) and required Texas to submit revisions to its SIP by December 1, 2011.

EPA published an interim final rule partially disapproving Texas' SIP; imposing the GHGs FIP effective as of its date of publication, as published in the December 30, 2010, issue of the *Federal Register* (75 FR 82430). EPA stated that FCAA, §110(k)(6) authorized it to change its previous approval of Texas' PSD SIP into a partial approval and partial disapproval. EPA's basis was that it had erroneously approved Texas' PSD SIP submission because the SIP did not appropriately address the applicability of newly-regulated pollutants to the PSD program in the future. EPA further stated that its action was independent of the GHG SIP Call because that action was aimed at a narrower issue of applicability to GHGs, whereas its decision retroactively disapproving Texas' PSD SIP submission was addressed to Texas' purported failure to address, or assure the legal authority for, application of PSD to all pollutants newly subject to regulation. EPA published the final rule retroactively disapproving Texas' PSD SIP in part and promulgating the FIP as published in the May 3, 2011, issue of the *Federal Register* (76 FR 25178).

The effect of EPA's FIP is that major source preconstruction permitting authority is divided between two authorities - EPA for GHGs and the state of Texas for all other pollutants. Currently, major construction projects and expansions in Texas that require PSD permits must file applications with both EPA Region 6 (for GHGs) and TCEQ (for all non-GHG pollutants).

House Bill (HB) 788, 83rd Legislature, 2013, added new Texas Health and Safety Code (THSC), §382.05102. The new section grants TCEQ authority to authorize emissions of GHGs consistent with THSC, §382.051, to the extent required under federal law. THSC, §382.05102 directs the commission to adopt implementing rules, including a procedure to transition GHG PSD applications currently under EPA review to the TCEQ. Upon adoption, the rules must be submitted to EPA for review and approval into the Texas SIP. THSC, §382.05102 excludes permitting processes for GHGs from the contested case hearing procedures in THSC, Chapter 382; Texas Water Code, Chapter 5; and Texas Government Code, Chapter 2001. THSC, §382.05102 also requires that the commission repeal the rules adopted under this authority and submit a SIP revision to EPA, if (at a future date) GHG emissions are no longer required to be authorized under federal law.

The commission is initiating this rulemaking to fulfill the directive from the legislature. The legislature found that "in the interest of the continued vitality and economic prosperity of the state, the Texas Commission on Environmental Quality, because of its technical expertise and experience in processing air quality permit applications, is the preferred authority for emissions of {GHGs}."

Texas has challenged in federal court EPA's GHG regulations as well as EPA's SIP Call and FIP. Implementation of HB 788 through this rulemaking is not adverse to Texas' claims in its ongoing challenges to EPA's actions regarding GHGs generally or relating to the SIP. The commission's action to conduct rulemaking for submittal and approval by EPA is consistent with Texas' position that state law does not give EPA the authority to automatically change state regulations.

Concurrently with this proposal, the commission is proposing new and amended rules to 30 TAC Chapters 39 (Public Notice), 101 (General Air Quality Rules), 106 (Permits by Rule), 116 (Control of Air Pollution by Permits for New Construction or Modification), and 122 (Federal Operating Permits Program) to implement HB 788. Except where specifically noted, all proposed changes to Chapters 39, 55, 101, 106, 116, and 122 are necessary to achieve the goal of implementation of HB 788, obtaining SIP approval of certain rules, and rescission of the FIP.

Proposed Amendments to Chapters 39 and 55

The commission proposes changes to two chapters regarding public participation. The proposed amendments to Chapters 39 and 55 are distinguishable from current public participation rules and the Texas SIP. First, PSD GHG permit applications would not be subject to an opportunity to request a contested case hearing or reconsideration of the executive director's decision. Second, based on EPA's interpretation of its PSD rules, no air quality analysis is required for GHG permits. Therefore, when no such analysis is required, none will be prepared by the commission and available for public comment.

HB 788 specifically excludes PSD GHG permit applications from the requirements relating to a contested case hearing. Requests for reconsideration were added by HB 801 (76th Legislature, 1999) as an alternative to the opportunity to request a contested case hearing. However, this remedy is not independent of the right to request a contested case hearing. Absent a right to request a contested case hearing, there is no independent right to request reconsideration of the executive director's decision. The commission interprets HB 788 to require that all other HB 801 requirements, discussed later in this preamble, apply to GHG permit applications.

In addition, although HB 788 does not specify that PSD GHG permit applications are exempt from requests for the commission to reconsider the executive director's preliminary decision, the legislative history of the bill provides that the intent of HB 788 is to shorten the time to obtain a permit by simplifying the permit process. Requests for reconsideration and contested case hearing are interim administrative remedies which add time to the process, and are not part of EPA's procedural mechanisms.

The majority of the existing public participation and notice requirements in Chapters 39 and 55, which implement both federal and state law, will apply to the PSD GHG applications. Many of these requirements were clarified in or added by HB 801. The Chapter 39 amendments are proposed as revisions to the SIP, but the Chapter 55 amendment is not required for the SIP. The public participation and notice requirements include newspaper publication of Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision, each with particular language; sign posting; alternate language newspaper publication and sign posting (where applicable); placement of a copy of the application, the executive director's preliminary decision (draft permit), and preliminary determination summary in a public place for review and copying; providing opportunity for and mandatory attendance at a public meeting (which is mandatory when requested by a member of the public for any PSD permit application or by a legislator who represents the general area where the facility is or is proposed to be located); and notice to certain affected agencies and representatives, including EPA Region 6, local air pollution control agencies with jurisdiction, the chief executives of the city and county where the source is or would be located, and any State or Federal Land Manager, and Indian Governing Body. In addition, the executive director's draft permit and preliminary decision, and preliminary determination summary are available electronically on the commission's Web site at the time of publication of the Notice of Application and Preliminary Decision. Finally, the executive director is required to respond to comments submitted by preparing a Response to Comments, which is mailed to commenters and posted on the commission's Web site, with the executive director's decision. Some of these requirements and procedures were changed in rulemaking and described in the preamble adopted June 2, 2010. Background information regarding the commission's public participation rules for PSD permits can be found in the preamble adopting new and amended rules as published in the June 18, 2010, issue of the *Texas Register* (35 TexReg 5198 - 5255, 5274 - 5277, and 5344 - 5348).

Any PSD GHG permit issued by the executive director will be subject to the Motion to Overturn Process in §50.139, or, if issued by the commission, will be subject to a Motion for Rehearing. Both of these administrative remedies are subject to appeal to Texas District Court for persons who participated in the steps of the administrative process by submitting comments and filing the appropriate challenge with the commission. As discussed in the preamble for the most recent rule amendments regarding public participation for air quality permit applications, as published in the June 18, 2010 issue of the *Texas Register* (35 TexReg 5198), access to judicial review for air quality permits is governed by THSC, §382.032. Generally, a person must comply with the requirement to exhaust the available administrative remedies prior to filing suit in district court. In addition, EPA has approved the Texas Title V Operating Permit Program, which required the submission of a Texas Attorney General opinion regarding sufficient access to courts, in compliance with Article III of the United States Constitution. The Attorney General Opinion specifically states that "{a}ny provisions of State law that limit access to judicial review do not exceed the corresponding limits on judicial review imposed by the standing requirement of Article III of the United States Constitution." The state statutory authority cited in support of the Texas Title V Operating Permit Program includes THSC, §382.032, which is the underlying authority for the appeal of Texas' air quality permit actions, including the PSD permitting program. Therefore, the Texas Attorney General statement regarding equivalence of judicial review based on THSC, §382.032 in accordance with Article III of the United States Constitution is also applicable for every action of the commission subject to the Texas Clean Air Act (TCAA), including PSD permit decisions.

Section Discussion

The proposed amendment to §55.201(i)(3)(C) would provide that an application for an air quality permit under Chapter 116, Subchapter B, Division 6 that would authorize only emissions of GHGs (as defined in proposed amendments to 30 TAC §101.1) is a type of application that is not subject to contested case hearing. This proposed amendment is consistent with HB 788 and the corresponding statute in THSC, §382.05102(d). Existing subparagraph (C) would be re-lettered as subparagraph (D).

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule. The proposed rule pertains to the public notice

requirements for GHG emissions under the PSD air permit program.

The proposed rule would amend Chapter 55 to implement the notice requirements of HB 788, 83rd Legislature, 2013, and are part of a larger rulemaking involving Chapters 39, 101, 106, 116, and 122. This fiscal note only addresses the proposed rule for Chapter 55.

HB 788 exempts GHG PSD air permits from the requirements of a contested case hearing. The proposed rule adds new language in Chapter 55 to specify that applications for a PSD permit to authorize GHGs would not be subject to a contested case hearing. The proposed rule would tend to result in a faster permit issuance for those applicants who otherwise might have had a permit delayed by a contested case hearing.

The proposed rule is not expected to have fiscal implications for state agencies or local government entities that do not participate in the types of activities that require a PSD permit. If a local government or state agency is required to have a PSD permit for GHG emissions, then that governmental entity could experience cost benefits from not having to participate in a contested case hearing in that the lack of a hearing will tend to result in faster permit issuance for permit applicants who otherwise might have had their permit delayed by a contested case hearing. Because no GHG PSD permits have been issued, affected entities will not experience any cost savings.

Public Benefits and Costs

Ms. Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be compliance with state law and an efficient GHG PSD permitting process.

The proposed rule is not expected to have a direct fiscal impact on individuals but may have cost benefits for large businesses that require a PSD permit for GHG emissions as the proposed rule may result in faster GHG PSD permit issuance times for permit applicants who otherwise might have had their permit delayed by a contested case hearing.

By not specifying that a GHG PSD permit is subject to a contested case hearing, the permitting process is expected to become shorter, less burdensome, and less costly for an applicant. However, determining the significance of any savings from not being subject to a contested case hearing is case-specific and depends upon a variety of factors including the savings generated by not having to pay consultants, attorneys, or experts to defend a permit.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the administration or implementation of the proposed rule during the first five years the proposed rule is in effect. Small businesses should experience the same types of cost benefits as a large business (if they become subject GHG PSD permit requirements) because the proposed rule would exempt a small business from a contested case hearing and provide for a shorter permitting process.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is required to comply with state law and does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory 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 specific intent of this proposed rulemaking, as discussed elsewhere in this preamble, is to implement HB 788 by amending §55.201 to add an exemption from requests for contested case hearing for applications for PSD GHG permits.

Additionally, even if the rule met the definition of a major environmental rule, 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 proposed amendment was not developed solely under the general powers of the agency, but is authorized by specific sections of THSC, Chapter 382 (also known as the TCAA), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble, and is specifically required by state law. The specific intent of this proposed rulemaking, as discussed elsewhere in this preamble, is to implement HB 788 by amending §55.201 to add an exemption from requests for contested case hearing for applications for PSD GHG permits. Further, the proposed amendment does not exceed a standard set by federal law or 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. Therefore, this proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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 Texas Constitution §17 or §19, Article I; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for the proposed rulemaking under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking, as discussed elsewhere in this preamble, is to implement HB 788 by amending the rule to add an exemption from requests for contested case hearing for applications for PSD GHG permits.

The proposed rule will not create any additional burden on private real property. The proposed 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 proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the 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 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 the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Advisory Committee and determined that the rulemaking is consistent with the applicable CMP goals and policies. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Advisory Committee and determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed rule updates a procedural requirement that governs the submittal of air quality PSD GHG permit applications. The CMP policy applicable to this rulemaking 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 §501.14(q)). Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking 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.

Effect on Sites Subject to the Federal Operating Permits Program

The proposed rule, if adopted, will not require any changes to outstanding federal operating permits.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 5, 2013, at 2:00 p.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 Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-040-116-AI. The comment period closes December 9, 2013. 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 Tasha Burns, Operational Support, Air Permits Division at (512) 239-5868.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, 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), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.05102,

which relates to the permitting authority of the commission for greenhouse gas emissions THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.0518, concerning Preconstruction Permit, which authorizes the commission to issue preconstruction permits; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which requires an applicant for a permit issued under THSC, §382.0518 to publish notice of intent to obtain a permit. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency. The amendment is also proposed under Federal Clean Air Act, 42 United States Code, §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The proposed amendment implements House Bill 788 (83rd Legislature, 2013), THSC, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05102, 382.0515, 382.0518, and 382.056; and Texas Government Code, §2001.004 and §2001.006.

§55.201. Requests for Reconsideration or Contested Case Hearing.

(a) A request for reconsideration or contested case hearing must be filed no later than 30 days after the chief clerk mails (or otherwise transmits) the executive director's decision and response to comments and provides instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing.

(b) The following may request a contested case hearing under this chapter:

(1) the commission;

(2) the executive director;

(3) the applicant; and

(4) affected persons, when authorized by law.

(c) A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided by subsection (a) of this section, and may not be based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment.

(d) A hearing request must substantially comply with the following:

(1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

(3) request a contested case hearing;

(4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and

(5) provide any other information specified in the public notice of application.

(e) Any person, other than a state agency that is prohibited by law from contesting the issuance of a permit or license as set forth in §55.103 of this title [~~chapter~~] (relating to Definitions), may file a request for reconsideration of the executive director's decision. The request must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk within the time provided by subsection (a) of this section. The request should also contain the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. The request for reconsideration must expressly state that the person is requesting reconsideration of the executive director's decision, and give reasons why the decision should be reconsidered.

(f) Documents that are filed with the chief clerk before the public comment deadline that comment on an application but do not request reconsideration or a contested case hearing shall be treated as public comment.

(g) Procedures for late filed public comments, requests for reconsideration, or contested case hearing are as follows.

(1) A request for reconsideration or contested case hearing, or public comment shall be processed under §55.209 of this title (relating to Processing Requests for Reconsideration and Contested Case Hearing) or under §55.156 of this title (relating to Public Comment Processing), respectively, if it is filed by the deadline. The chief clerk shall accept a request for reconsideration or contested case hearing, or public comment that is filed after the deadline but the chief clerk shall not process it. The chief clerk shall place the late documents in the application file.

(2) The commission may extend the time allowed to file a request for reconsideration, or a request for a contested case hearing.

(h) Any person, except the applicant, the executive director, the public interest counsel, and a state agency that is prohibited by law from contesting the issuance of a permit or license as set forth in §55.103 of this title [~~chapter~~], who was provided notice as required under Chapter 39 of this title (relating to Public Notice) but who failed to file timely public comment, failed to file a timely hearing request, failed to participate in the public meeting held under §55.154 of this title (relating to Public Meetings), and failed to participate in the contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings) may file a motion for rehearing under §50.119 of this title (relating to Notice of Commission Action, Motion for Rehearing), or §80.272 of this title (relating to Motion for Rehearing) or may file a motion to overturn the executive director's decision under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) only to the extent of the changes from the draft permit to the final permit decision.

(i) Applications for which there is no right to a contested case hearing include:

(1) a minor amendment or minor modification of a permit under Chapter 305, Subchapter D of this title (relating to Amendments,

Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(2) a Class 1 or Class 2 modification of a permit under Chapter 305, Subchapter D of this title;

(3) any air permit application for the following:

(A) initial issuance of a voluntary emission reduction permit or an electric generating facility permit;

(B) permits issued under Chapter 122 of this title (relating to Federal Operating Permits Program); [~~or~~]

(C) a permit issued under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review) that would authorize only emissions of greenhouse gases as defined in §101.1 of this title (relating to Definitions); or

(D) [~~(C)~~] amendment, modification, or renewal of an air application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. The commission may hold a contested case hearing if the application involves a facility for which the applicant's compliance history contains violations that are unresolved and that constitute a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations;

(4) hazardous waste permit renewals under §305.65(a)(8) of this title (relating to Renewal);

(5) an application, under Texas Water Code, Chapter 26, to renew or amend a permit if:

(A) the applicant is not applying to:

(i) increase significantly the quantity of waste authorized to be discharged; or

(ii) change materially the pattern or place of discharge;

(B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;

(C) any required opportunity for public meeting has been given;

(D) consultation and response to all timely received and significant public comment has been given; and

(E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit;

(6) an application for a Class I injection well permit used only for the disposal of nonhazardous brine produced by a desalination operation or nonhazardous drinking water treatment residuals under Texas Water Code, §27.021, concerning Permit for Disposal of Brine From Desalination Operations or of Drinking Water Treatment Residuals in Class I Injection Wells;

(7) the issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit, or the authorization for the use of an injection well under a general permit under Texas Water Code, §27.023, concerning General Permit Authorizing Use of Class I Injection Well to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals;

(8) an application for a pre-injection unit registration under §331.17 of this title (relating to Pre-Injection Units Registration);

(9) an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), if the application was submitted on or before January 1, 2018;

(10) other types of applications where a contested case hearing request has been filed, but no opportunity for hearing is provided by law; and

(11) an application for a production area authorization that is submitted after September 1, 2007, unless the application for the production area authorization seeks:

(A) an amendment to a restoration table value in accordance with the requirements of §331.107(g) of this title (relating to Restoration);

(B) the initial establishment of monitoring wells for any area covered by the authorization, including the location, number, depth, spacing, and design of the monitoring wells, unless the executive director uses the recommendations of an independent third-party expert as provided in §331.108 of this title (relating to Independent Third-Party Experts); or

(C) an amendment to the type or amount of financial assurance required for aquifer restoration, or by Texas Water Code, §27.073, to assure that there are sufficient funds available to the state to utilize a third-party contractor for aquifer restoration or plugging of abandoned wells in the area. Adjustments solely associated with the annual inflation rate adjustment required under §37.131 of this title (relating to Annual Inflation Adjustments to Closure Cost Estimates), or for adjustments due to decrease in the cost estimate for plugging and abandonment of wells when plugging and abandonment has been approved by the executive director in accordance with §331.144 of this title (relating to Approval of Plugging and Abandonment) are not considered an amendment to the type or amount of financial assurance required for aquifer restoration or well plugging and abandonment.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state 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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CHAPTER 101. GENERAL AIR QUALITY RULES

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes amendments to §§101.1, 101.10, 101.27, and 101.201.

If adopted, the commission will submit §§101.1, 101.10, and 101.201 to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

In *Massachusetts v. EPA* (549 U.S. 497 (2007)) the Supreme Court of the United States ruled that greenhouse gases (GHGs) fit within the Federal Clean Air Act (FCAA or Act) definition of air pollutant. This ruling gave EPA the authority to regulate GHGs from new motor vehicles and engines if EPA made a finding under FCAA, §202(a) that six key GHGs taken in combination endanger both public health and welfare, and that combined emissions of GHGs from new motor vehicles and engines contribute to pollution that endangers public health and welfare. EPA issued its "Endangerment Finding" for GHGs on December 15, 2009, (Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, Final Rule, as published in the December 15, 2009, issue of the *Federal Register* (74 FR 66496)). Based on the Endangerment Finding, EPA subsequently adopted new emissions standards for motor vehicles (the "Tailpipe Rule" as published in the May 7, 2010, issue of the *Federal Register* (75 FR 25324)). The rule established standards for light-duty motor vehicles to improve fuel economy thereby reducing emissions of GHGs. The standards were effective January 2, 2011. EPA also reconsidered its interpretation of the timing of applicability of Prevention of Significant Deterioration (PSD) under the FCAA (the "Timing Rule" as published in the April 2, 2010, issue of the *Federal Register* (75 FR 17004)). EPA's interpretation of the FCAA is that PSD requirements for stationary sources of GHGs take effect when the first national rule subjects GHGs to regulation under the Act. EPA determined that once GHGs were actually being controlled under any part of the Act they were subject to regulation under the PSD program. Specifically, EPA took the position that beginning on January 2, 2011, GHG control requirements would be required under the PSD and Title V permitting programs because national standards for GHGs under the Tailpipe Rule were effective on January 2, 2011.

EPA's regulation of GHGs under the FCAA presented substantial difficulties for the EPA and states, particularly with regard to the PSD program. For instance, the most common of the GHGs, carbon dioxide (CO_2), is emitted in quantities that dwarf the Act's major source thresholds for program applicability. As a result, under EPA's Timing Rule, PSD requirements could have expanded from approximately 500 issued permits annually to more than 81,000 nationwide, as published in the June 3, 2010, issue of the *Federal Register* (75 FR 31514, 31537 and 31538). To avoid this result, EPA excluded much of this new construction activity from the PSD program by altering the Act's statutory emission rate applicability thresholds for GHGs. This "Tailoring Rule," as published in the June 3, 2010, issue of the *Federal Register* (75 FR 31514) newly defined the statutory term "subject to regulation" and established higher GHGs emission thresholds for applicability of PSD and Title V permitting than specified in the FCAA. The Tailoring Rule also phased in permitting requirements in a multi-stepped process.

Before the *Massachusetts* decision in 2007, EPA took the position that GHGs are not regulated under the FCAA, and GHGs unquestionably were not regulated when EPA approved Texas' SIP in 1992. Texas has had an approved SIP since 1972, as published in the May 31, 1972, issue of the *Federal Register* (37 FR 10842). In 1983, Texas was delegated authority to implement the PSD program, as published in the February 9, 1983, issue of the *Federal Register* (48 FR 6023). Following this delegation, Texas submitted several SIP revisions to enable it to administer the PSD program (collectively the "PSD SIP submission"). EPA approved Texas' PSD SIP in 1992, granting the state full authority to implement the PSD program, as published in the June 24, 1992, issue of the *Federal Register* (57 FR 28093).

The Texas PSD SIP submission and approval proceedings produced a well-developed record on how Texas would address the applicability of newly regulated pollutants under the PSD program. During the SIP submission process, Texas consistently explained to EPA that the PSD provisions in the SIP are not prospective rulemaking, and do not incorporate future EPA interpretations of the Act or its regulations.

EPA's GHGs regulations created practical difficulties about how EPA could apply its Tailoring Rule in states with approved SIPs. In August 2010, Texas advised EPA that it could not retroactively reinterpret its SIP to cover GHGs, which were not regulated at the time Texas' SIP was approved in 1992 and were, in fact, a composite pollutant defined for the first time in the Tailoring Rule. Texas also explained that the PSD program only encompassed National Ambient Air Quality Standard (NAAQS) pollutants, but confirmed as a regulatory matter that the approved PSD program encompasses all federally regulated new source review (NSR) pollutants, including any pollutant that otherwise is subject to regulation under the FCAA, as stated in §116.12(14)(D).

Following promulgation of the Tailoring Rule, EPA issued a proposed "Finding of Substantial Inadequacy and SIP Call," as published in the September 2, 2010, issue of the *Federal Register* (75 FR 53892). This action proposed finding the SIPs of 13 states, including Texas', "substantially inadequate" because these SIPs did not apply PSD requirements to GHGs-emitting sources. EPA proposed to require these states (through their SIP-approved PSD programs) to regulate GHGs as defined in the Tailoring Rule. EPA also proposed a Federal Implementation Plan (FIP) that would apply specifically to states that did not or could not agree to reinterpret their SIPs to impose the Tailoring Rule and did not meet SIP submission deadlines. EPA finalized its GHG SIP Call in the December 12, 2010, issue of the *Federal Register* (75 FR 77698) and required Texas to submit revisions to its SIP by December 1, 2011.

EPA published an interim final rule partially disapproving Texas' SIP; imposing the GHGs FIP effective as of its date of publication, as published in the December 30, 2010, issue of the *Federal Register* (75 FR 82430). EPA stated that FCAA, §110(k)(6) authorized it to change its previous approval of Texas' PSD SIP into a partial approval and partial disapproval. EPA's basis was that it had erroneously approved Texas' PSD SIP submission because the SIP did not appropriately address the applicability of newly-regulated pollutants to the PSD program in the future. EPA further stated that its action was independent of the GHG SIP Call because that action was aimed at a narrower issue of applicability to GHGs, whereas its decision retroactively disapproving Texas' PSD SIP submission was addressed to Texas' purported failure to address, or assure the legal authority for, application of PSD to all pollutants newly subject to regulation. EPA published the final rule retroactively disapproving Texas' PSD SIP in part and promulgating the FIP as published in the May 3, 2011, issue of the *Federal Register* (76 FR 25178).

The effect of EPA's FIP is that major source preconstruction permitting authority is divided between two authorities - EPA for GHGs and the state of Texas for all other pollutants. Currently, major construction projects and expansions in Texas that require PSD permits must file applications with both EPA Region 6 (for GHGs) and TCEQ (for all non-GHG pollutants).

Although Texas has an EPA-approved Title V operating permit program, it currently lacks the approval to permit sources that are major sources subject to Title V as a result of their emissions of GHGs. In EPA's "Action to Ensure Authority to Implement Title V Permitting Programs Under the Greenhouse Gas Tailoring Rule," as published in the December, 30, 2010, issue of the *Federal Register* (75 FR 82254), EPA stated in footnote 8 that in this situation, there is no obligation for these major GHG sources to apply for a Title V permit until such time as the state amends its rules to make the permit program applicable to them.

House Bill (HB) 788, 83rd Legislature, 2013 added new Texas Health and Safety Code (THSC), §382.05102. The new section grants TCEQ authority to authorize emissions of GHGs consistent with THSC, §382.051, to the extent required under federal law. THSC, §382.05102 directs the commission to adopt implementing rules, including a procedure to transition GHG PSD applications currently under EPA review to the TCEQ. Upon adoption, the rules must be submitted to EPA for review and approval into the Texas SIP. THSC, §382.05102 excludes permitting processes for GHGs from the contested case hearing procedures in THSC, Chapter 382; Texas Water Code, Chapter 5; and Texas Government Code, Chapter 2001. THSC, §382.05102 also requires that the commission repeal the rules adopted under this authority and submit a SIP revision to EPA, if (at a future date) emissions of GHGs are no longer required to be authorized under federal law.

The commission is initiating this rulemaking to fulfill the directive from the legislature. The legislature found that "in the interest of the continued vitality and economic prosperity of the state, the Texas Commission on Environmental Quality, because of its technical expertise and experience in processing air quality permit applications, is the preferred authority for emissions of {GHGs}."

Texas has challenged in federal court EPA's GHG regulations as well as EPA's SIP Call and FIP. Implementation of HB 788 through this rulemaking is not adverse to Texas' claims in its ongoing challenges to EPA's actions regarding GHGs generally or relating to the SIP. The commission's action to conduct rulemaking for submittal and approval by EPA is consistent with Texas' position that state law does not give EPA the authority to automatically change state regulations.

Concurrently with this proposal, the commission is proposing new and amended rules to 30 TAC Chapters 39 (Public Notice), 55 (Requests for Reconsideration and Contested Case Hearings; Public Comment), 106 (Permits by Rule), 116 (Control of Air Pollution by Permits for New Construction or Modification), and 122 (Federal Operating Permits Program) to implement HB 788. Except where specifically noted, all proposed changes to Chapters 39, 55, 101, 106, 116, and 122 are necessary to achieve the goal of implementation of HB 788, obtaining SIP approval of certain rules, and the lifting of the FIP.

Implementation of HB 788

THSC, §382.0215 provides that the commission require the owner or operator of a regulated entity that experiences emissions events to maintain a record of all emissions events at the regulated entity in the manner and for the periods prescribed by commission rule. However, not all emissions events, consisting of emissions from upset events and unscheduled maintenance, startup and shutdown (MSS) activities, are required to be reported under §101.201. THSC, §382.0215 also authorizes the commission to establish the reportable quantities (RQs) of air contaminants associated with emissions events and requires the owner or operator of a regulated entity to notify the commission for each emissions event that meets or exceeds an RQ. The reporting provides useful information to evaluate the event for protection of air quality. In 1997 and 1999, the commission adopted RQs and updated its rules to clarify when and how emissions must be recorded and reported, considering reporting requirements found in other state and federal regulations, enhancement of compliance, and utilization of TCEQ resources. The commission uses the reports to determine compliance with the rule and claims of affirmative defense, determine excessive emissions events, organize potential monitoring of long duration events, provide technical assistance to emergency personnel, and inform the public. The records are also used to evaluate trends and provide an enforcement perspective. More information can be found in the rulemaking that first adopted the RQs in the July 29, 1997, issue of the *Texas Register* (22 TexReg 7040), and also for amendments to the rule in the December 17, 1999, issue of the *Texas Register* (24 TexReg 11494).

The RQ establishes what should be reported as soon as practicable within the 24-hour timeframe provided in THSC, §382.0215. The RQs are not intended to represent a judgment as to the specific degree of hazard associated with certain releases, but rather function as a mechanism by which the regulated community will know when to notify the commission of unauthorized emissions. When the RQs were first established, the recordkeeping requirements replaced the requirement to report events that do not meet an RQ.

The commission is proposing that there will be no RQ for CO_2, nitrous oxide (N_2O), methane (CH_4), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), or sulfur hexafluoride (SF_6), individually or collectively, except for the HFCs that are listed specifically in the definition of RQ. The proposed amendments would also exempt reporting of these six air contaminant compounds as part of a mixture with other air contaminant compounds. Further, any emissions of CO_2, N_2O, CH_4, HFCs, PFCs, or SF_6, individually or collectively, are not required to be submitted as part of the final record described in §101.201(c), except for the HFCs that are listed specifically in the definition of RQ. With regard to GHGs, the commission has found no basis for receiving any reports of excess emissions due to emissions events and therefore proposes to exempt these from reporting under §101.201. A source which has emissions exceeding PSD GHG permit limits would be subject to recordkeeping for the unauthorized emissions of GHGs and other pollutants. If an RQ was exceeded, reporting under §101.201 is required for pollutants other than GHGs (except the HFCs specifically listed). All unauthorized emissions would also be considered Title V deviations and would be required to be included in semi-annual reporting required in Chapter 122.

Unauthorized emissions are defined as exceeding a permit limit, rule, or order of the commission. A source that is not required to have a PSD GHG permit does not have a limit for which unauthorized emissions can be evaluated and therefore will not, by definition, have an emissions event of GHGs. Consequently, there is no recordkeeping requirement for unauthorized emissions of GHGs for a source that is not required to have a PSD GHG permit. However, recordkeeping of unauthorized emissions of other pollutants remains a requirement, and reporting under §101.201 may be required.

The commission is also proposing to repeal CO_2 and CH_4 from the definition of "Unauthorized emissions". By removing the

terms, these two GHGs will no longer be exempted from the definition of unauthorized emissions. Because no GHGs will be listed in the exception, all GHGs would be considered as unauthorized emissions if they exceed any air emission limitation in a permit, rule, or order of the commission or as authorized by Texas Clean Air Act (TCAA), THSC, §382.0518(g).

§101.10, Emissions Inventory Requirements

Implementation of HB 788 also necessitates the amendment of §101.10. Owners and operators of accounts that are currently required to submit an annual emissions inventory include any source that meets the definition of a major facility or major stationary source as defined in §116.12, or a source that emits or has the potential to emit 100 tons per year (tpy) of a contaminant. Under these requirements, a small source emitting 100 tpy of GHGs would be required to submit an annual emissions inventory. It is not the commission's intent to require these small-emitting sources to submit emissions inventories because this additional data would not contribute substantially to the inventory, and the commission could not administratively process the additional number of inventories received. Therefore, an exception to this 100 tpy reporting threshold is proposed for §101.10(a)(3) for emissions of GHGs. Only major sources required to obtain a PSD permit (at the thresholds proposed in new §116.164) would be required to submit an inventory.

Under the proposed revisions, owners and operators of accounts that include sources that are required to obtain a PSD permit for GHGs would be required to submit an initial emissions inventory and annual emissions inventory update required under subsection (b). At this time, the commission does not propose requiring the reporting of emissions of GHGs from any source required to submit an emissions inventory per §101.10 unless otherwise required through future rulemaking or specifically requested under the authority of §101.10(b)(3), special inventories as part of any future analysis to assess additional emissions fees to fun HB 788. Owners and operators that are required to submit an annual emissions inventory are required to report emissions of all pollutants listed in §101.10(b)(1). GHGs are not included in §101.10(b)(1).

§101.27, Emissions Fees

Implementation of HB 788 also necessitates the amendment of §101.27. Emissions fees are collected each fiscal year from regulated entities subject to federal operating permits under Chapter 122 (Federal Operating Permits Program, commonly referred to as Title V permitting). The fees are based on actual or authorized emissions of all regulated pollutants emitted from these sites including emissions of criteria pollutants, hazardous air pollutants, and other regulated emissions up to a cap of 4,000 tons per pollutant.

The emissions fee rule allows the rate to be adjusted annually in a range of $25 to $45 dollars per ton. This flexibility allows the agency to collect revenue necessary to fully fund the Title V program. The base rate is currently set at $25 per ton which resulted in an adjusted rate of $47.49 per ton for fiscal year 2014.

The proposed amendment to §101.27 excludes the GHGs defined in proposed amendment to §101.1 from fee collection requirements. However, sources that are required to obtain a Title V permit because of emissions of GHGs would be required to pay emissions fees on non-GHG pollutants. Owners or operators of these sources will pay fees on emissions of any pollutant subject to FCAA, §111; any pollutant listed as a hazardous air pollutant under FCAA, §112; each pollutant that a national primary ambient air quality standard has been promulgated (including carbon monoxide); and any other air pollutant subject to requirements under commission rules, regulations, permits, orders of the commission, or court orders. For purposes of §101.27 only, the term "regulated pollutant" does not include the individual GHGs as listed in the definition §101.1; thus excluding the GHGs from the emissions fee. The current and projected fees are anticipated to cover the cost of the program in the near term.

Proposed New Reportable Quantity for Fire Protection Fluid

In addition to the changes in Chapter 101 to implement HB 788, the commission is proposing to add a new RQ for 3-Pentanone, 1,1,1,2,2,4,5,5,5-nonafluoro-4-(trifluoromethyl)-, CAS No. 756-13-8 (hereafter C6 fluoroketone) in §101.1. On May 22, 2013, the commission approved a rulemaking petition from 3M Company filed on April 1, 2013 (Docket Number 2013-0700-RUL), requesting that its fire protection fluid be listed in §101.1(88), to establish an RQ of 5,000 pounds instead of the default RQ of 100 pounds. The chemical is sold as 3M™ Novec™ 1230 Fire Protection Fluid. According to the petition, the fluid is "used to extinguish fires in high valued assets" that cannot be protected with water.

The proposed new RQ would increase the reporting threshold for C6 fluoroketone. In considering reportable quantities, the TCEQ considers toxicological effects, photochemical reactivity for producing ozone, and its intent of limiting emissions events reports to the most significant events. C6 fluoroketone is neither a criteria pollutant nor a precursor of ozone, and therefore the 100-pound default for nonattainment and maintenance areas should not apply.

No signs of acute toxicity were observed in rats exposed to 100,000 parts per million (ppm) C6 fluoroketone for up to four hours. The "no observed adverse effect" level for acute toxicity in rats was 100,000 ppm or 10%. Other toxicity studies have concluded that C6 fluoroketone is only minimally irritating to the eye, non-irritating to the skin, and does not cause sensitization. There have been no complaints of adverse health effects from human experience with exposures to C6 fluoroketone. C6 fluoroketone is safe to the public when discharged in the event of a fire. C6 fluoroketone was approved by the EPA in 2002 (67 FR 77931) as an acceptable substitute for ozone-depleting substances, such as halon 1301, for use in fire suppression.

Section by Section Discussion

§101.1, Definitions

The commission proposes to amend §101.1 to add the definition of GHGs, set an RQ for a compound in response to a rulemaking petition, provide that there is no RQ for GHGs (except for the specific individual air contaminant compounds found in the current RQ definition), amend the definition of unauthorized emissions to exclude CO_2 and CH_4, and make nonsubstantive revisions including renumbering and clarifying references.

The commission proposes §101.1(42) to add a definition of the pollutant GHGs and to appropriately renumber the paragraphs of §101.1. The proposed definition would establish that the pollutant GHGs is an aggregate group of six GHGs including: CO_2, N_2O, CH_4, HFCs, PFCs, and SF_6. This proposed definition is consistent with EPA's definition in 40 Code of Federal Regulations (CFR) §51.166(b)(48). HFCs are compounds containing only hydrogen, fluorine, and carbon atoms. PFCs are compounds containing only carbon and fluorine atoms. Other gases that are

considered GHGs are not included in the definition of the pollutant GHGs.

The commission also proposes to add a new RQ of 5,000 lbs in §101.1(89)(A)(i)(III)(-aaa-) for 3-Pentanone, 1,1,1,2,2,4,5,5,5-nonafluoro-4-(trifluoromethyl)-, CAS No. 756-13-8. The proposed new RQ would increase the reporting threshold for C6 fluoroketone. In considering reportable quantities, the TCEQ considered toxicological effects, photochemical reactivity for producing ozone, and its intent of limiting emissions events reports to the most significant events. C6 fluoroketone is neither a criteria pollutant nor a precursor of ozone, and therefore the 100-pound default for nonattainment and maintenance areas should not apply.

No signs of acute toxicity were observed in rats exposed to 100,000 ppm C6 fluoroketone for up to four hours. The "no observed adverse effect" level for acute toxicity in rats was 100,000 ppm or 10%. Other toxicity studies have concluded that C6 fluoroketone is only minimally irritating to the eye, non-irritating to the skin, and does not cause sensitization. There have been no complaints of adverse health effects from human experience with exposures to C6 fluoroketone. C6 fluoroketone is safe to the public when discharged in the event of a fire. C6 fluoroketone was approved by the EPA in 2002 (67 FR 77931) as an acceptable substitute for ozone-depleting substances, such as halon 1301, for use in fire suppression.

The commission also proposes to add §101.1(89)(A)(iii) to provide that there would be no RQ for GHGs, except for the specific individual air contaminant compounds found in the current RQ definition. A source which has emissions exceeding PSD GHG permit limits would be subject to recordkeeping for unauthorized emissions of GHGs and other pollutants. All unauthorized emissions would also be considered Title V deviations and would be required to be included in semi-annual reporting required in Chapter 122.

Unauthorized emissions are defined as exceeding a permit limit, rule, or order of the commission. A source that is not required to have a PSD GHG permit does not have a limit for which unauthorized emissions can be evaluated and therefore will not, by definition, have an emissions event of GHGs. Consequently, there is no recordkeeping requirement for unauthorized emissions of GHGs for a source that is not required to have a PSD GHG permit. However, recordkeeping of unauthorized emissions of other pollutants remains a requirement, and reporting under §101.201 may be required.

In proposed §101.1(108), the commission removes the words "carbon dioxide" and "methane" from the definition of "Unauthorized emissions" because these will now be regulated as GHGs. By removing the terms, these two GHGs will no longer be exempted from the definition of unauthorized emissions. Because no GHGs will be listed in the exception, all GHGs would be considered as unauthorized emissions if they exceed any air emission limitation in a permit, rule, or order of the commission or as authorized by Texas Clean Air Act (TCAA), THSC, §382.0518(g).

In §101.1(25), the commission proposes nonsubstantive amendments to clarify the referenced rule is in the Code of Federal Regulations (CFR). In §101.1(61), the commission proposes nonsubstantive amendments to the definition of mobile emissions reduction credit. The added clarifying language provides the title of the referenced division, Emission Credit Banking and Trading. The commission proposes nonsubstantive amendments to the definition of particulate matter emissions, to clarify the chemical formula NO_x refers to nitrogen oxides in §101.1(77). The commission also proposes amendments in §101.1(89) correcting CFR to CFC for four air contaminant compounds.

§101.10, Emissions Inventory Requirements

The commission proposes to amend §101.10(a)(3) by adding an exception for GHGs (as listed in the proposed amendment to §101.1) to the applicable criteria for which an owner or operator is required to submit emissions inventories. Specifically, the exception is added to the requirement for any account that emits or has the potential to emit 100 tons per year (tpy) or more of any contaminant.

The commission also proposes nonsubstantive revisions for this section. Subsection (a) is proposed to be renumbered to reflect the subsection reorganization for clarity. Subsection (b) has been updated to reflect the renumbering in subsection (a). The title of §116.12 was updated in subsection (a)(1) to "Nonattainment and Prevention of Significant Deterioration Review Definitions" to reflect the current title of the rule. In subsection (a)(4) the acronym for Federal Clean Air Act was expanded for clarification. In subsections (b)(3) and (e) the word industrial was removed from the name of the "Emissions Assessment Section" to reflect its current name. Subsection (f) was updated to reflect the current enforcement authority for completing an emissions inventory. Enforcement by appropriate action includes Texas Water Code (TWC), §7.002 for administrative penalties, §7.101 for civil penalties, and §7.178 for criminal penalties.

§101.27, Emissions Fees

The commission proposes to amend subsection (f)(3) by excepting GHGs as defined in §101.1 from the term "regulated pollutant" for the purposes of §101.27. This change is necessary to exempt GHGs from the list of pollutants subject to fees. GHGs are being exempted because certain GHGs, like CO_2, are emitted in such large quantities that the resulting fee collection would be in excess of current near-term program funding requirements.

Existing sites in Texas will become subject to the Title V federal operating permits program on the effective date of EPA's final action approving the revisions to the Federal Operating Permits Program or approving revision of §122.122 into the SIP, whichever is later. For example, if the later of the two actions is effective on or before August 31, 2014 (the end of Fiscal Year 2014), existing sources which meet or exceed the Title V major source thresholds in proposed §122.122(14)(H) will become subject to emissions fees on that day. Since fees for Fiscal Year 2014 would have already been invoiced at that date, an emissions fee for Fiscal Year 2014 for these sources would be assessed as soon as practical and would be based on emissions of non-GHGs in calendar year 2012 (or other data allowed per §101.27). If the later of the two EPA actions is effective on or after September 1, 2014 (in Fiscal Year 2015), then these sources will become subject to emissions fees on that day. An emissions fee for Fiscal Year 2015 would typically be invoiced in fall of calendar year 2014 and would be based on emissions of non-GHGs in calendar year 2013 (or other data allowed per §101.27).

§101.201, Emissions Event Reporting and Recordkeeping Requirements

The commission proposes to amend subsection (c) to provide that any emissions of CO_2, N_2O, CH_4, HFCs, PFCs, or SF_6, individually or collectively, are not required to be submitted as part of the final record under this subsection. This is consistent with the proposed change adding §101.1(89)(A)(iii) to provide that there

would be no RQ for GHGs, except for the specific individual air contaminant compounds found in the current RQ definition.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. The proposed rules will not have any fiscal implications for other state agencies or units of local government.

The proposed rules would amend Chapter 101 to implement the requirements of HB 788, 83rd Legislature, 2013, as part of a larger rulemaking involving Chapters 39, 55, 106, 116, and 122. This fiscal note only addresses the proposed rules for Chapter 101.

Proposed amendments to implement HB 788

The proposed rules would amend Chapter 101 to clarify that, for emissions event and scheduled MSS rules, all emissions of GHGs are exempt from reporting requirements under §101.201. The proposed rules also clarify that emission fees will not be assessed on emissions of GHGs. Emissions of GHGs are not currently charged an emission fee in Texas, so this rule change carries forward existing practice. The rule change is necessary because GHGs are becoming a regulated pollutant and therefore would be subject to fees under §101.27 unless this exclusion is added. Note that under existing requirements of §101.27, sites which are required to obtain a federal operating permit under Chapter 122 as a result of emissions of GHGs will be required to pay a fee on their non-GHG pollutants. In addition, existing requirements of §101.10 specify that major sources as defined in §116.12 are required to submit an emissions inventory, and changes to Chapter 116 as part of this HB 788 implementation will result in additional sources becoming subject to emissions inventory requirements. These fee impacts and emissions inventory impacts are discussed in the fiscal notes for Chapter 122 and Chapter 116, respectively, because the changes to those chapters are what cause those existing requirements of Chapter 101 to apply to major sources of GHGs.

In implementing the previous changes some specific amendments in the proposed rules include: a definition of GHGs; a revision to the definition of RQs so that emissions of GHGs are not required to be reported for emissions events or scheduled MSS; a revision to clarify that emissions of GHGs are not counted towards the 100 tpy emissions inventory criteria in §101.10(a)(3); a change to clarify that GHGs are not considered regulated pollutants under the fee system of §101.27; and a change in the definition of unauthorized emissions to clarify that GHGs will be permitted pollutants. The result of the proposed rules (when combined with proposals in other chapters) clarify that emissions of GHGs will not be reportable for emission events purposes, scheduled MSS purposes, or for emissions inventories.

Proposed amendments to respond to a petition

Finally, in response to the 3M petition received by the agency, the proposed rules would also establish a 5,000 pound RQ threshold instead of the default 100 pound RQ for C6 fluoroketone (a fire retardant).

Fiscal Impact on Governmental Entities

Other state agencies and units of local government will not experience any fiscal impacts as a result of the proposed rules for Chapter 101. Current rules have never required the reporting of emissions of GHGs, and the proposed rules clarify that reporting emissions of GHGs will not be required for emissions inventory or under §101.201 for emissions events or unscheduled MSS. In the case of the proposed RQ for C6 fluoroketone, the proposed rules are expected to have minimal fiscal impact since the compound is expected to be used on very rare occasions and in specific circumstances.

Agency revenue will not increase as a result of the proposed rules, and regulated entities will not be required to pay additional emission fees for emissions of GHGs.

Public Benefits and Costs

Ms. Chamness 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 clarification of reporting requirements for emissions of GHGs.

The proposed rules would amend Chapter 101 to clarify that, for emissions event and scheduled MSS reporting rules, all emissions of GHGs are exempt from reporting requirements under §101.201. Also, the proposed rules clarify that emission fees will not be assessed on emissions of GHGs, although major Title V sources of GHGs will be required to pay fees on emissions of non-GHGs under existing rules. Finally, in response to a petition received by the agency, the proposed rules would also establish a 5,000 pound RQ threshold instead of the default 100 pounds RQ for C6 fluoroketone.

Individuals and businesses will not experience significant fiscal impacts under the proposed rules because they are either clarifying in nature, continue current agency reporting requirements for emissions of GHGs or are, as with C6 fluoroketone, expected to be applicable to very rare circumstances. The proposed Chapter 101 rules are consistent with changes to be made in other air emission regulations for major sources.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules because they are either clarifying in nature, continue current agency reporting requirements for emissions of GHGs, or are, as with C6 fluoroketone, expected to be applicable to very rare circumstances.

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 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 specific intent of the proposed rulemaking is to implement HB 788 by adding a definition of the pollutant GHGs as an aggregate group of six GHGs including: CO_2, N_2O, CH_4, HFCs, PFCs, and SF_6; and establishing a new reportable quantity for fire protection fluid, 3-Pentanone, 1,1,1,2,2,4,5,5,5-nonafluoro-4-(trifluoromethyl)-, CAS No. 756-13-8. Further, the rulemaking is intended to clarify how the regulation of GHGs is implemented in the emissions inventory and emissions fee requirements of the commission's rules.

Additionally, even if the rules met the definition of a major environmental rule, 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 proposed rules would implement requirements of the FCAA. Under 42 United States Code (USC), §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, attain, maintain, and enforce the NAAQS within the state. One of the requirements of 42 USC, §7410 is for states to include programs for the regulation of the modification and construction of any stationary source within the area covered by the plan as necessary to assure that the NAAQS are achieved, including a permit program as required in FCAA, Parts C and D, or NSR. This rulemaking will implement provisions in HB 788 to establish the TCEQ as the permitting authority for major sources of emissions of GHGs in Texas and to do so consistent with federal law. Specifically, the amendments to Chapter 101 would add a definition of the pollutant GHGs as an aggregate group of six GHGs including: CO_2, N_2O, CH_4, HFCs, PFCs, and SF_6. Further, the rulemaking is intended to clarify how the regulation of GHGs is implemented in the emissions inventory and emissions fee requirements of the commission's rules.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633, 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded, "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the Legislative Budget Board, the commission believes that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the proposed rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA, and thus allow EPA to lift its federal permitting program on GHG sources in Texas. In fact, the proposed rules create no additional impacts since major GHG sources in Texas must currently obtain a PSD permits from EPA and the proposed rules merely supplant EPA as the authority for GHG PSD permitting in Texas. For these reasons, the proposed rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *(Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue,* 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ). Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied);* and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978)).

The commission's interpretation of the RIA requirements is also supported by a change made to the 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" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The proposed rules do not exceed an express requirement in federal or state law. The proposed rules implement requirements of the FCAA, specifically to adopt and implement SIPs, as well as specific requirements of the TCAA. The specific intent of the proposed rulemaking is to implement HB 788 by adding a definition of the pollutant GHGs as an aggregate group of six GHGs including: CO_2, N_2O, CH_4, HFCs, PFCs, and SF_6. Further, the rulemaking is intended to clarify how the regulation of GHGs is implemented in the emissions inventory and emissions fee requirements of the commission's rules. The rulemaking also would add a new reportable quantity for fire protection fluid, 3-Pentanone, 1,1,1,2,2,4,5,5,5-nonafluoro-4-(trifluoromethyl)-, CAS No. 756-13-8. The proposed rules do not exceed a requirement of a delegation agreement or any contract between the state and a federal agency, because there is no agreement applicable to this rulemaking. The proposed rules were not developed solely under the general powers of the agency, but are authorized by specific sections of THSC, Chapter 382 (also known as the TCAA), and the TWC, which are cited in the Statutory Authority section of this preamble. Therefore, this proposed rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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 Texas Constitution §17 or §19, Article I; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for the proposed rulemaking under the Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking, as discussed elsewhere in this preamble, is to implement HB 788 by adding a definition of the pollutant GHGs as an aggregate group of six GHGs including: CO_2, N_2O, CH_4, HFCs, PFCs, and SF_6. Further, the rulemaking is intended to clarify how the regulation of GHGs is implemented in the emissions inventory and emissions fee requirements of the commission's rules. The rulemaking also would add a new reportable quantity for fire protection fluid, 3-Pentanone, 1,1,1,2,2,4,5,5,5-nonafluoro-4-(trifluoromethyl)-, CAS No. 756-13-8.

The proposed rules will not create any additional burden on private real property. The proposed 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 proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the 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 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 the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Advisory Committee and determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed rules update rules that govern the submittal of air quality PSD and Title V GHG permit applications and associated emissions of GHGs. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking 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.

Effect on Sites Subject to the Federal Operating Permits Program

Sections 101.1 and 101.10 are applicable requirements in the Federal Operating Permits Program (Chapter 122). However, the proposed rules, if adopted, would not require any revisions to federal operating permits.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 5, 2013, at 2:00 p.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 Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.*

File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-040-116-AI. The comment period closes December 9, 2013. 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 Tasha Burns, Operational Support, Air Permits Division at (512) 239-5868.

SUBCHAPTER A. GENERAL RULES

30 TAC §§101.1, 101.10, 101.27

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §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; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require submittal of information regarding emissions of air contaminants; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for measuring, monitoring, and maintaining records of emissions of air contaminants; THSC, §382.0215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; THSC, §382.0216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events; THSC, §382.05102, concerning Permitting Authority of Commission; Greenhouse Gas Emissions, which relates to the permitting authority of the commission for greenhouse gas emissions; THSC, §382.062, concerning Application, Permit and Inspection Fees, which authorizes the commission to charge these types of fees; and THSC, §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions of air contaminants except as authorized by commission by rule or order. The amendments are also proposed under Texas Government Code, §2006.004, concerning Requirements to Adopt Rules of Practice and Index Rules, Orders, Decisions, which requires state agencies to adopt procedural rules; and Texas Government Code, §2001.006, concerning Actions Preparatory to Implementation of Statute or Rule, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation. The amendments are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The proposed amendments implement House Bill 788, 82nd Legislature, 2013, THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, 382.0215, 382.0216, 382.05102, and 382.062; and Texas Government Code, §2001.004 and §2001.006; and FCAA, 42 USC, §§7401 *et seq.*

§101.1. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA, the following terms, when used in the air quality rules in this title, have the following meanings, unless the context clearly indicates otherwise.

(1) Account--For those sources required to be permitted under Chapter 122 of this title (relating to Federal Operating Permits Program), all sources that are aggregated as a site. For all other sources, any combination of sources under common ownership or control and located on one or more contiguous properties, or properties contiguous except for intervening roads, railroads, rights-of-way, waterways, or similar divisions.

(2) Acid gas flare--A flare used exclusively for the incineration of hydrogen sulfide and other acidic gases derived from natural gas sweetening processes.

(3) Agency established facility identification number--For the purposes of Subchapter F of this chapter (relating to Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities), a unique alphanumeric code required to be assigned by the owner or operator of a regulated entity that the emission inventory reporting requirements of §101.10 of this title (relating to Emissions Inventory Requirements) are applicable to each facility at that regulated entity.

(4) Ambient air--That portion of the atmosphere, external to buildings, to which the general public has access.

(5) Background--Background concentration, the level of air contaminants that cannot be reduced by controlling emissions from man-made sources. It is determined by measuring levels in non-urban areas.

(6) Boiler--Any combustion equipment fired with solid, liquid, and/or gaseous fuel used to produce steam or to heat water.

(7) Capture system--All equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.

(8) Captured facility--A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(9) Carbon adsorber--An add-on control device that uses activated carbon to adsorb volatile organic compounds from a gas stream.

(10) Carbon adsorption system--A carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

(11) Coating--A material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, ad-

hesives, thinners, diluents, inks, maskants, and temporary protective coatings.

(12) Cold solvent cleaning--A batch process that uses liquid solvent to remove soils from the surfaces of parts or to dry the parts by spraying, brushing, flushing, and/or immersion while maintaining the solvent below its boiling point. Wipe cleaning (hand cleaning) is not included in this definition.

(13) Combustion unit--Any boiler plant, furnace, incinerator, flare, engine, or other device or system used to oxidize solid, liquid, or gaseous fuels, but excluding motors and engines used in propelling land, water, and air vehicles.

(14) Combustion turbine--Any gas turbine system that is gas and/or liquid fuel fired with or without power augmentation. This unit is either attached to a foundation or is portable equipment operated at a specific minor or major source for more than 90 days in any 12-month period. Two or more gas turbines powering one shaft will be treated as one unit.

(15) Commercial hazardous waste management facility--Any hazardous waste management facility that accepts hazardous waste or polychlorinated biphenyl compounds for a charge, except a captured facility that disposes only waste generated on-site or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(16) Commercial incinerator--An incinerator used to dispose of waste material from retail and wholesale trade establishments.

(17) Commercial medical waste incinerator--A facility that accepts for incineration medical waste generated outside the property boundaries of the facility.

(18) Component--A piece of equipment, including, but not limited to, pumps, valves, compressors, and pressure relief valves that has the potential to leak volatile organic compounds.

(19) Condensate--Liquids that result from the cooling and/or pressure changes of produced natural gas. Once these liquids are processed at gas plants or refineries or in any other manner, they are no longer considered condensates.

(20) Construction-demolition waste--Waste resulting from construction or demolition projects.

(21) Control system or control device--Any part, chemical, machine, equipment, contrivance, or combination of same, used to destroy, eliminate, reduce, or control the emission of air contaminants to the atmosphere.

(22) Conveyorized degreasing--A solvent cleaning process that uses an automated parts handling system, typically a conveyor, to automatically provide a continuous supply of parts to be cleaned or dried using either cold solvent or vaporized solvent. A conveyorized degreasing process is fully enclosed except for the conveyor inlet and exit portals.

(23) Criteria pollutant or standard--Any pollutant for which there is a national ambient air quality standard established under 40 Code of Federal Regulations Part 50.

(24) Custody transfer--The transfer of produced crude oil and/or condensate, after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

(25) De minimis impact--A change in ground level concentration of an air contaminant as a result of the operation of any new major stationary source or of the operation of any existing source that has undergone a major modification that does not exceed the significance levels as specified in 40 Code of Federal Regulations [~~(CFR)~~] §51.165(b)(2).

(26) Domestic wastes--The garbage and rubbish normally resulting from the functions of life within a residence.

(27) Emissions banking--A system for recording emissions reduction credits so they may be used or transferred for future use.

(28) Emissions event--Any upset event or unscheduled maintenance, startup, or shutdown activity, from a common cause that results in unauthorized emissions of air contaminants from one or more emissions points at a regulated entity.

(29) Emissions reduction credit--Any stationary source emissions reduction that has been banked in accordance with Chapter 101, Subchapter H, Division 1 of this title (relating to Emission Credit Banking and Trading).

(30) Emissions reduction credit certificate--The certificate issued by the executive director that indicates the amount of qualified reduction available for use as offsets and the length of time the reduction is eligible for use.

(31) Emissions unit--Any part of a stationary source that emits, or would have the potential to emit, any pollutant subject to regulation under the Federal Clean Air Act.

(32) Excess opacity event--When an opacity reading is equal to or exceeds 15 additional percentage points above an applicable opacity limit, averaged over a six-minute period.

(33) Exempt solvent--Those carbon compounds or mixtures of carbon compounds used as solvents that have been excluded from the definition of volatile organic compound.

(34) External floating roof--A cover or roof in an open top tank that rests upon or is floated upon the liquid being contained and is equipped with a single or double seal to close the space between the roof edge and tank shell. A double seal consists of two complete and separate closure seals, one above the other, containing an enclosed space between them.

(35) Federal motor vehicle regulation--Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines, 40 Code of Federal Regulations Part 85.

(36) Federally enforceable--All limitations and conditions that are enforceable by the United States Environmental Protection Agency administrator, including those requirements developed under 40 Code of Federal Regulations (CFR) Parts 60 and 61; requirements within any applicable state implementation plan (SIP); and any permit requirements established under 40 CFR §52.21 or under regulations approved under 40 CFR Part 51, Subpart 1, including operating permits issued under the approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program.

(37) Flare--An open combustion unit (i.e., lacking an enclosed combustion chamber) whose combustion air is provided by uncontrolled ambient air around the flame, and that is used as a control device. A flare may be equipped with a radiant heat shield (with or without a refractory lining), but is not equipped with a flame air control damping system to control the air/fuel mixture. In addition, a flare may also use auxiliary fuel. The combustion flame may be elevated or at ground level. A vapor combustor, as defined in this section, is not considered a flare.

(38) Fuel oil--Any oil meeting the American Society for Testing and Materials (ASTM) specifications for fuel oil in ASTM

D396-01, Standard Specifications for Fuel Oils, revised 2001. This includes fuel oil grades 1, 1 (Low Sulfur), 2, 2 (Low Sulfur), 4 (Light), 4, 5 (Light), 5 (Heavy), and 6.

(39) Fugitive emission--Any gaseous or particulate contaminant entering the atmosphere that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow.

(40) Garbage--Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, and handling and sale of produce and other food products.

(41) Gasoline--Any petroleum distillate having a Reid vapor pressure of four pounds per square inch (27.6 kilopascals) or greater that is produced for use as a motor fuel, and is commonly called gasoline.

(42) Greenhouse gases--The aggregate group of six greenhouse gases: carbon dioxide (CO_2), nitrous oxide (N_2O), methane (CH_4), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6).

(43) [~~(42)~~] Hazardous wastes--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.,* as amended.

(44) [~~(43)~~] Heatset (used in offset lithographic printing)--Any operation where heat is required to evaporate ink oil from the printing ink. Hot air dryers are used to deliver the heat.

(45) [~~(44)~~] High-bake coatings--Coatings designed to cure at temperatures above 194 degrees Fahrenheit.

(46) [~~(45)~~] High-volume low-pressure spray guns--Equipment used to apply coatings by means of a spray gun that operates between 0.1 and 10.0 pounds per square inch gauge air pressure measured at the air cap.

(47) [~~(46)~~] Incinerator--An enclosed combustion apparatus and attachments that is used in the process of burning wastes for the primary purpose of reducing its volume and weight by removing the combustibles of the waste and is equipped with a flue for conducting products of combustion to the atmosphere. Any combustion device that burns 10% or more of solid waste on a total British thermal unit (Btu) heat input basis averaged over any one-hour period is considered to be an incinerator. A combustion device without instrumentation or methodology to determine hourly flow rates of solid waste and burning 1.0% or more of solid waste on a total Btu heat input basis averaged annually is also considered to be an incinerator. An open-trench type (with closed ends) combustion unit may be considered an incinerator when approved by the executive director. Devices burning untreated wood scraps, waste wood, or sludge from the treatment of wastewater from the process mills as a primary fuel for heat recovery are not included under this definition. Combustion devices permitted under this title as combustion devices other than incinerators will not be considered incinerators for application of any rule within this title provided they are installed and operated in compliance with the condition of all applicable permits.

(48) [~~(47)~~] Industrial boiler--A boiler located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes.

(49) [~~(48)~~] Industrial furnace--Cement kilns; lime kilns; aggregate kilns; phosphate kilns; coke ovens; blast furnaces; smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces; titanium dioxide chloride process oxidation reactors; methane reforming furnaces; pulping recovery furnaces; combustion devices used in the recovery of sulfur values from spent sulfuric acid; and other devices the commission may list.

(50) [~~(49)~~] Industrial solid waste--Solid waste resulting from, or incidental to, any process of industry or manufacturing, or mining or agricultural operations, classified as follows.

(A) Class 1 industrial solid waste or Class 1 waste is any industrial solid waste designated as Class 1 by the executive director as any industrial solid waste or mixture of industrial solid wastes that because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste, as defined in §335.1 and §335.505 of this title (relating to Definitions and Class 1 Waste Determination).

(B) Class 2 industrial solid waste is any individual solid waste or combination of industrial solid wastes that cannot be described as Class 1 or Class 3, as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(C) Class 3 industrial solid waste is any inert and essentially insoluble industrial solid waste, including materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable as defined in §335.507 of this title (relating to Class 3 Waste Determination).

(51) [~~(50)~~] Internal floating cover--A cover or floating roof in a fixed roof tank that rests upon or is floated upon the liquid being contained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell.

(52) [~~(51)~~] Leak--A volatile organic compound concentration greater than 10,000 parts per million by volume or the amount specified by applicable rule, whichever is lower; or the dripping or exuding of process fluid based on sight, smell, or sound.

(53) [~~(52)~~] Liquid fuel--A liquid combustible mixture, not derived from hazardous waste, with a heating value of at least 5,000 British thermal units per pound.

(54) [~~(53)~~] Liquid-mounted seal--A primary seal mounted in continuous contact with the liquid between the tank wall and the floating roof around the circumference of the tank.

(55) [~~(54)~~] Maintenance area--A geographic region of the state previously designated nonattainment under the Federal Clean Air Act Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under 42 United States Code, §7505a, as described in 40 Code of Federal Regulations Part 81 and in pertinent *Federal Register* notices.

(56) [~~(55)~~] Maintenance plan--A revision to the applicable state implementation plan, meeting the requirements of 42 United States Code, §7505a.

(57) [~~(56)~~] Marine vessel--Any watercraft used, or capable of being used, as a means of transportation on water, and that is constructed or adapted to carry, or that carries, oil, gasoline, or other volatile organic liquid in bulk as a cargo or cargo residue.

(58) [(57)] Mechanical shoe seal--A metal sheet that is held vertically against the storage tank wall by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

(59) [(58)] Medical waste--Waste materials identified by the Department of State Health Services as "special waste from health care-related facilities" and those waste materials commingled and discarded with special waste from health care-related facilities.

(60) [(59)] Metropolitan Planning Organization--That organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 United States Code (USC), §134 and 49 USC, §1607.

(61) [(60)] Mobile emissions reduction credit--The credit obtained from an enforceable, permanent, quantifiable, and surplus (to other federal and state rules) emissions reduction generated by a mobile source as set forth in Chapter 114, Subchapter F of this title (relating to Vehicle Retirement and Mobile Emission Reduction Credits), and that has been banked in accordance with Subchapter H, Division 1 of this chapter (relating to Emission Credit Banking and Trading).

(62) [(61)] Motor vehicle--A self-propelled vehicle designed for transporting persons or property on a street or highway.

(63) [(62)] Motor vehicle fuel dispensing facility--Any site where gasoline is dispensed to motor vehicle fuel tanks from stationary storage tanks.

(64) [(63)] Municipal solid waste--Solid waste resulting from, or incidental to, municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste except industrial solid waste.

(65) [(64)] Municipal solid waste facility--All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(66) [(65)] Municipal solid waste landfill--A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 Code of Federal Regulations §257.2. A municipal solid waste landfill (MSWLF) unit also may receive other types of Resource Conservation and Recovery Act Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.

(67) [(66)] National ambient air quality standard--Those standards established under 42 United States Code, §7409, including standards for carbon monoxide, lead, nitrogen dioxide, ozone, inhalable particulate matter, and sulfur dioxide.

(68) [(67)] Net ground-level concentration--The concentration of an air contaminant as measured at or beyond the property boundary minus the representative concentration flowing onto a property as measured at any point. Where there is no expected influence of the air contaminant flowing onto a property from other sources, the net ground level concentration may be determined by a measurement at or beyond the property boundary.

(69) [(68)] New source--Any stationary source, the construction or modification of which was commenced after March 5, 1972.

(70) [(69)] Nitrogen oxides (NO_x)--The sum of the nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.

(71) [(70)] Nonattainment area--A defined region within the state that is designated by the United States Environmental Protection Agency (EPA) as failing to meet the national ambient air quality standard (NAAQS or standard) for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of 42 United States Code, §7407(d). For the official list and boundaries of nonattainment areas, see 40 Code of Federal Regulations (CFR) Part 81 and pertinent Federal Register notices. The designations and classifications for the one-hour ozone national ambient air quality standard in 40 CFR Part 81 were retained for the purpose of anti-backsliding and upon determination by the EPA that any requirement is no longer required for purposes of anti-backsliding, then that requirement no longer applies.

(72) [(71)] Non-reportable emissions event--Any emissions event that in any 24-hour period does not result in an unauthorized emission from any emissions point equal to or in excess of the reportable quantity as defined in this section.

(73) [(72)] Opacity--The degree to which an emission of air contaminants obstructs the transmission of light expressed as the percentage of light obstructed as measured by an optical instrument or trained observer.

(74) [(73)] Open-top vapor degreasing--A batch solvent cleaning process that is open to the air and that uses boiling solvent to create solvent vapor used to clean or dry parts through condensation of the hot solvent vapors on the parts.

(75) [(74)] Outdoor burning--Any fire or smoke-producing process that is not conducted in a combustion unit.

(76) [(75)] Particulate matter--Any material, except uncombined water, that exists as a solid or liquid in the atmosphere or in a gas stream at standard conditions.

(A) Particulate matter with diameters less than 10 micrometers (PM_{10})--Particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers as measured by a reference method based on 40 Code of Federal Regulations (CFR) Part 50, Appendix J, and designated in accordance with 40 CFR Part 53, or by an equivalent method designated with that Part 53.

(B) Particulate matter with diameters less than 2.5 micrometers ($PM_{2.5}$)--Particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR Part 50, Appendix L, and designated in accordance with 40 CFR Part 53, or by an equivalent method designated with that Part 53.

(77) [(76)] Particulate matter emissions--All finely-divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by United States Environmental Protection Agency Reference Method 5, as specified at 40 Code of Federal Regulations (CFR) Part 60, Appendix A, modified to include particulate caught by an impinger train; by an equivalent or alternative method, as specified at 40 CFR Part 51; or by a test method specified in an approved state implementation plan.

(A) Direct PM emissions--Solid particles emitted directly from an air emissions source or activity, or gaseous emissions or liquid droplets from an air emissions source or activity which

condense to form particulate matter at ambient temperatures. Direct 2.5 micrometers ($PM_{2.5}$) emissions include elemental carbon, directly emitted organic carbon, directly emitted sulfate, directly emitted nitrate, and other inorganic particles (including but not limited to crustal materials, metals, and sea salt).

(B) Secondary PM emissions--Those air pollutants other than $PM_{2.5}$ direct emissions that contribute to the formation of $PM_{2.5}$. $PM_{2.5}$ precursors include sulfur dioxide (SO_2), nitrogen oxides (NO_x), volatile organic compounds, and ammonia.

(78) [~~(77)~~] Petroleum refinery--Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oil, or through the redistillation, cracking, extraction, reforming, or other processing of unfinished petroleum derivatives.

(79) [~~(78)~~] $PM_{2.5}$ emissions--Finely-divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in 40 Code of Federal Regulations Part 51, or by a test method approved under a state implementation plan or under a United States Environmental Protection Agency delegation or approval.

(80) [~~(79)~~] PM_{10} emissions--Finely-divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in 40 Code of Federal Regulations Part 51, or by a test method specified in an approved state implementation plan.

(81) [~~(80)~~] Polychlorinated biphenyl compound--A compound subject to 40 Code of Federal Regulations Part 761.

(82) [~~(81)~~] Process or processes--Any action, operation, or treatment embracing chemical, commercial, industrial, or manufacturing factors such as combustion units, kilns, stills, dryers, roasters, and equipment used in connection therewith, and all other methods or forms of manufacturing or processing that may emit smoke, particulate matter, gaseous matter, or visible emissions.

(83) [~~(82)~~] Process weight per hour--"Process weight" is the total weight of all materials introduced or recirculated into any specific process that may cause any discharge of air contaminants into the atmosphere. Solid fuels charged into the process will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not. The "process weight per hour" will be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during that the equipment used to conduct the process is idle. For continuous operation, the "process weight per hour" will be derived by dividing the total process weight for a 24-hour period by 24.

(84) [~~(83)~~] Property--All land under common control or ownership coupled with all improvements on such land, and all fixed or movable objects on such land, or any vessel on the waters of this state.

(85) [~~(84)~~] Reasonable further progress--Annual incremental reductions in emissions of the applicable air contaminant that are sufficient to provide for attainment of the applicable national ambient air quality standard in the designated nonattainment areas by the date required in the state implementation plan.

(86) [~~(85)~~] Regulated entity--All regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. The term includes any property under common ownership or control identified in a permit or used in conjunction with the regulated activity at the same street address or location. Owners or operators of pipelines, gathering lines, and flowlines under common ownership or control in a particular county may be treated as a single regulated entity for purposes of assessment and regulation of emissions events.

(87) [~~(86)~~] Remote reservoir cold solvent cleaning--Any cold solvent cleaning operation in which liquid solvent is pumped to a sink-like work area that drains solvent back into an enclosed container while parts are being cleaned, allowing no solvent to pool in the work area.

(88) [~~(87)~~] Reportable emissions event--Any emissions event that in any 24-hour period, results in an unauthorized emission from any emissions point equal to or in excess of the reportable quantity as defined in this section.

(89) [~~(88)~~] Reportable quantity (RQ)--Is as follows:

(A) for individual air contaminant compounds and specifically listed mixtures by name or Chemical Abstracts Service (CAS) number, either:

(i) the lowest of the quantities:

(I) listed in 40 Code of Federal Regulations (CFR) Part 302, Table 302.4, the column "final RQ";

(II) listed in 40 CFR Part 355, Appendix A, the column "Reportable Quantity"; or

(III) listed as follows:

(-a-) acetaldehyde - 1,000 pounds, except in the Houston-Galveston-Brazoria (HGB) and Beaumont-Port Arthur (BPA) ozone nonattainment areas as defined in paragraph (70) of this section, where the RQ must be 100 pounds;

(-b-) butanes (any isomer) - 5,000 pounds;

(-c-) butenes (any isomer, except 1,3-butadiene) - 5,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (70) of this section, where the RQ must be 100 pounds;

(-d-) carbon monoxide - 5,000 pounds;

(-e-) 1-chloro-1,1-difluoroethane (HCFC-142b) - 5,000 pounds;

(-f-) chlorodifluoromethane (HCFC-22) - 5,000 pounds;

(-g-) 1-chloro-1-fluoroethane (HCFC-151a) - 5,000 pounds;

(-h-) chlorofluoromethane (HCFC-31) - 5,000 pounds;

(-i-) chloropentafluoroethane (CFC-115) - 5,000 pounds;

(-j-) 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124) - 5,000 pounds;

(-k-) 1-chloro-1,1,2,2 tetrafluoroethane (HCFC-124a) - 5,000 pounds;

(-l-) 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee) - 5,000 pounds;

(-m-) decanes (any isomer) - 5,000 pounds;

(-n-) 1,1-dichloro-1-fluoroethane (HCFC-141b) - 5,000 pounds;

(-o-) 3,3-dichloro-1,1,2,2-pentafluoropropane (HCFC-225ca) - 5,000 pounds;

(-p-) 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb) - 5,000 pounds;

(-q-) 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC [~~CFR~~]-114) - 5,000 pounds;

(-r-) 1,1-dichlorotetrafluoroethane (CFC-114a) - 5,000 pounds;

(-s-) 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a) - 5,000 pounds;

(-t-) 1,1-difluoroethane (HFC-152a) - 5,000 pounds;

(-u-) difluoromethane (HFC-32) - 5,000 pounds;

(-v-) ethanol - 5,000 pounds;

(-w-) ethylene - 5,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (70) of this section, where the RQ must be 100 pounds;

(-x-) ethylfluoride (HFC-161) - 5,000 pounds;

(-y-) 1,1,1,2,3,3,3-heptafluoropropane (HFC-227ea) - 5,000 pounds;

(-z-) 1,1,1,3,3,3-hexafluoropropane (HFC-236fa) - 5,000 pounds;

(-aa-) 1,1,1,2,3,3-hexafluoropropane (HFC-236ea) - 5,000 pounds;

(-bb-) hexanes (any isomer) - 5,000 pounds;

(-cc-) isopropyl alcohol - 5,000 pounds;

(-dd-) mineral spirits - 5,000 pounds;

(-ee-) octanes (any isomer) - 5,000 pounds;

(-ff-) oxides of nitrogen - 200 pounds in ozone nonattainment, ozone maintenance, early action compact areas, Nueces County, and San Patricio County, and 5,000 pounds in all other areas of the state, which should be used instead of the RQs for nitrogen oxide and nitrogen dioxide provided in 40 CFR Part 302, Table 302.4, the column "final RQ";

(-gg-) pentachlorofluoroethane (CFC [~~CFR~~]-111) - 5,000 pounds;

(-hh-) 1,1,1,3,3-pentafluorobutane (HFC-365mfc) - 5,000 pounds;

(-ii-) pentafluoroethane (HFC-125) - 5,000 pounds;

(-jj-) 1,1,2,2,3-pentafluoropropane (HFC-245ca) - 5,000 pounds;

(-kk-) 1,1,2,3,3-pentafluoropropane (HFC-245ea) - 5,000 pounds;

(-ll-) 1,1,1,2,3-pentafluoropropane (HFC-245eb) - 5,000 pounds;

(-mm-) 1,1,1,3,3-pentafluoropropane (HFC-245fa) - 5,000 pounds;

(-nn-) pentanes (any isomer) - 5,000 pounds;

(-oo-) propane - 5,000 pounds;

(-pp-) propylene - 5,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (70) of this section, where the RQ must be 100 pounds;

(-qq-) 1,1,2,2-terachlorodifluoroethane (CFC [~~CFR~~]-112) - 5,000 pounds;

(-rr-) 1,1,1,2-tetrachlorodifluoroethane (CFC-112a) - 5,000 pounds;

(-ss-) 1,1,2,2-tetrafluoroethane (HFC-134) - 5,000 pounds;

(-tt-) 1,1,1,2-tetrafluoroethane (HFC-134a) - 5,000 pounds;

(-uu-) 1,1,2-trichloro-1,2,2-trifluoroethane (CFC [~~CFR~~]-113) - 5,000 pounds;

(-vv-) 1,1,1-trichloro-2,2,2-trilfloroethane (CFC-113a) - 5,000 pounds;

(-ww-) 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123) - 5,000 pounds;

(-xx-) 1,1,1-trifluoroethane (HFC-143a) - 5,000 pounds;

(-yy-) trifluoromethane (HFC-23) - 5,000 pounds; [~~or~~]

(-zz-) toluene - 1,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (70) of this section, where the RQ must be 100 pounds; or

(-aaa-) 3-Pentanone, 1,1,1,2,2,4,5,5,5-nonafluoro-4-(trifluoromethyl)-, CAS No. 756-13-8, or C6 fluoroketone - 5,000 pounds;

(ii) if not listed in clause (i) of this subparagraph, 100 pounds;

(iii) for greenhouse gases, individually or collectively, there is no reportable quantity, except for the specific individual air contaminant compounds listed in this paragraph;

(B) for mixtures of air contaminant compounds:

(i) where the relative amount of individual air contaminant compounds is known through common process knowledge or prior engineering analysis or testing, any amount of an individual air contaminant compound that equals or exceeds the amount specified in subparagraph (A) of this paragraph;

(ii) where the relative amount of individual air contaminant compounds in subparagraph (A)(i) of this paragraph is not known, any amount of the mixture that equals or exceeds the amount for any single air contaminant compound that is present in the mixture and listed in subparagraph (A)(i) of this paragraph;

(iii) where each of the individual air contaminant compounds listed in subparagraph (A)(i) of this paragraph are known to be less than 0.02% by weight of the mixture, and each of the other individual air contaminant compounds covered by subparagraph (A)(ii) of this paragraph are known to be less than 2.0% by weight of the mixture, any total amount of the mixture of air contaminant compounds greater than or equal to 5,000 pounds; or

(iv) where natural gas excluding carbon dioxide, water, nitrogen, methane, ethane, noble gases, hydrogen, and oxygen or air emissions from crude oil are known to be in an amount greater than or equal to 5,000 pounds or the associated hydrogen sulfide and mercaptans in a total amount greater than 100 pounds, whichever occurs first;

(C) for opacity from boilers and combustion turbines as defined in this section fueled by natural gas, coal, lignite, wood, fuel oil containing hazardous air pollutants at a concentration of less than 0.02% by weight, opacity that is equal to or exceeds 15 additional percentage points above the applicable limit, averaged over a six-minute period. Opacity is the only RQ applicable to boilers and combustion turbines described in this paragraph; or

(D) for facilities where air contaminant compounds are measured directly by a continuous emission monitoring system providing updated readings at a minimum 15-minute interval an amount, approved by the executive director based on any relevant conditions and a screening model, that would be reported prior to ground level concentrations reaching at any distance beyond the closest regulated entity property line:

(i) less than one-half of any applicable ambient air standards; and

(ii) less than two times the concentration of applicable air emission limitations.

(90) [~~(89)~~] Rubbish--Nonputrescible solid waste, consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials. Noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

(91) [~~(90)~~] Scheduled maintenance, startup, or shutdown activity--For activities with unauthorized emissions that are expected to exceed a reportable quantity (RQ), a scheduled maintenance, startup, or shutdown activity is an activity that the owner or operator of the regulated entity whether performing or otherwise affected by the activity, provides prior notice and a final report as required by §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements); the notice or final report includes the information required in §101.211 of this title; and the actual unauthorized emissions from the activity do not exceed the emissions estimates submitted in the initial notification by more than an RQ. For activities with unauthorized emissions that are not expected to, and do not, exceed an RQ, a scheduled maintenance, startup, or shutdown activity is one that is recorded as required by §101.211 of this title. Expected excess opacity events as described in §101.201(e) of this title (relating to Emissions Event Reporting and Recordkeeping Requirements) resulting from scheduled maintenance, startup, or shutdown activities are those that provide prior notice (if required), and are recorded and reported as required by §101.211 of this title.

(92) [~~(91)~~] Sludge--Any solid or semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant; water supply treatment plant, exclusive of the treated effluent from a wastewater treatment plant; or air pollution control equipment.

(93) [~~(92)~~] Smoke--Small gas-born particles resulting from incomplete combustion consisting predominately of carbon and other combustible material and present in sufficient quantity to be visible.

(94) [~~(93)~~] Solid waste--Garbage, rubbish, refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control equipment, and other discarded material, including solid, liquid, semisolid, or containerized gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under the Texas Water Code, Chapter 26;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land, if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas, or geothermal resources, and other substance or material regulated by the Railroad Commission of Texas under Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act, as amended (42 United States Code, §§6901 *et seq.)*.

(95) [~~(94)~~] Sour crude--A crude oil that will emit a sour gas when in equilibrium at atmospheric pressure.

(96) [~~(95)~~] Sour gas--Any natural gas containing more than 1.5 grains of hydrogen sulfide per 100 cubic feet, or more than 30 grains of total sulfur per 100 cubic feet.

(97) [~~(96)~~] Source--A point of origin of air contaminants, whether privately or publicly owned or operated. Upon request of a source owner, the executive director shall determine whether multiple processes emitting air contaminants from a single point of emission will be treated as a single source or as multiple sources.

(98) [~~(97)~~] Special waste from health care-related facilities--A solid waste that if improperly treated or handled, may serve to transmit infectious disease(s) and that is comprised of the following: animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps.

(99) [~~(98)~~] Standard conditions--A condition at a temperature of 68 degrees Fahrenheit (20 degrees Centigrade) and a pressure of 14.7 pounds per square inch absolute (101.3 kiloPascals).

(100) [~~(99)~~] Standard metropolitan statistical area--An area consisting of a county or one or more contiguous counties that is officially so designated by the United States Bureau of the Budget.

(101) [~~(100)~~] Submerged fill pipe--A fill pipe that extends from the top of a tank to have a maximum clearance of six inches (15.2 centimeters) from the bottom or, when applied to a tank that is loaded from the side, that has a discharge opening entirely submerged when the pipe used to withdraw liquid from the tank can no longer withdraw liquid in normal operation.

(102) [~~(101)~~] Sulfur compounds--All inorganic or organic chemicals having an atom or atoms of sulfur in their chemical structure.

(103) [~~(102)~~] Sulfuric acid mist/sulfuric acid--Emissions of sulfuric acid mist and sulfuric acid are considered to be the same air contaminant calculated as H_2SO_4 and must include sulfuric acid liquid mist, sulfur trioxide, and sulfuric acid vapor as measured by Test Method 8 in 40 Code of Federal Regulations Part 60, Appendix A.

(104) [~~(103)~~] Sweet crude oil and gas--Those crude petroleum hydrocarbons that are not "sour" as defined in this section.

(105) [~~(104)~~] Total suspended particulate--Particulate matter as measured by the method described in 40 Code of Federal Regulations Part 50, Appendix B.

(106) [~~(105)~~] Transfer efficiency--The amount of coating solids deposited onto the surface or a part of product divided by the total amount of coating solids delivered to the coating application system.

(107) [~~(106)~~] True vapor pressure--The absolute aggregate partial vapor pressure, measured in pounds per square inch absolute, of all volatile organic compounds at the temperature of storage, handling, or processing.

(108) [~~(107)~~] Unauthorized emissions--Emissions of any air contaminant except [~~carbon dioxide,~~] water, nitrogen, [~~methane,~~] ethane, noble gases, hydrogen, and oxygen that exceed any air emission limitation in a permit, rule, or order of the commission or as authorized by Texas Clean Air Act, §382.0518(g).

(109) [~~(108)~~] Unplanned maintenance, startup, or shutdown activity--For activities with unauthorized emissions that are expected to exceed a reportable quantity or with excess opacity, an unplanned maintenance, startup, or shutdown activity is:

(A) a startup or shutdown that was not part of normal or routine facility operations, is unpredictable as to timing, and is not the type of event normally authorized by permit; or

(B) a maintenance activity that arises from sudden and unforeseeable events beyond the control of the operator that requires the immediate corrective action to minimize or avoid an upset or malfunction.

(110) [~~(109)~~] Upset event--An unplanned and unavoidable breakdown or excursion of a process or operation that results in unauthorized emissions. A maintenance, startup, or shutdown activity that was reported under §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements), but had emissions that exceeded the reported amount by more than a reportable quantity due to an unplanned and unavoidable breakdown or excursion of a process or operation is an upset event.

(111) [~~(110)~~] Utility boiler--A boiler used to produce electric power, steam, or heated or cooled air, or other gases or fluids for sale.

(112) [~~(111)~~] Vapor combustor--A partially enclosed combustion device used to destroy volatile organic compounds by smokeless combustion without extracting energy in the form of process heat or steam. The combustion flame may be partially visible, but at no time does the device operate with an uncontrolled flame. Auxiliary fuel and/or a flame air control damping system that can operate at all times to control the air/fuel mixture to the combustor's flame zone, may be required to ensure smokeless combustion during operation.

(113) [~~(112)~~] Vapor-mounted seal--A primary seal mounted so there is an annular space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the liquid surface, and the floating roof or cover.

(114) [~~(113)~~] Vent--Any duct, stack, chimney, flue, conduit, or other device used to conduct air contaminants into the atmosphere.

(115) [~~(114)~~] Visible emissions--Particulate or gaseous matter that can be detected by the human eye. The radiant energy from an open flame is not considered a visible emission under this definition.

(116) [~~(115)~~] Volatile organic compound--As defined in 40 Code of Federal Regulations §51.100(s), except §51.100(s)(2) - (4), as amended on January 21, 2009 (74 FR 3441).

(117) [~~(116)~~] Volatile organic compound (VOC) water separator--Any tank, box, sump, or other container in which any VOC, floating on or contained in water entering such tank, box, sump, or other container, is physically separated and removed from such water prior to outfall, drainage, or recovery of such water.

§101.10. Emissions Inventory Requirements.

(a) Applicability. The owner or operator of an account or source in the State of Texas or on waters that extend 25 miles from the shoreline meeting one or more of the following conditions shall submit emissions inventories [~~and/~~]or related data as required in subsection (b) of this section to the commission on forms or other media approved by the commission:

(1) an account which meets the definition of a major facility/stationary source, as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions);[~~,~~]

(2) [~~or~~] any account in an ozone nonattainment area emitting a minimum of ten tons per year (tpy) volatile organic compounds (VOC), 25 tpy nitrogen oxides (NO_x), or 100 tpy or more of any other contaminant subject to national ambient air quality standards (NAAQS);

(3) [~~(2)~~] any account that emits or has the potential to emit 100 tpy or more of any contaminant except for GHGs, individually or collectively, as listed in §101.1 of this chapter (relating to Definitions);

(4) [~~(3)~~] any account which emits or has the potential to emit 10 tons of any single or 25 tons of aggregate hazardous air pollutants as defined in Federal Clean Air Act (FCAA), §112(a)(1); and

(5) [~~(4)~~] any minor industrial source, area source, non-road mobile source, or mobile source of emissions subject to special inventories under subsection (b)(3) of this section. For purposes of this section, the term "area source" means a group of similar activities that, taken collectively, produce a significant amount of air pollution.

(b) Types of inventories.

(1) Initial emissions inventory. Accounts, as identified in subsection (a)(1), (2), [~~or~~] (3), or (4) of this section, shall submit an initial emissions inventory (IEI) for any criteria pollutant or hazardous air pollutant (HAP) that has not been identified in a previous inventory. The IEI shall consist of actual emissions of VOC, NO_x, carbon monoxide (CO), sulfur dioxide (SO_2), lead (Pb), particulate matter of less than 10 microns in diameter (PM_{10}), any other contaminant subject to NAAQS, emissions of all HAPs identified in FCAA, §112(b), or any other contaminant requested by the commission from individual emission units within an account. For purposes of this section, the term "actual emission" is the actual rate of emissions of a pollutant from an emissions unit as it enters the atmosphere. The reporting year will be the calendar year or seasonal period as designated by the commission. Reported emission activities must include annual routine emissions; excess emissions occurring during maintenance activities, including start-ups and shutdowns; and emissions resulting from upset conditions. For the ozone nonattainment areas, the inventory shall also include typical weekday emissions that occur during the summer months. For CO nonattainment areas, the inventory shall also include typical weekday emissions that occur during the winter months. Emission calculations must follow methodologies as identified in subsection (c) of this section.

(2) Statewide annual emissions inventory update (AEIU). Accounts meeting the applicability requirements during an inventory reporting period as identified in subsection (a)(1), (2), [~~or~~] (3), or (4) of this section shall submit an AEIU which consists of actual emissions as identified in subsection (b)(1) of this section if any of the following criteria are met. If none of the following criteria are met, a letter certifying such shall be submitted instead:

(A) any change in operating conditions, including start-ups, permanent shut-downs of individual units, or process changes at the account, that results in at least a 5.0% or 5 tpy, whichever is greater, increase or reduction in total annual emissions of VOC, NO_x, CO, SO_2, Pb, or PM_{10} from the most recently submitted emissions data of the account; or

(B) a cessation of all production processes and termination of operations at the account.

(3) Special inventories. Upon request by the executive director or a designated representative of the commission, any person owning or operating a source of air emissions which is or could be affected by any rule or regulation of the commission shall file emissions-related data with the commission as necessary to develop an inventory of emissions. Owners or operators submitting the requested data may make special procedural arrangements with the [~~Industrial~~] Emissions Assessment Section to submit data separate from routine

emission inventory submissions or other arrangements as necessary to support claims of confidentiality.

(c) Calculations. Actual measurement with continuous emissions monitoring systems (CEMS) is the preferred method of calculating emissions from a source. If CEMS data is not available, other means for determining actual emissions may be utilized in accordance with detailed instructions of the commission. Sample calculations representative of the processes in the account must be submitted with the inventory.

(d) Certifying statement. A certifying statement, required by the FCAA, §182(a)(3)(B), is to be signed by the owner(s) or operator(s) and shall accompany each emissions inventory to attest that the information contained in the inventory is true and accurate to the best knowledge of the certifying official.

(e) Reporting requirements. The IEI or subsequent AEIUs shall contain emissions data from the previous calendar year and shall be due on March 31 of each year or as directed by the commission. Owners or operators submitting emissions data may make special procedural arrangements with the [~~Industrial~~] Emissions Assessment Section to submit data separate from routine emission inventory submissions or other arrangements as necessary to support claims of confidentiality. Emissions-related data submitted under a special inventory request made under subsection (b)(3) of this section are due as detailed in the letter of request.

(f) Enforcement. Failure to submit emissions inventory data as required in this section shall result in formal enforcement action under Texas Water Code, Chapter 7. [~~the TCAA, §382.082 and §382.088. In addition, the TCAA, §361.2225, provides for criminal penalties for failure to comply with this section.~~]

§101.27. Emissions Fees.

(a) Applicability. The owner or operator of an account that is required to obtain a federal operating permit as described in Chapter 122 of this title (relating to Federal Operating Permits Program) shall remit to the commission an emissions fee each fiscal year. A fiscal year is defined as the period from September 1 through August 31. A fiscal year, having the same number as the next calendar year, begins on the September 1 prior to that calendar year. Each account will be assessed a separate emissions fee. An account subject to both an emissions fee and an inspection fee, under §101.24 of this title (relating to Inspection Fees), is required to pay only the greater of the two fees. The commission will not initiate the combination or separation of accounts solely for fee assessment purposes. If an account is operated at any time during the fiscal year that a fee is being assessed, a full emissions fee is due. If the commission is notified in writing that the account is not and will not be in operation during that fiscal year, a fee will not be due.

(b) Self reported/billed information. Emissions/inspection fees information packets will be mailed to each account owner or operator prior to the fiscal year that a fee is due. The completed emissions/inspection fees basis form must be returned to the address specified on the emissions/inspection fees basis form within 60 calendar days of the date the agency sends the emissions fees information packet. The completed emissions/inspection fees basis form must include, at least, the company name, mailing address, site name, all commission identification numbers, applicable Standard Industrial Classification (SIC) category, the emissions of all regulated air pollutants at the account for the reporting period, and the name and telephone number of the person to contact in case questions arise regarding the fee payment. If more than one SIC category can apply to an account, the category reported must be the one with the highest associated fee as listed in §101.24 of this title. Subsequent to a review of the information submitted, a billing statement of the fee assessment will be sent to the account owner or operator.

(c) Requesting fee information packet. If an account owner or operator has not received the fee information packet described in subsection (b) of this section by June 1 prior to the fiscal year that a fee is due, the owner or operator of the account shall notify the commission by July 1 prior to the fiscal year that a fee is due. For accounts that begin or resume operation after September 1, the owner or operator of the account shall request an information packet within 30 calendar days prior to commencing operation.

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

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

(f) Basis for fees.

(1) The fee must be based on allowable levels or actual emissions at the account. For purposes of this section, allowable levels are those limits as specified in an enforceable document such as a permit, certified registration of emissions, or Commission Order that are in effect during the fiscal year that a fee is due and actual emissions are the emissions of all regulated pollutants emitted from the account during the last full calendar year preceding the beginning of the fiscal year that a fee is due. Under no circumstances may the fee basis be less than the actual emissions at the account. The fee applies to the regulated pollutant emissions at the account, including those emissions from point and fugitive sources. The fee basis must include emissions during all operational conditions, including all emissions from emissions events and maintenance, startup, and shutdown activities as described in Subchapter F of this chapter (relating to Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities). Although certain fugitive emissions are excluded for applicability determination purposes under subsection (a) of this section, all fugitive emissions must be considered for fee calculations after applicability of the fee has been established. A maximum of 4,000 tons of each regulated pollutant will be used for fee calculations. The fee for each fiscal year is set at the following rates.
Figure: 30 TAC §101.27(f)(1) (No change.)

(2) The emissions tonnage for the account for fee calculation purposes will be the sum of those allowable levels or actual emissions for individual emission points or process units at the account rounded up to the nearest whole number, as follows.

(A) Where there is an enforceable document such as a permit, certified registration of emissions, or a Commission Order establishing allowable levels for individual emission points or process units, the actual emissions from all individual emission points and process units at the account may be used to calculate the fee basis only if a complete and verifiable emissions [~~emission~~] inventory for the account is submitted as described in §101.10 of this title (relating to Emissions Inventory Requirements). Where a complete and verifiable emissions inventory is not submitted, the executive director may direct that the fee be based on all of the allowable levels for the account.

(B) Where there is not an enforceable document such as a permit, certified registration of emissions, or a Commission Order establishing allowable levels for individual emissions points or process units; actual emissions from all individual emission points and process units must be used to calculate the fee basis. Actual production, throughput, or measurement records must be submitted along with complete documentation of calculation methods. Thorough justifica-

tion is required for all assumptions made and emission factors used in such calculations.

(3) For purposes of this section, the term "regulated pollutant" includes any volatile organic compound, any pollutant subject to Federal Clean Air Act (FCAA), §111, any pollutant listed as a hazardous air pollutant under FCAA, §112, each pollutant that a national primary ambient air quality standard has been promulgated (including carbon monoxide), and any other air pollutant subject to requirements under commission rules, regulations, permits, orders of the commission, or court orders. For purposes of this section, the term "regulated pollutant" does not include individual gases listed in the definition of greenhouse gases.

(g) Nonpayment of fees. Each emissions fee payment must be paid at the time and in the manner and amount provided by this subchapter. Failure to remit the full emissions fee by the due date must result in enforcement action under Texas Water Code, §7.178. The provisions of this section, as first adopted and amended thereafter, are and must remain in effect for purposes of any unpaid fee assessments, and the fees assessed in accordance with such provisions as adopted or as amended remain a continuing obligation.

(h) Late payments. The agency shall impose interest and penalties on owners or operators of accounts who fail to make payment of emissions fees when due in accordance with Chapter 12 of this title (relating to Payment of Fees).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state 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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For further information, please call: (512) 239-0779

SUBCHAPTER F. EMISSIONS EVENTS AND SCHEDULED MAINTENANCE, STARTUP, AND SHUTDOWN ACTIVITIES

DIVISION 1. EMISSIONS EVENTS

30 TAC §101.201

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §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; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require submittal of information regarding emissions of air contaminants; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for measuring, monitoring, and maintaining records of emissions of air contaminants; THSC, §382.0215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; THSC, §382.0216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events; THSC, §382.05102, concerning Permitting Authority of Commission; Greenhouse Gas Emissions, which relates to the permitting authority of the commission for greenhouse gas emissions; THSC, §382.062, concerning Application, Permit and Inspection Fees, which authorizes the commission to charge these types of fees; and THSC, §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions of air contaminants except as authorized by commission by rule or order. The amendment is also proposed under Texas Government Code, §2006.004, concerning Requirements to Adopt Rules of Practice and Index Rules, Orders, Decisions, which requires state agencies to adopt procedural rules; and Texas Government Code, §2001.006, concerning Actions Prepatory to Implementation of Statute or Rule, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation. Additionally, the amendment is proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The proposed amendment implements House Bill 788 (82nd Legislature, 2013), THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, 382.0215, 382.0216, 382.05102, and 382.062; and Texas Government Code, §2001.004 and §2001.006; and FCAA, 42 USC, §§7401 *et seq.*

§101.201. Emissions Event Reporting and Recordkeeping Requirements.

(a) The following requirements for reportable emissions events apply.

(1) As soon as practicable, but not later than 24 hours after the discovery of an emissions event, the owner or operator of a regulated entity shall:

(A) determine if the event is a reportable emissions event; and

(B) notify the commission office for the region in which the regulated entity is located, and all appropriate local air pollution control agencies with jurisdiction, if the emissions event is reportable.

(2) The initial 24-hour notification for reportable emissions events, with the exception of emissions from boilers or combustion turbines referenced in the definition of reportable quantity (RQ) in §101.1

of this title (relating to Definitions) for each regulated entity, must at a minimum, identify for each emissions point with emissions that exceed an RQ:

(A) the name of the owner or operator of the regulated entity experiencing an emissions event;

(B) the commission Regulated Entity Number of the regulated entity experiencing an emissions event, if a Regulated Entity Number exists, or if there is not a Regulated Entity Number, the air account number of the regulated entity. If a Regulated Entity Number and air account number do not exist, then identify the location of the release and a contact telephone number;

(C) the common name of the process units or areas, the common name of the facilities that incurred the emissions event, and the common name of the emission points where the unauthorized emissions exceeded an RQ were released to the atmosphere;

(D) the date and time of the discovery of the emissions;

(E) the estimated duration of the emissions;

(F) the compound descriptive type of the individually listed compounds or mixtures of air contaminants released during the emissions event, in the definition of RQ in §101.1 of this title that are known through common process knowledge, past engineering analysis, or testing to have equaled or exceeded the RQ;

(G) the estimated total quantities for those compounds or mixtures described in subparagraph (F) of this paragraph;

(H) the best known cause of the emissions event at the time of the initial 24-hour notification, if known; and

(I) the actions taken, or being taken, to correct the emissions event and minimize the emissions.

(3) The initial 24-hour notification for reportable emissions events for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title must identify for each emission point with excess opacity that exceeds the RQ by more than 15%:

(A) the name of the owner or operator of the regulated entity experiencing an emissions event;

(B) the commission Regulated Entity Number of the regulated entity experiencing an emissions event, if a Regulated Entity Number exists, or if there is not a Regulated Entity Number, the air account number of the regulated entity. If a Regulated Entity Number and air account number do not exist, then identify the location of the release and a contact telephone number;

(C) the best known cause of the emissions event, if known at the time of notification;

(D) the common name of the process units or areas, the common name of the facilities that experienced the emissions event, and the common name of the emission points where the unauthorized opacity that exceeded the RQ occurred;

(E) the date and time of the discovery of the emissions event;

(F) the estimated duration or expected duration of the emissions;

(G) the estimated opacity; and

(H) the actions taken, or being taken, to correct the emissions event and minimize the emissions.

(4) The owner or operator of a regulated entity experiencing a reportable emissions event that also requires an initial notification under §327.3 of this title (relating to Notification Requirements) may satisfy the initial 24-hour notification requirements of this section by complying with the requirements under §327.3 of this title.

(b) The owner or operator of a regulated entity experiencing an emissions event shall create a final record of all reportable and non-reportable emissions events as soon as practicable, but no later than two weeks after the end of an emissions event. Final records must be maintained on-site for a minimum of five years and be made readily available upon request to commission staff or personnel of any air pollution program with jurisdiction. If a regulated entity is not normally staffed, records of emissions events may be maintained at the staffed location within Texas that is responsible for the day-to-day operations of the regulated entity.

(1) The final record of a reportable emissions event must identify for all emission points involved in the emissions event:

(A) the name of the owner or operator of the regulated entity experiencing an emissions event;

(B) the commission Regulated Entity Number of the regulated entity experiencing an emissions event, if a Regulated Entity Number and air account number exists, or if there is not a Regulated Entity Number, the air account number of the regulated entity. If a Regulated Entity Number and air account number do not exist, then identify the location of the release and a contact telephone number;

(C) the physical location of the points at which emissions to the atmosphere occurred;

(D) the common name of the process units or areas, the common name and the agency-established facility identification number of the facilities that experienced the emissions event, and the common name and the agency-established emission point numbers where the unauthorized emissions were released to the atmosphere. Owners or operators of those facilities and emission points that the agency has not established facility identification numbers or emission point numbers for are not required to provide the facility identification numbers and emission point numbers in the report, but are required to provide the common names in the report.

(E) the date and time of the discovery of the emissions event;

(F) the estimated duration of the emissions;

(G) the compound descriptive type of all individually listed compounds or mixtures of air contaminants in the definition of RQ in §101.1 of this title, from all emission points involved in the emissions event, that are known through common process knowledge or past engineering analysis or testing to have been released during the emissions event, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title. Compounds or mixtures of air contaminants, that have an RQ greater than or equal to 100 pounds and the amount released is less than ten pounds in a 24-hour period, are not required to be specifically listed in the report, instead these compounds or mixtures of air contaminants may be identified together as "other";

(H) the estimated total quantities for those compounds or mixtures described in subparagraph (G) of this paragraph; the preconstruction authorization number or rule citation of the standard permit, permit by rule, or rule, if any, governing the facilities involved in the emissions event; and the authorized emissions limits, if any, for the facilities involved in the emissions events, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title, which record only the authorized opacity limit and the estimated opacity during the emissions event. Good engineering practice

and methods must be used to provide reasonably accurate representations for emissions and opacity. Estimated emissions from compounds or mixtures of air contaminants that are identified as "other" under subparagraph (G) of this paragraph, are not required for each individual compound or mixture of air contaminants, however, a total estimate of emissions must be provided for the category identified as "other";

(I) the basis used for determining the quantity of air contaminants emitted, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title;

(J) the best known cause of the emissions event at the time of reporting;

(K) the actions taken, or being taken, to correct the emissions event and minimize the emissions; and

(L) any additional information necessary to evaluate the emissions event.

(2) Records of non-reportable emissions events must identify:

(A) the name of the owner or operator of the regulated entity experiencing an emissions event;

(B) the commission Regulated Entity Number and air account number of the regulated entity experiencing an emissions event, if a Regulated Entity Number and air account number exists, of if there is not a Regulated Entity Number, the air account number of the regulated entity. If a Regulated Entity Number and air account number do not exist, then identify the location of the release and a contact telephone number;

(C) the physical location of the points at which emissions to the atmosphere occurred;

(D) the common name of the process units or areas, the common name and the agency-established facility identification number of the facilities that experienced the emissions event, and the common name and the agency-established emission point numbers where the unauthorized emissions were released to the atmosphere. Owners or operators of those facilities and emission points that the commission has not established facility identification numbers or emission point numbers for are not required to provide the facility identification numbers and emission point numbers in the report, but are required to provide the common names in the report;

(E) the date and time of the discovery of the emissions event;

(F) the estimated duration of the emissions;

(G) the compound descriptive type of the individually listed compounds or mixtures of air contaminants, in the definition of RQ in §101.1 of this title, from all emission points involved in the emissions event, that are known through common process knowledge or past engineering analysis, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title and that were unauthorized. Compounds or mixtures of air contaminants, that have an RQ greater than or equal to 100 pounds and the amount released is less than ten pounds in a 24-hour period, are not required to be specifically listed in the report, instead these compounds or mixtures of air contaminants may be identified together as "other";

(H) the estimated total quantities and the authorized emissions limits for those compounds or mixtures described in subparagraph (G) of this paragraph; the preconstruction authorization number or rule citation of the standard permit, permit by rule, or rule, if any, governing the facilities involved in the emissions event; and the authorized emissions limits, if any, for the facilities involved in the emissions events, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title, which record only the authorized opacity limit and the estimated opacity during the emissions event. Good engineering practice and methods must be used to provide reasonably accurate representations for emissions and opacity. Estimated emissions from compounds or mixtures of air contaminants that are identified as "other" under subparagraph (G) of this paragraph, are not required for each individual compound or mixture of air contaminants, however, a total estimate of emissions must be provided for the category identified as "other";

(I) the basis used for determining the quantity of air contaminants emitted, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title;

(J) the best known cause of the emissions event at the time of recording;

(K) the actions taken, or being taken, to correct the emissions event and minimize the emissions; and

(L) any additional information necessary to evaluate the emissions event.

(c) For all reportable emissions events, if the information required in subsection (b) of this section differs from the information provided in the initial 24-hour notification under subsection (a) of this section, the owner or operator of the regulated entity shall submit a copy of the final record to the commission office for the region in which the regulated entity is located and to appropriate local air pollution agencies with jurisdiction no later than two weeks after the end of the emissions event. If the owner or operator does not submit a record under this subsection, the information provided in the initial 24-hour notification under subsection (a) of this section will be the final record of the emissions event, provided the initial 24-hour notification was submitted electronically in accordance with subsection (g) of this section. Any emissions of greenhouse gases, individually or collectively, are not required to be submitted under this subsection, except for specific individual air contaminant compounds listed in the definition of reportable quantity.

(d) The owner or operator of a boiler or combustion turbine, as defined in §101.1 of this title, fueled by natural gas, coal, lignite, wood, or fuel oil containing hazardous air pollutants at a concentration of less than 0.02% by weight, that is equipped with a continuous emission monitoring system that completes a minimum of one operating cycle (sampling, analyzing, and data recording) for each successive 15-minute interval, and is required to submit excess emission reports by other state or federal requirements, is exempt from creating, maintaining, and submitting final records of reportable and non-reportable emissions events of the boiler or combustion turbine under subsections (b) and (c) of this section if the notice submitted under subsection (a) of this section contains the information required under subsection (b) of this section.

(e) As soon as practicable, but not later than 24 hours after the discovery of an excess opacity event, as defined in §101.1 of this title, where the owner or operator was not already required to provide an initial 24-hour notification under subsection (a)(2) or (3) of this section, the owner or operator shall notify the commission office for the region in which the regulated entity is located, and all appropriate local air pollution control agencies with jurisdiction. In the notification, the owner or operator shall identify:

(1) the name of the owner or operator of the regulated entity experiencing the excess opacity event;

(2) the commission Regulated Entity Number and air account number of the regulated entity experiencing an opacity event, if

a Regulated Entity Number and air account number exists, or if there is not a Regulated Entity Number, the air account number of the regulated entity. If a Regulated Entity Number and air account number do not exist, then identify the location of the release and a contact telephone number;

(3) the physical location of the excess opacity event;

(4) the common name of the process units or areas, the common name of the facilities where the excess opacity event occurred, and the common name of the emission points where the excess opacity event occurred;

(5) the date and time of the discovery of the excess opacity event;

(6) the estimated duration of the excess opacity;

(7) the estimated opacity;

(8) the authorized opacity limit for the facilities having the excess opacity event;

(9) the best known cause of the excess opacity event at the time of the notification; and

(10) the actions taken, or being taken, to correct the excess opacity event.

(f) The owner or operator of any regulated entity subject to the provisions of this section shall perform, upon request by the executive director or any air pollution control agency with jurisdiction, a technical evaluation of each emissions event. The evaluation must include at least an analysis of the probable causes of each emissions event and any necessary actions to prevent or minimize recurrence. The evaluation must be submitted in writing to the executive director and to the appropriate local air pollution agencies with jurisdiction within 60 days from the date of request. The 60-day period may be extended by the executive director. Additionally, the owner or operator of a regulated entity experiencing an emissions event must provide, in writing, additional or more detailed information regarding the emissions event when requested by the executive director or any air pollution control agency with jurisdiction, within the time established in the request.

(g) On and after January 1, 2003, notifications and reports required in subsection (c) of this section must be submitted electronically to the commission using the electronic forms provided by the commission. On and after January 1, 2004, notifications required in subsections (a) and (e) of this section must be submitted via commission's secure Web server, facsimile, or electronic mail to the commission using electronic forms provided by the commission. Notwithstanding the requirement to report initial 24-hour notifications electronically after January 1, 2004, the owner or operator of a regulated entity experiencing a reportable emissions event that also requires an initial notification under §327.3 of this title, is not required to report the event electronically under this subsection provided the owner or operator complies with the requirements under §327.3 of this title and in subsections (a) and (c) of this section. If the initial notification is not submitted by using an online form on the commission's secure Web server, the owner or operator must submit the identical information on the commission's secure Web server within 48 hours of discovery of the event. In the event the commission's server is unavailable due to technical failures or scheduled maintenance, events may be reported via facsimile to the appropriate regional office. The commission will provide an alternative means of notification in the event that the commission's electronic reporting system is inoperative. Electronic notification and reporting is not required for small businesses that meet the small business definition in Texas Water Code, §5.135(g)(2) and to appropriate local air pollution control agencies with jurisdiction. Small businesses shall provide notifications and reporting by any viable means that meet the time frames required by this section.

(h) Annual emissions event reporting: beginning in calender year 2007, on or before March 31 of each calendar year or as directed by the executive director, each owner or operator of a regulated entity, as defined in §101.1 of this title that is subject to reporting under §101.10 of this title (relating to Emissions Inventory Requirements), and those that are not subject to reporting under §101.10 of this title, but are located in nonattainment, maintenance, early action compact areas, Nueces County, and San Patricio County, that experienced at least one emissions event during the calendar year shall report to the executive director, and all appropriate local air pollution control agencies with jurisdiction, the following:

(1) the total number of reportable and the total number of non-reportable emissions events experienced at the regulated entity;

(2) the estimated total quantities for all compounds or mixtures of air contaminants, by compound or mixture, in the definition of RQ in §101.1 of this title that, by facility, were emitted during emissions events at the regulated entity. Compounds or mixtures of air contaminants, that have an RQ greater than or equal to 100 pounds and the amount released is less than one pound in a 24-hour period, are not required to be included in the report. Good engineering practice and methods must be used to provide reasonably accurate representations for emissions and opacity. This paragraph does not apply to boilers and combustion turbines referenced in the definition of RQ in §101.1 of this title that must report only the estimated opacities during emissions events and duration of unauthorized opacity; and

(3) owners and operators of regulated entities that are not subject to reporting under §101.10 of this title must provide annual emissions event reporting electronically by using an online form on the commission's secure Web server. The commission will provide an alternative means of reporting in the event that the commission's electronic reporting system is inoperative. If the commission's server is unavailable due to technical failures or scheduled maintenance, the annual reports may be provided through alternative means to the executive director. Annual electronic reporting is not required for small businesses that meet the small business definition in Texas Water Code, §5.135(g)(2) and to appropriate local air pollution control agencies with jurisdiction. Small businesses shall provide annual reporting by any viable means that meet the time frames required by this section.

(4) owners and operators of regulated entities that are subject to reporting under §101.10 of this title must provide the information required by this subsection as part of their reporting under §101.10 of this title.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state 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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For further information, please call: (512) 239-0779

CHAPTER 106. PERMITS BY RULE

SUBCHAPTER A. GENERAL REQUIREMENTS

30 TAC §106.2, §106.4

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §106.2 and §106.4.

If adopted, the commission will submit §106.2 and §106.4 to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

In *Massachusetts v. EPA* (549 U.S. 497 (2007)) the Supreme Court of the United States ruled that greenhouse gases (GHGs) fit within the Federal Clean Air Act (FCAA or Act) definition of air pollutant. This ruling gave EPA the authority to regulate GHGs from new motor vehicles and engines if EPA made a finding under FCAA, §202(a) that six key GHGs taken in combination endanger both public health and welfare, and that combined emissions of GHGs from new motor vehicles and engines contribute to pollution that endangers public health and welfare. EPA issued its "Endangerment Finding" for GHGs on December 15, 2009 (Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, Final Rule, as published in the December 15, 2009, issue of the *Federal Register* (74 FR 66496)). Based on the Endangerment Finding, EPA subsequently adopted new emissions standards for motor vehicles (the "Tailpipe Rule" as published in the May 7, 2010, issue of the *Federal Register* (75 FR 25324)). The rule established standards for light-duty motor vehicles to improve fuel economy thereby reducing emissions of GHGs. The standards were effective January 2, 2011. EPA also reconsidered its interpretation of the timing of applicability of Prevention of Significant Deterioration (PSD) under the FCAA (the "Timing Rule" as published in the April 2, 2010, issue of the *Federal Register* (75 FR 17004)). EPA's interpretation of the FCAA is that PSD requirements for stationary sources of GHGs take effect when the first national rule subjects GHGs to regulation under the Act. EPA determined that once GHGs were actually being controlled under any part of the Act they were subject to regulation under the PSD program. Specifically, EPA took the position that beginning on January 2, 2011, GHG control requirements would be required under the PSD and Title V permitting programs because national standards for GHGs under the Tailpipe Rule were effective on January 2, 2011.

EPA's regulation of GHGs under the FCAA presented substantial difficulties for the EPA and states, particularly with regard to the PSD program. For instance, the most common of the GHGs, carbon dioxide (CO_2), is emitted in quantities that dwarf the Act's major source thresholds for program applicability. As a result, under EPA's Timing Rule, PSD requirements could have expanded from approximately 500 issued permits annually to more than 81,000 nationwide, as published in the June 3, 2010, issue of the *Federal Register* (75 FR 31514, 31537 and 31538). To avoid this result, EPA excluded much of this new construction activity from the PSD program by altering the Act's statutory emission rate applicability thresholds for GHGs. This "Tailoring Rule," as published in the June 3, 2010, issue of the *Federal Register* (75 FR 31514) newly defined the statutory term "subject to regulation" and established higher GHGs emission thresholds for applicability of PSD and Title V permitting than specified in the FCAA. The Tailoring Rule also phased in permitting requirements in a multi-stepped process.

Before the *Massachusetts* decision in 2007, EPA took the position that GHGs are not regulated under the FCAA, and GHGs unquestionably were not regulated when EPA approved Texas' SIP in 1992. Texas has had an approved SIP since 1972, as published in the May 31, 1972, issue of the *Federal Register* (37 FR 10842). In 1983, Texas was delegated authority to implement the PSD program, as published in the February 9, 1983, issue of the *Federal Register* (48 FR 6023). Following this delegation, Texas submitted several SIP revisions to enable it to administer the PSD program (collectively the "PSD SIP submission"). EPA approved Texas' PSD SIP in 1992, granting the state full authority to implement the PSD program, as published in the June 24, 1992, issue of the *Federal Register* (57 FR 28093).

The Texas PSD SIP submission and approval proceedings produced a well-developed record on how Texas would address the applicability of newly-regulated pollutants under the PSD program. During the SIP submission process, Texas consistently explained to EPA that the PSD provisions in the SIP are not prospective rulemaking, and do not incorporate future EPA interpretations of the Act or its regulations.

EPA's GHGs regulations created practical difficulties about how EPA could apply its Tailoring Rule in states with approved SIPs. In August 2010, Texas advised EPA that it could not retroactively reinterpret its SIP to cover GHGs, which were not regulated at the time Texas' SIP was approved in 1992 and were, in fact, a composite pollutant defined for the first time in the Tailoring Rule. Texas also explained that the PSD program only encompassed National Ambient Air Quality Standard (NAAQS) pollutants, but confirmed as a regulatory matter that the approved PSD program encompasses all federally regulated new source review (NSR) pollutants, including any pollutant that otherwise is subject to regulation under the FCAA, as stated in 30 TAC §116.12(14)(D).

Following promulgation of the Tailoring Rule, EPA issued a proposed "Finding of Substantial Inadequacy and SIP Call," as published in the September 2, 2010, issue of the *Federal Register* (75 FR 53892). This action proposed finding the SIPs of 13 states, including Texas', "substantially inadequate" because these SIPs did not apply PSD requirements to GHGs-emitting sources. EPA proposed to require these states (through their SIP-approved PSD programs) to regulate GHGs as defined in the Tailoring Rule. EPA also proposed a Federal Implementation Plan (FIP) that would apply specifically to states that did not or could not agree to reinterpret their SIPs to impose the Tailoring Rule and did not meet SIP submission deadlines. EPA finalized its GHG SIP Call in the December 12, 2010, issue of the *Federal Register* (75 FR 77698) and required Texas to submit revisions to its SIP by December 1, 2011.

EPA published an interim final rule partially disapproving Texas' SIP; imposing the GHGs FIP effective as of its date of publication, as published in the December 30, 2010, issue of the *Federal Register* (75 FR 82430). EPA stated that FCAA, §110(k)(6) authorized it to change its previous approval of Texas' PSD SIP into a partial approval and partial disapproval. EPA's basis was that it had erroneously approved Texas' PSD SIP submission because the SIP did not appropriately address the applicability of newly-regulated pollutants to the PSD program in the future. EPA further stated that its action was independent of the GHG SIP Call because that action was aimed at a narrower issue of applicability to GHGs, whereas its decision retroactively disapproving Texas' PSD SIP submission was addressed to Texas' purported failure to address, or assure the legal authority for, ap-

plication of PSD to all pollutants newly subject to regulation. EPA published the final rule retroactively disapproving Texas' PSD SIP in part and promulgating the FIP as published in the May 3, 2011, issue of the *Federal Register* (76 FR 25178).

The effect of EPA's FIP is that major source preconstruction permitting authority is divided between two authorities - EPA for GHGs and the state of Texas for all other pollutants. Currently, major construction projects and expansions in Texas that require PSD permits must file applications with both EPA Region 6 (for GHGs) and TCEQ (for all non-GHG pollutants).

House Bill (HB) 788, 83rd Legislature, 2013 added new Texas Health and Safety Code (THSC), §382.05102. The new section grants TCEQ authority to authorize emissions of GHGs consistent with THSC, §382.051, to the extent required under federal law. THSC, §382.05102 directs the commission to adopt implementing rules, including a procedure to transition GHG PSD applications currently under EPA review to the TCEQ. Upon adoption, the rules must be submitted to EPA for review and approval into the Texas SIP. THSC, §382.05102 excludes permitting processes for GHGs from the contested case hearing procedures in THSC, Chapter 382; Texas Water Code, Chapter 5; and Texas Government Code, Chapter 2001. THSC, §382.05102 also requires that the commission repeal the rules adopted under this authority and submit a SIP revision to EPA, if (at a future date) emissions of GHGs are no longer required to be authorized under federal law.

The commission is initiating this rulemaking to fulfill the directive from the legislature. The legislature found that "in the interest of the continued vitality and economic prosperity of the state, the Texas Commission on Environmental Quality, because of its technical expertise and experience in processing air quality permit applications, is the preferred authority for emissions of {GHGs}."

Texas has challenged in federal court EPA's GHG regulations as well as EPA's SIP Call and FIP. Implementation of HB 788 through this rulemaking is not adverse to Texas' claims in its ongoing challenges to EPA's actions regarding GHGs generally or relating to the SIP. The commission's action to conduct rulemaking for submittal and approval by EPA is consistent with Texas' position that state law does not give EPA the authority to automatically change state regulations.

Concurrently with this proposal, the commission is proposing new and amended rules to 30 TAC Chapters 39 (Public Notice), 55 (Requests for Reconsideration and Contested Case Hearings; Public Comment), 101 (General Air Quality Rules), 116 (Control of Air Pollution by Permits for New Construction or Modification), and 122 (Federal Operating Permits Program) to implement HB 788. Except where specifically noted, all proposed changes to Chapters 39, 55, 101, 106, 116 and 122 are necessary to achieve the goal of implementation of HB 788, obtaining SIP approval of certain rules, and the lifting of the FIP.

The commission's proposed strategy for authorization of emissions of GHGs under the NSR program is that emissions above the thresholds established in proposed §116.164(a) must be authorized by PSD permits. EPA does not consider emissions lower than the tailored thresholds to be defined as subject to regulation and EPA does not require authorization of these emissions. Thus, the commission is proposing rule language that will comply with the specific intent of HB 788 to authorize emissions of GHGs only to the extent required under federal law. No emissions of GHGs may be authorized by any Permit by Rule (PBR) under Chapter 106 or standard permit under Chapter 116, Subchapter F, however emissions of non-GHGs at the same facility may be authorized under this chapter or Chapter 116.

Section by Section Discussion

§106.2, Applicability

The commission proposes to amend §106.2 to establish that Chapter 106 does not apply to emissions of GHGs (as defined in proposed amendment to §101.1). Emissions of GHGs would not be authorized under PBRs; these emissions would be authorized by PSD permit if any of the applicability conditions in proposed new §116.164 are met. However, PBRs would continue to be available as an authorization mechanism for emissions of non-GHGs.

§106.4, Requirements for Permitting by Rule

The commission proposes several revisions to §106.4 in order to address the use of PBRs for authorization of emissions of non-GHGs at sources which emit GHGs. The commission's intent is to ensure that PBRs remain a valid method of authorization for emissions of non-GHGs at facilities and projects which emit GHGs. Emissions of GHGs themselves will be authorized under a PSD permit, if the emissions meet or exceed the tailored thresholds. This is consistent with federal law.

The commission proposes to restructure §106.4(a)(1) into subparagraphs (A) - (E) in order to improve the readability and clarify the various emission limitations in this paragraph.

The commission proposes to add rule language that excepts GHGs from the emission limits in §106.4 and removes the terms carbon dioxide and methane from this section. These two gases are proposed to be removed from this section because carbon dioxide and methane are included in the proposed new definition of GHGs. Section 106.4(a) places limits on actual emissions authorized under PBR. Because GHGs would not be authorized under PBR, it is not necessary to include GHGs on the list of emission limits. While the commission is proposing to remove the terms carbon dioxide and methane this amendment would not affect how PBRs function, as GHGs will not be subject to an emission limit under §106.4(a), which is the current practice.

The proposed amendment is necessary to ensure that a project or facility will not be ineligible for a PBR solely because of emissions of GHGs.

The commission also proposes to amend §106.4(a)(3) to specify that projects and facilities which trigger PSD permit requirements due solely to emissions of GHGs are not excluded from using an applicable PBR to authorize the non-GHGs pollutants associated with the project or facility. In such a case, all applicable PSD requirements relating to the emissions of GHGs must be satisfied, and the emissions of non-GHG pollutants and facility parameters must meet all applicable PBR conditions, including §106.4 requirements. Projects and facilities which trigger PSD requirements due to emissions of non-GHGs pollutants cannot qualify for a PBR.

Additionally, the commission proposes to add language which establishes that facilities or projects which require a PSD permit due to emissions of GHGs may not commence construction or operation until the PSD permit is issued. This amendment is necessary because many PBRs do not require registration or approval prior to construction, and therefore the PBR authorization may be available prior to issuance of the PSD GHG permit.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. The proposed rules will not have any fiscal implications for other state agencies or units of local government.

The proposed rules would amend Chapter 106 to implement the requirements of HB 788, 83rd Legislature, 2013, and are part of a larger rulemaking involving Chapters 39, 55, 101, 116, and 122. This fiscal note only addresses the proposed rules for Chapter 106.

HB 788 requires the agency to adopt rules that allow it to permit emissions of GHGs to the extent required by federal law. Under the proposed rules, major emissions of GHGs will be subject to the state's PSD permit program. The proposed rules also clarify that emissions of GHGs will not be permitted under Chapter 106. The agency expects that some small and medium-sized facilities, with emissions currently authorized by PBRs, will be subject to the PSD program because of emissions of GHGs. The amended language to Chapter 106 clarifies that some of these facilities can continue to be authorized for minor source emissions of non-GHGs under a PBR even though emissions of GHGs may trigger a requirement for a PSD permit.

The proposed rules clarify that PBRs will not apply to emissions of GHGs and, to the extent federal PSD regulations allow, that other emissions can continue to be authorized by a PBR if the non-GHG emissions meet the requirements of the PBR. The proposed rules will not have a fiscal impact on governmental entities, individuals, or business entities since they are clarifying in nature and do not delete any current PBR regulations or impose new ones. Currently, governmental entities that emit GHGs are subject to federal law and EPA review to authorize those emissions. The proposed rules will facilitate a transition to an authorization process by the agency for GHGs, and no additional fiscal impacts on governmental entities are expected due to the proposed changes to Chapter 106.

Public Benefits and Costs

Ms. Chamness 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 clarification of PBR rules concerning GHGs.

The proposed rules clarify that PBRs will not apply to emissions of GHGs and that other emissions can continue to be authorized by a PBR, to the extent allowed under federal PSD regulations. The proposed rules will not have a fiscal impact on governmental entities, individuals, or business entities since they are clarifying in nature and do not delete any current PBR regulations or impose new ones. Currently, facilities that emit GHGs are subject to federal law and EPA review to authorize those emissions. The proposed rules will facilitate a transition to an authorization process by the agency for GHGs, and no additional fiscal impacts on individuals or businesses are expected due to the proposed changes to Chapter 106.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Currently, small businesses with facilities that emit GHGs are subject to federal law and EPA review to authorize those emissions. The proposed rules will facilitate a transition to an authorization process by the agency for GHGs, and no additional fiscal impacts on individuals or businesses are expected due to the proposed changes to Chapter 106. The proposed rules do not delete any current PBR regulations or impose any new ones.

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 federal and 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 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 specific intent of the proposed revisions to Chapter 106 is to implement the provisions of HB 788 by ensuring that the PBR requirements do not apply to emissions of GHGs and to ensure that PBRs would continue to be available as an authorization mechanism for emissions of non-GHGs.

Additionally, even if the rules met the definition of a major environmental rule, 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 proposed rules would implement requirements of the FCAA. Under 42 United States Code (USC), §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, attain, maintain, and enforce the NAAQS within the state. One of the requirements of 42 USC, §7410 is for states to include programs for the regulation of the modification and construction of any stationary source within the area covered by the plan as necessary to assure that the NAAQS are achieved, including a permit program as required in FCAA, Parts

C and D, or NSR. This proposed rulemaking is in conjunction with changes to other chapters in 30 TAC that are necessary to implement provisions in HB 788. The intent of the legislation is to establish the TCEQ as the permitting authority for major sources of GHG emissions in Texas and to do so consistent with federal law.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded, "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the Legislative Budget Board, the commission believes that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the proposed rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA and thus allow EPA to lift its federal permitting program on GHG sources in Texas. In fact, the proposed rules create no additional impacts since major GHG sources in Texas must currently obtain a PSD permit from EPA and the proposed rules merely supplant EPA as the authority for GHG PSD permitting in Texas. For these reasons, the proposed rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *(Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. Austin 1995), writ denied with per curiam opinion respecting another issue, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ). *Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, pet. denied); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978)).

The commission's interpretation of the RIA requirements is also supported by a change made to the 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" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The proposed rules implement requirements of the FCAA, specifically to adopt and implement SIPs, including a requirement to adopt and implement permit programs. This rulemaking is one of several concurrent rulemakings that will implement provisions in HB 788 to establish the TCEQ as the permitting authority for major sources of GHG emissions in Texas and to do so consistent with federal law. Specifically, the proposed revisions to Chapter 106 implement the provisions of HB 788 by ensuring that the PBR requirements do not apply to emissions of GHGs and to ensure that PBRs would continue to be available as an authorization mechanism for emissions of non-GHGs.

The proposed rules were not developed solely under the general powers of the agency, but are authorized by specific sections of THSC, Chapter 382 (also known as the Texas Clean Air Act (TCAA) and the Texas Water Code), which are cited in the Statutory Authority section of this preamble. Further, the proposed rules do not exceed a standard set by federal law or 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. Therefore, this proposed rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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 Texas Constitution §17 or §19, Article I; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for the proposed rulemaking action under Texas Government Code,

§2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to implement provisions in HB 788 to establish the TCEQ as the permitting authority for major sources of GHG emissions in Texas and to do so consistent with federal law. Specifically, the proposed revisions to Chapter 106 would ensure that the PBR requirements do not apply to emissions of GHGs and to ensure that PBRs would continue to be available as an authorization mechanism for emissions of non-GHGs.

The proposed rules will not create any additional burden on private real property. The proposed 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 proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the 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 the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Advisory Committee and determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed rules amend and update rules that govern the applicability of the PSD program to major sources of emissions of GHGs. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking 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.

Effect on Sites Subject to the Federal Operating Permits Program

The proposed rules, if adopted, will not require any revisions to federal operating permits.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 5, 2013, at 2:00 p.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 Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-040-116-AI. The comment period closes December 9, 2013. 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 Tasha Burns, Operational Support, Air Permits Division at (512) 239-5868.

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities determined to not make a significant contribution of air contaminants in the atmosphere; and THSC, §382.05102, which relates to the permitting authority of the commission for greenhouse gas emissions. An additional relevant section is Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation. The new section and amendments are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The proposed amendments implement HB 788 (82nd Legislature, 2013), THSC, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05102, and 382.05196; Texas Government Code, §2001.006; and FCAA, 42 USC, §§7401 *et seq.*

§106.2. Applicability.

This chapter applies to certain types of facilities or changes within facilities listed in this chapter where construction is commenced on or after the effective date of the relevant permit by rule. This chapter does not apply to emissions of greenhouse gases (as defined in §101.1 of this title (relating to Definitions)).

§106.4. Requirements for Permitting by Rule.

(a) To qualify for a permit by rule, the following general requirements must be met.

(1) Total actual emissions authorized under permit by rule from the facility shall not exceed the following limits, as applicable:

(A) 250 tons per year (tpy) of carbon monoxide (CO) or nitrogen oxides (NO_x); [or]

(B) 25 tpy of volatile organic compounds (VOC), [or] sulfur dioxide (SO_2), or inhalable particulate matter (PM); [or]

(C) 15 tpy of particulate matter with diameters of 10 microns or less (PM_{10}); [or]

(D) 10 tpy of particulate matter with diameters of 2.5 microns or less ($PM_{2.5}$); or

(E) 25 tpy of any other air contaminant except:

(i) [carbon dioxide,] water, nitrogen, [methane,] ethane, hydrogen, and oxygen; and[.]

(ii) greenhouse gases as specified in §106.2 of this title (relating to Applicability).

(2) Any facility or group of facilities, which constitutes a new major stationary source, as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions), or any modification which constitutes a major modification, as defined in §116.12 of this title, under the new source review requirements of the Federal Clean Air Act (FCAA), Part D (Nonattainment) as amended by the FCAA Amendments of 1990, and regulations promulgated thereunder, must meet the permitting requirements of Chapter 116, Subchapter B of this title (relating to New Source Review Permits) and cannot qualify for a permit by rule under this chapter. Persons claiming a permit by rule under this chapter should see the requirements of §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas) to ensure that any applicable netting requirements have been satisfied.

(3) Any facility or group of facilities, which constitutes a new major stationary source, as defined in 40 Code of Federal Regulations (CFR) §52.21, or any change which constitutes a major modification, as defined in 40 CFR §52.21, under the new source review requirements of the FCAA, Part C (Prevention of Significant Deterioration) as amended by the FCAA Amendments of 1990, and regulations promulgated thereunder because of emissions of air contaminants other than greenhouse gases, must meet the permitting requirements of Chapter 116, Subchapter B of this title and cannot qualify for a permit by rule under this chapter. A new major stationary source or major modification which is subject to Chapter 116, Subchapter B, Division 6 of this title due solely to emissions of greenhouse gases may use a permit by rule under this chapter for air contaminants that are not greenhouse gases. However, facilities or projects which require a prevention of significant deterioration permit due to emissions of greenhouse gases may not commence construction or operation until the prevention of significant deterioration permit is issued.

(4) Unless at least one facility at an account has been subject to public notification and comment as required in Chapter 116, Subchapter B or Subchapter D of this title (relating to New Source Review Permits or Permit Renewals), total actual emissions from all facilities permitted by rule at an account shall not exceed 250 tpy of CO or NO_x; or 25 tpy of VOC or SO_2 or PM; or 15 tpy of PM_{10}; or 10 tpy of $PM_{2.5}$; or 25 tpy of any other air contaminant except [carbon dioxide,] water, nitrogen, [methane,] ethane, hydrogen, [and] oxygen, and GHGs (as specified in §106.2 of this title).

(5) Construction or modification of a facility commenced on or after the effective date of a revision of this section or the effective date of a revision to a specific permit by rule in this chapter must meet the revised requirements to qualify for a permit by rule.

(6) A facility shall comply with all applicable provisions of the FCAA, §111 (Federal New Source Performance Standards) and §112 (Hazardous Air Pollutants), and the new source review requirements of the FCAA, Part C and Part D and regulations promulgated thereunder.

(7) There are no permits under the same commission account number that contain a condition or conditions precluding the use of a permit by rule under this chapter.

(8) The proposed facility or group of facilities shall obtain allowances for NO_x if they are subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program).

(b) No person shall circumvent by artificial limitations the requirements of §116.110 of this title (relating to Applicability).

(c) The emissions from the facility shall comply with all rules and regulations of the commission and with the intent of the Texas Clean Air Act (TCAA), including protection of health and property of the public, and all emissions control equipment shall be maintained in good condition and operated properly during operation of the facility.

(d) Facilities permitted by rule under this chapter are not exempted from any permits or registrations required by local air pollution control agencies. Any such requirements must be in accordance with Texas Health and Safety Code [TCAA], §382.113 and any other applicable law.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes amendments to §§116.12, 116.111, 116.160, 116.610 and 116.611; and new §§116.164, and 116.169.

If adopted, the commission will submit the amendments to §§116.12, 116.111, 116.160, 116.610 and 116.611; and new §§116.164, and 116.169 to the United States Environmental Protection Agency (EPA) as revisions to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

In *Massachusetts v. EPA* (549 U.S. 497 (2007)) the Supreme Court of the United States ruled that greenhouse gases (GHGs) fit within the Federal Clean Air Act (FCAA or Act) definition of air pollutant. This ruling gave EPA the authority to regulate GHGs from new motor vehicles and engines if EPA made a finding under FCAA, §202(a) that six key GHGs taken in combination endanger both public health and welfare, and that combined emissions of GHGs from new motor vehicles and engines contribute to pollution that endangers public health and welfare. EPA issued its "Endangerment Finding" for GHGs on December 15, 2009 (Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, Final Rule, as published in the December 15, 2009, issue of the *Federal Register* (74 FR 66496)). Based on the Endangerment Finding, EPA subsequently adopted new emissions standards for motor vehicles (the "Tailpipe Rule" as published in the May 7, 2010, issue of the *Federal Register* (75 FR 25324)). The rule established standards for light-duty motor vehicles to improve fuel economy thereby reducing emissions of GHGs. The standards were effective January 2, 2011. EPA also reconsidered its interpretation of the timing of applicability of Prevention of Significant Deterioration (PSD) requirements under the FCAA (the "Timing Rule" as published in the April 2, 2010, issue of the *Federal Register* (75 FR 17004)). EPA's interpretation of the FCAA is that PSD requirements for stationary sources of GHGs take effect when the first national rule subjects GHGs to regulation under the Act. EPA determined that once GHGs were actually being controlled under any part of the Act they were subject to regulation under the PSD program. Specifically, EPA took the position that beginning on January 2, 2011, GHG control requirements would be required under the PSD and Title V permitting programs because national standards for GHGs under the Tailpipe Rule were effective on January 2, 2011.

EPA's regulation of GHGs under the FCAA presented substantial difficulties for the EPA and states, particularly with regard to the PSD program. For instance, the most common of the GHGs, carbon dioxide (CO_2), is emitted in quantities that dwarf the Act's major source thresholds for program applicability. As a result, under EPA's Timing Rule, PSD requirements could have expanded from approximately 500 issued permits annually to more than 81,000 nationwide, as published in the June 3, 2010, issue of the *Federal Register* (75 FR 31514, 31537 and 31538). To avoid this result, EPA excluded much of this new construction activity from the PSD program by altering the Act's statutory emission rate applicability thresholds for GHGs. This "Tailoring Rule," as published in the June 3, 2010, issue of the *Federal Register* (75 FR 31514) newly defined the term "subject to regulation" and established higher GHGs emission thresholds for applicability of PSD and Title V permitting than specified in the FCAA. The Tailoring Rule also phased in permitting requirements in a multi-stepped process.

Before the *Massachusetts* decision in 2007, EPA took the position that GHGs are not regulated under the FCAA, and GHGs unquestionably were not regulated when EPA approved Texas' SIP in 1992. Texas has had an approved SIP since 1972, as published in the May 31, 1972, issue of the *Federal Register* (37 FR 10842). In 1983, Texas was delegated authority to implement the PSD program, as published in the February 9, 1983, issue of the *Federal Register* (48 FR 6023). Following this delegation, Texas submitted several SIP revisions to enable it to administer the PSD program (collectively the "PSD SIP submission"). EPA approved Texas' PSD SIP in 1992, granting the state full authority to implement the PSD program, as published in the June 24, 1992, issue of the *Federal Register* (57 FR 28093).

The Texas PSD SIP submission and approval proceedings produced a well-developed record on how Texas would address the applicability of newly-regulated pollutants under the PSD program. During the SIP submission process, Texas consistently explained to EPA that the PSD provisions in the SIP are not prospective rulemaking, and do not incorporate future EPA interpretations of the Act or its regulations.

EPA's GHGs regulations created practical difficulties about how EPA could apply its Tailoring Rule in states with approved SIPs. In August 2010, Texas advised EPA that it could not retroactively reinterpret its SIP to cover GHGs, which were not regulated at the time Texas' SIP was approved in 1992 and were, in fact, a composite pollutant defined for the first time in the Tailoring Rule. Texas also explained that the PSD program only encompassed National Ambient Air Quality Standard (NAAQS) pollutants, but confirmed as a regulatory matter that the approved PSD program encompasses all federally regulated new source review (NSR) pollutants, including any pollutant that otherwise is subject to regulation under the FCAA, as stated in §116.12(14)(D).

Following promulgation of the Tailoring Rule, EPA issued a proposed "Finding of Substantial Inadequacy and SIP Call," as published in the September 2, 2010, issue of the *Federal Register* (75 FR 53892). This action proposed finding the SIPs of 13 states, including Texas', "substantially inadequate" because these SIPs did not apply PSD requirements to GHGs-emitting sources. EPA proposed to require these states (through their SIP-approved PSD programs) to regulate GHGs as defined in the Tailoring Rule. EPA also proposed a Federal Implementation Plan (FIP) that would apply specifically to states that did not or could not agree to reinterpret their SIPs to impose the Tailoring Rule and did not meet SIP submission deadlines. EPA finalized its GHG SIP Call in the December 12, 2010, issue of the *Federal Register* (75 FR 77698) and required Texas to submit revisions to its SIP by December 1, 2011.

EPA published an interim final rule partially disapproving Texas' SIP; imposing the GHGs FIP effective as of its date of publication, as published in the December 30, 2010, issue of the *Federal Register* (75 FR 82430). EPA stated that FCAA, §110(k)(6) authorized it to change its previous approval of Texas' PSD SIP into a partial approval and partial disapproval. EPA's basis was that it had erroneously approved Texas' PSD SIP submission because the SIP did not appropriately address the applicability of newly-regulated pollutants to the PSD program in the future. EPA further stated that its action was independent of the GHG SIP Call because that action was aimed at a narrower issue of applicability to GHGs, whereas its decision retroactively disapproving Texas' PSD SIP submission was addressed to Texas' purported failure to address, or assure the legal authority for, application of PSD to all pollutants newly subject to regulation. EPA

published the final rule retroactively disapproving Texas' PSD SIP in part and promulgating the FIP as published in the May 3, 2011, issue of the *Federal Register* (76 FR 25178).

The effect of EPA's FIP is that major source preconstruction permitting authority is divided between two authorities - EPA for GHGs and the state of Texas for all other pollutants. Currently, major construction projects and expansions in Texas that require PSD permits must file applications with both EPA Region 6 (for GHGs) and TCEQ (for all non-GHG pollutants).

House Bill (HB) 788, 83rd Legislature, 2013 added new Texas Health and Safety Code (THSC), §382.05102. The new section grants TCEQ authority to authorize emissions of GHGs consistent with THSC, §382.051, to the extent required under federal law. THSC, §382.05102 directs the commission to adopt implementing rules, including a procedure to transition GHG PSD applications currently under EPA review to the TCEQ. Upon adoption, the rules must be submitted to EPA for review and approval into the Texas SIP. THSC, §382.05102 excludes permitting processes for GHGs from the contested case hearing procedures in THSC, Chapter 382; Texas Water Code (TWC), Chapter 5; and Texas Government Code, Chapter 2001. THSC, §382.05102 also requires that the commission repeal the rules adopted under this authority and submit a SIP revision to EPA, if, at a future date, emissions of GHG are no longer required to be authorized under federal law.

The commission is initiating this rulemaking to fulfill the directive from the legislature. The legislature found that "in the interest of the continued vitality and economic prosperity of the state, the Texas Commission on Environmental Quality, because of its technical expertise and experience in processing air quality permit applications, is the preferred authority for emissions of {GHGs}".

Texas has challenged in federal court EPA's GHG regulations as well as EPA's SIP Call and FIP. Implementation of HB 788 through this rulemaking is not adverse to Texas' claims in its ongoing challenges to EPA's actions regarding GHGs generally or relating to the SIP. The commission's action to conduct rulemaking for submittal and approval by EPA is consistent with Texas' position that state law does not give EPA the authority to automatically change state regulations.

Concurrently with this proposal, the commission is proposing revisions to Chapters 39 (Public Notice), 55 (Requests for Reconsideration and Contested Case Hearings; Public Comment), 101 (General Air Quality Rules), 106 (Permits by Rule), and 122 (Federal Operating Permits Program) to implement HB 788. Except where specifically noted, all proposed changes to Chapters 39, 55, 101, 106, 116, and 122 are necessary to achieve the goal of implementation of HB 788, obtaining SIP approval of certain rules, and rescission of the FIP.

Section by Section Discussion

§116.12, Nonattainment and Prevention of Significant Deterioration Definitions

The commission proposes to amend §116.12 to add the definitions of carbon dioxide equivalent (CO_2e) emissions and the pollutant GHGs. The commission proposes amendments to the definitions of federally regulated NSR pollutant, major stationary source, and major modification.

The proposed definition of GHGs references the proposed definition in §101.1(42), Definitions, and establishes that the regulated pollutant GHGs is an aggregate group of six greenhouse gases including: carbon dioxide (CO_2), nitrous oxide (N_2O), methane (CH_4), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6). HFCs are compounds containing only hydrogen, fluorine, and carbon atoms. PFCs are compounds containing only carbon and fluorine atoms. This proposed definition is consistent with EPA's definition in 40 Code of Federal Regulations (CFR) §51.166(b)(48)(i). Other gases that are considered greenhouse gases are not included in the definition of the pollutant GHGs.

The proposed definition in §116.12(7) of CO_2e emissions is consistent with EPA's definition in 40 CFR §51.166(b)(48)(ii). The new definition is necessary to establish the threshold for sources to be considered major for GHGs, consistent with EPA's Tailoring Rule. The CO_2e emissions are determined by multiplying the mass amount in tons per year (tpy) of emissions of each of the gases (that are included in the definition of the pollutant of GHGs) by the global warming potential (GWP) of the gas, and adding the results. The GWPs are published in the 40 CFR Part 98, Subpart A, Table A-1 - Global Warming Potentials. For example, a source emits 5 tpy CO_2, 25 tpy of CH_4, and 10 tpy of the hydroflourcarbon trifluoromethane (CHF_3). The GWP of CO_2e is 1, the GWP of CH_4 is 21, and the GWP of CHF_3 is 11,700. The CO_2e of the source would be 117,530 tpy CO_2e. This value is reached by multiplying 5 tpy CO_2 times 1, 21 tpy CH_4 by 25, and 10 tpy CHF_3 by 11,700, then adding each result to total 117,530 tpy CO_2e.

The proposed definition of CO_2e emissions includes EPA's deferral for CO_2 emissions from bioenergy and other biogenic sources as published in the July 20, 2011, issue of the *Federal Register* (76 FR 43490). This deferral established that biogenic CO_2 emissions are not required to be counted for applicability purposes under the PSD program until July 21, 2014. EPA committed to conduct a detailed examination of the science associated with biogenic CO_2 emissions from stationary sources during the deferral period. In the meantime, certain CO_2 emissions from the combustion or decomposition of non-fossilized and biodegradable organic material are not required to be included in the total mass of CO_2 used to determine CO_2e emissions. For example, CO_2 generated from the combustion of biogas collected from (or the biological decomposition of) waste in landfills, wastewater treatment, or manure management processes is not required to be included in the calculation of CO_2e emissions. Also exempted is CO_2 generated from the following: fermentation during ethanol production; combustion of the biological fraction of municipal solid waste or biosolids; combustion of the biological fraction of tire-derived fuel; and combustion of biological material, including all types of wood and wood waste, forest residue, and agricultural material. Additional information regarding the deferral for biogenic sources is available on EPA's Web site *http://www.epa.gov/climatechange/ghgemissions/biogenic-emissions.html.*

The proposed amendment to the definition of federally regulated NSR pollutant in §116.12(15) will establish GHGs emitted over the federal Tailoring Rule thresholds as a pollutant subject to Texas' PSD permitting program.

Sources that emit GHGs are only subject to the PSD permitting program if they meet or exceed the thresholds proposed in new §116.164, Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources.

The proposed new definition if GHGs in §116.12(16) establishes that the regulated pollutant GHGs is the aggregate group of six GHGs including: CO_2, N_2O, CH_4, HFCs, PFCs, and CF_6. This

proposed definition is consistent with EPA's definition in 40 CFR §51.166(b)(48). HFCs are compounds containing only hydrogen, fluorine, and carbon atoms. PFCs are compounds containing only carbon and fluorine atoms. Other gases that are commonly considered GHGs are not included in the definition of the pollutant GHGs.

The proposed amendment to the definition of major stationary source and major modification (in §116.12(19) and (20), respectively) reference proposed new §116.164 in order to simplify understanding of the thresholds established specifically for GHGs.

The commission also proposes clarifying amendments to §116.12 including renumbering to accommodate the proposed new definitions; deleting the sentence, "The terms in this section are applicable to permit review for major source construction and major source modification in nonattainment areas" because the definitions apply in attainment areas as well; and clarifying the title and citation of a referenced section in the foot note to Table I - Major Source/Major Modification Emission Thresholds.

§116.111, General Application

The commission proposes to amend §116.111 to add subsection (a)(2)(I)(ii) to establish the requirement to obtain authorization under the PSD permitting program for sources of GHGs which meet the thresholds proposed in new §116.164. The proposed amendment is necessary because the existing language in subparagraph (I) only requires PSD review in attainment areas. The proposed amendment clarifies that authorization of GHGs above the tailored thresholds is required statewide. The proposed amendment includes relettering subparagraph (I) to accommodate the two conditions which require PSD review. Consistent with current practice, the commission intends to issue a separate PSD GHG permit.

§116.160, Prevention of Significant Deterioration Requirements

The commission proposes to amend subsection (a) to require that new major sources of GHGs or major modifications of GHGs comply with the requirements of the PSD permitting program regardless of the location of the sources. The PSD permitting requirements are proposed to be statewide because there is no NAAQS for GHGs. This is consistent with the federal PSD permitting regulations.

The proposed amendment to subsection (a) will result in the applicable PSD requirements applying to sources that emit GHGs above the thresholds in proposed §116.164. The federal PSD rules, like the preconstruction requirements in the THSC, require a best available control technology (BACT) determination and an air quality analysis. As EPA's guidance on PSD permitting for GHGs indicates, the focus of the application review is on the control technology choice. EPA has recognized that the unique nature of emissions of GHGs and impacts present challenges to permitting authorities conducting PSD review for these emissions. For instance, EPA has indicated that no air quality analysis is required for PSD GHG permits. In "PSD and Title V Permitting Guidance for Greenhouse Gases," (dated March 2011) prepared by EPA's Office of Air Quality Planning and Standards, EPA stated that, ". . .monitoring for GHGs is not required because EPA regulations provide an exemption in 40 CFR §52.21(i)(5)(iii) and §51.166(i)(5)(iii) for pollutants that are not listed in the appropriate section of the regulations, and GHGs are not currently included in that list. However, 40 CFR §52.21(m)(1)(ii) and §51.166(m)(1)(ii) of EPA's regulations apply to pollutants for which no NAAQS exists. These provisions call for collection of air quality monitoring data 'as the Administrator determines is necessary to assess ambient air quality for that pollutant in any (or the) area that the emissions of that pollutant would affect.' In the case of GHGs, the exemption in 40 CFR §52.21(i)(5)(iii) and §51.166(i)(5)(iii) is controlling since GHGs are not currently listed in the relevant paragraph. Nevertheless, EPA does not consider it necessary for applicants to gather monitoring data to assess ambient air quality for GHGs under 40 CFR §52.21(m)(1)(ii) and §51.166(m)(1)(ii), or similar provisions that may be contained in state rules based on EPA's rules. GHGs do not affect "ambient air quality" in the sense that EPA intended when these parts of EPA's rules were initially drafted." A NAAQS for GHGs has not been established due to the extreme difficulty in determining what concentration level is requisite to protect public health and welfare. The uniformity of GHG concentrations throughout the ambient air also make localized impacts determinations problematic. Considering the nature of emissions of GHGs and their global impacts, EPA stated that it is not "practical or appropriate to expect permitting authorities to collect monitoring data for purpose of assessing ambient air impacts of GHGs."

Furthermore, consistent with EPA's statement in the Tailoring Rule, EPA stated, " . . . it is not necessary for applicants or permitting authorities to assess impacts from GHGs in the context of the additional impacts analysis or Class I area provisions of the PSD regulations for the following policy reasons. Although {it is EPA's position that emissions of GHGs} contribute to global warming and other climate changes that result in impacts on the environment, including impacts on Class I areas and soils and vegetation due to the global scope of the problem, climate change modeling and evaluations of risks and impacts of emissions of GHGs is typically conducted for changes in emissions orders of magnitude larger than the emissions from individual projects that might be analyzed in PSD permit reviews. Quantifying the exact impacts attributable to a specific GHGs source obtaining a permit in specific places and points would not be possible with current climate change modeling. Given these considerations, emissions of GHGs would serve as the more appropriate and credible proxy for assessing the impact of a given facility. Thus, EPA believes that the most practical way to address the considerations reflected in the Class I area and additional impacts analysis is to focus on reducing emissions of GHGs to the maximum extent. In light of these analytical challenges, compliance with the best available control technology analysis is the best technique that can be employed at present to satisfy the additional impacts analysis and Class I area requirements of the rules related to GHGs. "TCEQ intends to implement the PSD GHG permitting requirements consistent with the EPA's recognition of the unique nature of emissions of GHGs. The "PSD and Title V Permitting Guidance for Greenhouse Gases," (EPA-457/B-11-001 March 2011) guidance is available on the EPA's Web site: *http://www.epa.gov/nsr/ghgdocs/ghgpermittingguidance.pdf.*

Further, because GHG emissions are typically non-toxic, relatively inactive and nonflammable, concentrations of GHGs high enough to produce health effects are extremely unlikely to be found in ambient air. Therefore, while health effects of GHG emissions will be evaluated consistent with the preceding statement when determining issuance of a PSD GHG permit, modeling or additional impacts review of GHGs will not be conducted as part of the review of an application for a PSD GHG permit. In addition, it is not necessary to review individual emissions of GHGs for purposes of global effects on the climate because no numerical standard exists. As discussed elsewhere in this pre-

amble, this is because of the inherent difficulty in determining: 1) the appropriate concentration level as well as; 2) localized impacts because of the uniformity of GHG concentrations throughout the ambient air. The impacts review for individual air contaminants will continue to be addressed, as applicable, in the state's traditional minor and major NSR permits program per Chapter 116.

The commission proposes subsection (b)(2) to include references to the netting requirements for applicability thresholds in §116.164 for GHGs. The proposed amendment establishes the emission netting thresholds for GHGs which may cause an existing source to become subject to the PSD permitting program when the source is undergoing a modification. The subsection is proposed to be relettered to clarify that the *de minimis* threshold test (netting) includes the threshold for GHGs on mass basis and CO_2e emissions for modifications of emissions of GHGs.

The commission proposes the amendment to subsection (c) to clarify that emissions of GHGs have the threshold specified in proposed new §116.164.

§116.164, Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources

The commission proposes new §116.164 to establish the specific PSD permitting major source thresholds for emissions of GHGs. Consistent with EPA's Tailoring Rule, emissions of GHGs at sources that emit or will emit GHGs must be evaluated on a mass basis and as CO_2e emissions. In proposed new subsection (a), there are five circumstances which will require a source to conduct PSD review for emissions of GHGs. Two are considered by EPA as "anyway sources" or "anyway modifications" because they are subject to PSD permitting due to emissions of a regulated NSR pollutant that is not GHGs. In the proposed rule language these two categories are §116.164(a)(1) and (2), respectively. Two categories are considered by EPA as "non-anyway sources" and "non-anyway modifications" because they are not subject to PSD permitting for a regulated NSR pollutant other than GHGs. In the proposed rule language these categories are §116.164(a)(3) and (4), respectively. These sources will become subject to PSD permitting for GHGs as discussed in this preamble. The final category is existing sources that are not major for any pollutants. In the proposed rule language this category is in §116.164(a)(5).

EPA's approach to regulating GHGs is that the emissions of GHGs (on a mass basis) must first meet or exceed the definition of a "major stationary source" in 40 CFR §52.21(b)(1)(i) (for EPA and delegated state air permit programs) or 40 CFR §51.166(b)(1)(i) (for approved state air permit programs). The Tailoring Rule established that emissions of CO_2e must meet or exceed the tailored thresholds established in the federal definition of "subject to regulation" in 40 CFR §52.21(b)(49) and §51.166(b)(48). EPA details this approach in the preamble for the Tailoring Rule, as published in the June 3, 2010, issue of the *Federal Register* (75 FR 31523 and 31524), and page 9 of EPA's guidance (EPA-457/B-11-001 March 2011, PSD and Title V Permitting Guidance for Greenhouse Gases), available on EPA's Web site: *http://www.epa.gov/nsr/ghgdocs/ghgpermittingguidance.pdf.*

The EPA evaluated potential streamlining mechanisms as part of Step 3 of the Tailoring Rule. The commission intends to explore options to efficiently process PSD GHG applications. The commission has existing authority to establish a streamlined application review and permit issuance process for groups of sources, such as sources that belong to the same industrial source category, or that have common processes and equipment. The executive director has researched streamlining options presented in the FCAA Advisory Committee GHG Permit Streamlining Workgroup Final Report, available on EPA's Web site: *http://www.epa.gov/nsr/ghgdocs/20120914CAAACPermitStreamlining.pdf.* The commission will work with stakeholders during implementation of the PSD GHG permitting program to identify and develop appropriate streamlining options.

Proposed §116.164(a)(1)

The first circumstance proposed in §116.164(a)(1) is a new major stationary source subject to the PSD permitting program because of emissions of one or more pollutants that are not GHGs. EPA calls this category "new anyway sources" because these are major sources subject to PSD permitting for a pollutant that is not GHGs as defined in 40 CFR §51.166(b)(1). These sources will become subject to PSD permitting for GHGs as a result of Step 1 of the Tailoring Rule (effective January 2, 2011) under 40 CFR §51.166(b)(48)(iv)(a). Additional information on this category can be found in Appendix A and in Table II-A, Summary of PSD Applicability Criteria for New Sources of GHGs, in EPA's guidance.

These sources must include GHGs in the PSD review if the source emits or has the potential to emit 75,000 tpy of CO_2e or more. For example, a new source is proposed that will have the potential to emit: 300 tpy of volatile organic compounds (VOC); 5,000 tpy CO_2; and 4,500 tpy CH_4. Under the existing PSD permitting program in Texas, this source is subject to PSD permitting because its emissions of VOC exceed the major source threshold in 40 CFR §51.166(b)(1). In addition, the emissions of GHGs must be evaluated against the threshold in proposed §116.164(a)(1) to determine if the PSD review must include GHGs. In this example, the source will have a potential to emit 99,500 tpy CO_2e (multiply 5,000 tpy CO_2 by the GWP of 1, multiply 4,500 tpy CH_4 by the GWP of 21, and add the two results to get 99,500 tpy CO_2e). This source would be required to include emissions of GHGs in the PSD review because the source would emit greater than or equal to 75,000 tpy CO_2e.

Proposed §116.164(a)(2)

The second circumstance proposed in §116.164(a)(2) is an existing major stationary source subject to the PSD permitting program because of emissions of a pollutant(s) that are not GHGs. EPA calls these "anyway modifications." These are major sources subject to PSD permitting for a pollutant that is not GHGs as defined in 40 CFR §51.166(b)(1). These sources will become subject to PSD permitting for GHGs as a result of Step 1 of the Tailoring Rule under 40 CFR §51.166(b)(48)(iv)(b) when these sources will have a modification that results in an emissions increase of a regulated NSR pollutant and an emissions increase of CO_2e as defined in 40 CFR §51.166(b)(48)(iii). Because an emission rate for GHGs is not listed in 40 CFR §51.166(b)(23)(i), any GHGs emission rate greater than zero on a mass basis is considered significant, according to 40 CFR §51.166(b)(23)(ii). The modification must also meet the tailored threshold of 75,000 tpy CO_2e or more in 40 CFR §51.166(b)(48)(iv)(b). Therefore, if the project causes a significant net emissions increase for a non-GHG pollutant, then the project is a major modification for GHGs only if it also results in a net emissions increase for GHGs at or above the threshold in proposed 40 CFR §51.166(b)(48)(iv)(b) as well. Additional information on this category can be found in Appendix C and in

Table II-B, Summary of PSD Applicability Criteria for Modified Sources of GHGs, in EPA's guidance.

When the existing source has a major modification (as defined in §116.12) of a pollutant(s) that is not GHGs, the source must include GHGs in the PSD review if there is also a net emissions increase equal to or greater than 75,000 tpy CO_2e. For example, an existing source major for PSD permitting is proposing changes in operation that would have the potential to emit net increases of: 450 tpy of nitrogen oxides (NO_x), 150 tpy of carbon monoxide (CO); 7,000 tpy CO_2; and 3,800 tpy CH_4. Under the existing PSD permitting program in Texas, this action meets the definition of a major modification for NO_x and CO, and those pollutants are subject to PSD review. In addition, the emissions of GHGs must be evaluated against the threshold in proposed §116.164(a)(2) to determine if the PSD review must include GHGs. In this example, the source will have a potential to emit 86,800 tpy CO_2e (multiply 7,000 tpy CO_2 by the GWP of 1, multiply 3,800 tpy CH_4 by the GWP of 21, and add the two results to get 86,800 tpy CO_2e). This source would be required to include emissions of GHGs in the PSD review because the action meets the definition of a major modification in §116.12 for a federally regulated NSR pollutant that is not GHGs, and there would be a net emission increase of GHGs that exceeds zero tpy GHGs on mass basis, and 75,000 tpy CO_2e or more, as established in proposed new §116.164(a)(2).

In another example for the second circumstance, an existing source major for PSD permitting (for non-GHGs) is proposing changes in operation that would have the potential to emit net increases of 35 tpy NO_x, 15 tpy CO, 1,000 tpy CO_2, and 3,700 tpy CH_4. The net emission increases of NO_x and CO do not meet the definition of a major modification in §116.12 because the proposed potential emissions of both NO_x and CO are below the significant levels in 40 CFR §51.166(b)(23). While the CO_2e emissions of the proposed modification are 78,700 tpy CO_2e, which is over the significant threshold in proposed §116.164, the emissions of GHGs are not subject to PSD review for this action because the source is not also undergoing a major modification for a federally regulated NSR pollutant that is not GHGs.

Proposed §116.164(a)(3)

The third circumstance proposed in §116.164(a)(3) is a new stationary source that is major for GHGs only (these sources are minor for all non-GHGs pollutants). EPA calls these "non-anyway sources" because they are subject to PSD only because of emissions of GHGs. These sources will become subject to PSD permitting for GHGs as a result of Step 2 of the Tailoring Rule under 40 CFR §51.166(b)(48)(v)(a). Additional information on this category can be found in Appendix B and in Table II-A in EPA's guidance.

These sources will be subject to the PSD permitting program for only GHGs if both the mass basis emissions of GHGs and the CO_2e emissions meet or exceed the thresholds in proposed §116.164(a)(3). These sources must have mass basis emissions of GHGs that are greater than or equal to 250 tpy, or 100 tpy if the source is listed in 40 CFR §51.166(b)(1)(i). Additionally, these sources must meet or exceed the tailored threshold of 100,000 tpy CO_2e. If both of the thresholds are met, the source is subject to the PSD permitting program solely because of emissions of GHGs.

For example, a new proposed source would have the potential to emit 35 tpy NO_x, 20 tpy CO, 500 tpy CO_2, and 6 tpy of the hydroflurocarbon nitrogen trifluoride (NF_3) (the GWP for NF_3 is 17,200). The emissions of NO_x and CO are not over the major source thresholds for those pollutants. The mass basis for GHGs would be 506 tpy, which exceeds the 250 tpy threshold. The CO_2e emissions would be 103,700, which exceeds the 100,000 tpy threshold. This new source would be subject to PSD permitting solely because of emissions of GHGs. Since this source is not major for any pollutant other than GHGs (the emissions of NO_x and CO are not over the significant thresholds in 40 CFR §51.166(b)(23)), only the GHGs are subject to PSD review. All other pollutants would be subject to appropriate minor source authorization.

In another example for the third circumstance, a proposed new source would have the potential to emit 45 tpy NO_x, 15 tpy CO, 90 tpy CO_2, and 6 tpy NF3. The emissions of NO_x and CO are below the major source thresholds. The mass basis of emissions of GHGs is 96 (90 tpy CO_2 plus 6 tpy NF_3). While the CO_2e emissions are 103,290 tpy CO_2e, the source is not considered major for GHGs because the mass basis is not over the threshold of 100 tpy GHGs if the source is listed on the named source category list in 40 CFR §51.166(b)(1)(i), or greater than or equal to 250 tpy GHG if the source is not on the list. Both the mass basis threshold and the tailored CO_2e threshold must be met or exceeded for the source to be considered a major source and subject to the PSD permitting program.

Proposed §116.164(a)(4)

The fourth circumstance, proposed in new §116.164(a)(4), is an existing stationary source that is major for GHGs and is proposing a major modification for GHGs. EPA calls these "non-anyway modifications." These sources will become subject to PSD permitting for GHGs in Step 2 of the Tailoring Rule under 40 CFR §51.166(b)(48)(v)(b). These are existing sources that emit or have the potential to emit over the major source thresholds for GHGs. When the source will make changes that result in a net increase in emissions of GHGs above zero on a mass basis and greater than or equal to the tailored threshold of 75,000 tpy CO_2e in 40 CFR §51.166(b)(48)(v)(b), it becomes subject to PSD permitting. As previously noted, because GHGs are not listed in 40 CFR §51.166(b)(23)(i), any emission rate greater than zero is considered significant according to 40 CFR §51.166(b)(23)(ii). Additional information on this category can be found in Appendix D and in Table II-B in EPA's guidance.

These sources are existing major sources of GHGs if two thresholds are met or exceeded: the mass basis emissions of GHGs meet or exceed the defined threshold, and CO_2e meets or exceeds the tailored threshold. These sources must have mass basis emissions of GHGs that are greater than or equal to 250 tpy, or 100 tpy if the source is listed in 40 CFR §51.166(b)(1)(i). Additionally, these sources must meet or exceed the tailored threshold of 100,000 tpy CO_2e. These existing major sources are subject to the PSD permitting program when there is a physical change or change in method of operation that results in a net emissions increase of greater than zero tpy GHGs on a mass basis and greater than or equal to 75,000 tpy CO_2e. In the following example, an existing source is authorized to emit the following: 50 tpy NO_x, 30 tpy CO, 45 tpy SO_2, 5,000 tpy CO_2, 250 tpy CH_4, and 4 tpy SF_6. The source is currently a minor source in regard to criteria pollutants; however, the source is an existing major source in regard to GHGs. This is because the source currently has the potential to emit 5,000 tpy CO_2, 250 tpy of CH_4, and 4 tpy of SF_6. The total mass basis is 5,254 tpy GHGs. The GWP of CO_2 is 1, CH_4 is 21, and SF_6 is 23,900, so the source emits or has the potential to emit 105,850 tpy CO_2e emissions. Both the mass

basis and tailored GHGs thresholds are exceeded. This source is considered a major stationary source for GHGs. If the source proposes a change in operation that affects emissions of GHGs, the next step would be to calculate the proposed net emissions increases that will result from the proposed change in operation. If the net emissions increase is greater than zero tpy of GHGs on a mass basis, and greater than or equal to 75,000 tpy CO_2e, then the emissions of GHGs will be subject to PSD review as part of a major modification.

In another example of the fourth circumstance, an existing source is authorized to emit the following: 500 tpy SO_2, 95,000 tpy CO_2, and 250 tpy CH_4. The source is currently a major source of SO_2 and GHGs. This source is proposing changes in operation that would have the potential to emit net increases of: 15 tpy SO_2, 70,000 tpy CO_2; and 500 tpy methane. The netted emission increases of SO_2 does not meet the definition of a major modification in §116.12 because the proposed potential emissions of SO_2 are below the significant levels in 40 CFR §51.166(b)(23). However, because the net emissions increase is greater than zero tpy of GHGs on a mass basis, and greater than or equal to 75,000 tpy CO_2e (80,500 tpy CO_2e in this example), then the emissions of GHGs would be subject to PSD review as a major modification.

Proposed §116.164(a)(5)

The fifth circumstance in proposed §116.164(a)(5) is an existing minor stationary source with emissions below the major source thresholds for all pollutants. This category of sources was not specifically addressed by EPA in the Tailoring Rule, however, an existing minor source that has a physical change or change in the method of operation that would constitute a major stationary source in and of itself is considered a new major stationary source and subject to PSD according to 40 CFR §51.166(b)(1)(i)(C). Additional information on this category can be found in Appendix D and Table II-B in EPA's guidance.

For example, the source has the potential to emit 20 tpy NO_x, 10 tpy CO, 0.5 tpy SO_2, and 90 tpy CO_2. The emissions of GHGs for this source are below both the mass basis threshold of 250 tpy (or 100 tpy if the source is on the named source category list), and under the tailored 100,000 tpy CO_2e threshold. The emissions of GHGs from this source would become subject to the PSD permitting program if the source proposed a change that would result in an emissions increase greater than or equal to 100,000 tpy CO_2e, and greater than or equal to 250 tpy GHGs (or 100 tpy GHGs, if the source is listed on the named source category list).

Proposed §116.164(b)

The commission is proposing new §116.164(b) to clarify that emissions of GHGs at a new or modified facility that are below the thresholds in EPA's Tailoring Rule, as described by the conditions in proposed §116.164(a), do not require preconstruction authorization, consistent with HB 788 and EPA's interpretation of PSD GHG permitting requirements. This proposed amendment is appropriate because EPA does not consider emissions lower than the tailored thresholds to be defined as subject to regulation and EPA does not require authorization of these emissions. The Texas Clean Air Act (TCAA) allows the commission to develop rules to establish a level of emissions for groups of facilities that do not require preconstruction authorization. In addition, emission increases below those thresholds resulting from a change at an existing permitted facility are not defined as a modification that requires preconstruction authorization under the TCAA. In order to demonstrate that emissions of GHGs from new or modified facilities or sources will not trigger PSD review, owners or operators must keep sufficient records to demonstrate authorization is not required for these GHG emissions. The commission intends to develop guidance to help smaller sources determine the type of records that are necessary to demonstrate compliance with this subsection. Sources will continue to be required to seek authorization for emissions from new or modified sources that are not GHGs.

§116.169, Greenhouse Gas Transition

The commission proposes new §116.169 to fulfill requirements established in HB 788. Proposed subsection (a) provides for the transition of certain PSD permitting applications which were previously submitted to EPA. Once EPA approves the SIP revisions and rescinds the FIP, the commission will accept the transfer of and review applications. The commission will work with EPA and applicants to determine if the commission or EPA will complete review of the application and issuance of a PSD GHG permit. Based on these discussions, TCEQ expects EPA will retain PSD permit implementation authority for those specific sources that have submitted PSD GHG applications to EPA, but for which final agency action or the exhaustion of all administrative and judicial appeals processes have not yet been concluded or completed upon the effective date of EPA's final SIP approval of the new and amended sections in this chapter and rescission of the FIP.

§116.610, Applicability

The commission proposes to amend §116.610(a)(1) and (b) to clarify that sources of GHGs may use standard permits to authorize emissions of pollutants that are not GHGs. GHGs will not be authorized under standard permits. Instead, emissions of GHGs which meet or exceed the thresholds set in the EPA's Tailoring Rule are subject to the PSD permitting program. Sources subject to the PSD permitting program solely because of emissions of GHGs may continue to utilize standard permits to authorize emissions of pollutants that are not GHGs, in conjunction with a PSD permit that authorizes GHGs. Projects which trigger PSD requirements due to emissions of non-GHGs cannot qualify for a standard permit.

§116.611, Registration to Use a Standard Permit

The commission proposes to amend §116.611. Section §116.611(b) currently allows a source to begin construction 45 days after the executive director receives the registration for a standard permit. The proposed amendment to subsection (b) clarifies that sources which are subject to the PSD permitting program solely because of emissions of GHGs, and using a standard permit to authorize emissions of pollutants that are not GHGs, may not begin construction until the source is issued a PSD GHG permit.

The commission proposes to amend subsection (c) to establish a deadline for sources that are currently operating to certify emissions of GHGs. Since GHGs were not previously subject to permitting requirements, sources will have the opportunity to evaluate potential to emit GHGs and certify emissions, if necessary. These sources will have 90 days after EPA's final action approving the amendments concurrently proposed for Chapter 122, Federal Operating Permits, Potential to Emit, to certify emissions of GHGs to avoid applicability of Title V permitting. New sources of GHGs would be required to certify emissions no later than the date of operation. The commission invites comments regarding the timing allotted for certifying emissions of GHGs.

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, significant fiscal implications are anticipated for the agency and for some other units of state or local government as a result of administration or enforcement of the proposed rules. The proposed rules would permit air emissions of GHGs under the PSD program.

The proposed rules would implement provisions in HB 788, 83rd Legislature, 2013, to establish the TCEQ as the permitting authority for major sources of GHG emissions in Texas, consistent with federal law. The proposed changes to Chapter 116 are part of a concurrent rulemaking that involves changes to other TAC chapters intended to implement HB 788. Other chapters in the rulemaking include Chapters 39, 55, 101, 106, and 122. Fiscal notes for proposed revisions to those chapters are provided separately.

The proposed rules establish that GHGs is a federally regulated NSR pollutant which can be subject to PSD permitting and that owners or operators of major sources with emissions of GHGs will be subject to PSD permitting requirements. The proposed rules would provide GHG emission thresholds for new sources and modifications in order to determine when PSD permits will be required.

The proposed rules also contain provisions for the transfer of applications from EPA to TCEQ.

A proposed change to §116.610(b) will allow a facility or project that triggers the requirement for a PSD permit as a result of emissions of GHGs to still use a standard permit to authorize their other minor emissions, to the extent allowed under federal PSD regulations. A change to §116.611(b) specifies that projects which are using a standard permit to authorize non-GHGs cannot begin construction until after the PSD permit for their emissions of GHGs is issued.

Other, minor changes to Chapter 116 clarify the statewide applicability of PSD permitting, and provide instructions on how emissions of GHGs are to be calculated.

PSD fee permit revenue is deposited into the Clean Air Account 0151 and is calculated based on 1% of the capital cost of the project with a minimum assessed fee of $3,000 and maximum of $75,000. Agency staff estimates that the implementation of the new rules will result in approximately 400 additional PSD permit applications over the five-year period covered by the fiscal note. Very few additional PSD permit applications are expected to be processed in Fiscal Year 2014 as the new rule is not expected to be in effect and SIP-approved until late in the fiscal year. However, beginning in Fiscal Year 2015, approximately 100 additional PSD permit applications each fiscal year are expected to be received and processed. This fiscal note assumes that of the 100 new major PSD GHG permit applications each year, an estimated 70% would have previously qualified for a Permit By Rule (PBR) or a Standard Permit (SP). It is further assumed that for this 70% or an estimated 70 permit applications per year, most of these would fall in the lower end of the PSD fee scale, which for the purposes of this fiscal note is estimated to be $20,000. Therefore, given the fee increase for 70 permit applications that would go from a PBR or SP to a PSD permit, the agency could see an increase in PSD fee revenue of $1,368,500 each year (assuming $20,000 fee for PSD less $450 PBR fee x 70 projects/year = $1,368,500/year). The other 30% of the 100 additional PSD permit applications expected each year would be those sites that are expected to change from a minor NSR permit to a PSD permit. The anticipated fee increase for the other 30 projects (30% of 100) that went from case-by-case minor NSR to PSD is estimated to result in a $27,288 fee increase for each permit application. This change in permit type is expected to result in an additional $818,640 each year ($27,288 fee increase x 30 permit applications each year). The total estimated increase in PSD fee revenue is anticipated to be $2,187,140 each year. However, it must be pointed out that the level of additional fee revenue to be collected would depend upon the number of additional PSD applications received and the capital cost of each project involved, both of which are highly variable and difficult to predict. Any additional revenue would be used to support PSD permitting activities.

All PSD permits, including PSD permits for GHGs, require public notice as part of the permit application process. Costs may be associated with these public notice requirements. The costs for public notice associated with PSD GHG permits are not significantly different from the costs of public notice for PSD permits for non-GHG pollutants.

State agencies that operate devices such as boilers or incinerators that are stationary sources of GHG of sufficient size may require a PSD permit. Local governments that own or operate sites of an industrial or heavy commercial nature, such as power generating stations and landfills would also be affected. Some of these sites already have PSD permits due to major emissions of other pollutants. Agency staff does not have sufficient information to determine how many state agencies may be affected by the proposed rules, but based upon information that is available, it is roughly estimated that 60 local government facilities could be affected (or 15% of the estimated 400 PSD permits anticipated to be affected by the proposed rules). This estimate would result in approximately 15 new governmental permit applications each year (very few if any applications in the first year, but 15 applications for each subsequent year).

Owners or operators of new or modified facilities with emissions of GHGs that meet or exceed defined threshold levels would be required to obtain a PSD permit, and pay the PSD permit fee, and comply with Emissions Inventory (EI) requirements under §101.10. Costs for each facility to implement and conduct the EI each year are estimated to be $3,000. It is estimated that each of the 60 new governmental permits would have an incremental cost on average of $21,871. Total costs for the estimated 270 local government facilities for the first five years the proposed rules are in effect are estimated to be $1,762,260. This figure consists of $450,000 in cumulative costs for conducting emissions inventories, and $1,312,260 in cumulative permit fees. Under current federal regulations these sources are already required to get the PSD permit from EPA. It is also not known if permitting costs would be more or less through EPA or the TCEQ.

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 the continued protection of the public health and safety through the implementation of an efficient and effective state permit review process, while maintaining compliance with state and federal law.

The proposed rules will have a fiscal impact on businesses that own or operate new or modified facilities with emissions of GHGs that meet or exceed defined threshold levels. The proposed

rules are not anticipated to have direct fiscal implications for individuals unless they own or operate affected facilities. Any business or industry with new or modified stationary sources which have emissions of GHGs in quantities that meet or exceed certain threshold levels must obtain a PSD permit, pay a permit fee, and comply with EI requirements. Under current federal regulations these sources are already required to get the PSD permit from EPA. It is also not known if permitting costs would be more or less through EPA or the TCEQ. However, PSD permit requirements themselves are not expected to be burdensome as best available control technology for GHGs generally does not require add-on controls, and sources are likely already equipped with sufficient monitoring technology to determine their emissions of GHGs (which are generally based on fuel consumption).

Staff estimates that approximately 100 owners and operators of major sources of GHG will be required to submit PSD GHG permit applications each year for at least four of the five years covered by this fiscal note. Of these 100 new applications expected to be submitted each year, approximately 85 (or 85%) are estimated to be commercial or industrial and come from businesses (non-governmental). These sites are likely to be in the oil and gas industry, petrochemical industry, electric utilities, and general manufacturing, but may also be in other types of industries. Owners and operators required to obtain a PSD permit will be required to pay a PSD permit fee, and comply with EI requirements. Very few applications are expected in the first year, as the rules either will not have been approved by EPA, or will have been approved by EPA for only a short time. For the estimated 85 commercial or industrial permit applications each year, the total estimated costs over the first five years the proposed rules would be in effect is estimated to be $1,859,035 each year. The cumulative total fee increase over the first five years the proposed rules would be in effect is estimated to be $7,436,140. This estimate comes out to approximately $21,871 in incremental permit application fees for each application. Costs for each facility to implement and conduct the EI each year are estimated to be $3,000. Total cumulative EI costs for an estimated 85 facilities over the first five years the proposed rules would be in effect would be $2,550,000. The EI costs increase year-by-year because it is an ongoing requirement and the number of sources subject to the EI requirement is increasing.

There is substantial uncertainty as to the actual number of permits that would be needed for these sites, and the fee varies widely with project specifics, so this estimate is highly speculative. Permitting costs are not expected to continue at the 85 site per year level after the first five years the proposed rules are in effect.

Small Business and Micro-Business Assessment

Adverse fiscal implications are anticipated for small or micro-businesses for the first five-year period the proposed rules are in effect. Any business or industry with new or modified stationary sources with emissions of GHGs in quantities that meet or exceed certain threshold levels must obtain a PSD permit, pay a permit fee and comply with EI requirements. Under current federal regulations these sources are already required to get the PSD permit from EPA. It is also not known if permitting costs would be more or less through EPA or the TCEQ. The GHG thresholds set by EPA trigger PSD applicability at some small facilities which previously were not subject to the requirement to get a PSD permit. There is not enough data on emissions of GHGs from small businesses to predict how many will be affected with a high degree of accuracy. Staff estimates that approximately 40 small business sites would be affected by the PSD requirements, but the number could be substantially higher. These sites are likely to be in the oil and gas industry, petrochemical industry, electric utilities, and general manufacturing, but may also be in other types of industries. The one-time incremental cost for the PSD permit is estimated to be approximately $21,871 for each small or micro-business permit application. Total permitting costs for an estimated 10 small business sites for each year of the five-year period would be $218,710/year, or $874,840 in total for the five-year period. This assumes very few applications in the first year, with the remaining applications coming in over the last four years. Total cumulative EI costs for an estimated 40 small businesses over the first five years the proposed rules are in effect would be $300,000. The EI costs increase year-by-year because it is an ongoing requirement and the number of sources subject to the EI requirement is increasing.

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 by state and federal law and therefore are consistent with the health, safety, or environmental and economic welfare of the state.

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 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 specific intent of the proposed revisions to Chapter 116 is to add six GHGs to the pollutants regulated under the commission's PSD permitting program and to establish the emissions thresholds for applicability of the program consistent with federal requirements in the final PSD and Title V GHG Tailoring Rule in the June 3, 2010, issue of the *Federal Register* (75 FR 31514).

Additionally, even if the rules met the definition of a major environmental rule, 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, §2001.0225(a). Texas Government, §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 fed-

eral 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 proposed rules would implement requirements of the FCAA. Under 42 United States Code (USC), §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, attain, maintain, and enforce the NAAQS within the state. One of the requirements of 42 USC, §7410 is for states to include programs for the regulation of the modification and construction of any stationary source within the area covered by the plan as necessary to assure that the NAAQS are achieved, including a permit program as required in FCAA, Parts C and D, or NSR. This rulemaking will implement provisions in HB 788 to establish the TCEQ as the permitting authority for major sources of emissions of GHGs in Texas and to do so consistent with federal law. Specifically, amendments to Chapter 116 will add the following terms to nonattainment and PSD definitions: GHGs, and CO_2e emissions. The rulemaking will also amend definitions and the PSD rules in Subchapter B to subject GHGs to PSD permitting requirements at specific Tailoring Rule thresholds.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded, "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the Legislative Budget Board, the commission believes that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the proposed rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA and thus allow EPA to lift its federal permitting program on GHG sources in Texas. In fact, the proposed rules create no additional impacts since major GHG sources in Texas must currently obtain a PSD permit from EPA and the proposed rules merely supplant EPA as the authority for GHG PSD permitting in Texas. For these reasons, the proposed rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. Austin 1995), writ denied with per curiam opinion respecting another issue, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ). *Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, pet. denied); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978)).

The commission's interpretation of the RIA requirements is also supported by a change made to the 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" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The proposed rules implement requirements of the FCAA, specifically to adopt and implement SIPs, including a requirement to adopt and implement permit programs.

This rulemaking will implement provisions in HB 788 to establish the TCEQ as the permitting authority for major sources of emissions GHGs in Texas and to do so consistent with federal law. Specifically, amendments to Chapter 116 will add the following terms to nonattainment and PSD definitions: GHGs, and CO_2e emissions. The rulemaking will also amend definitions and the PSD rules in Subchapter B to subject GHGs to PSD permitting requirements at specific Tailoring Rule thresholds.

The proposed rules were not developed solely under the general powers of the agency, but are authorized by specific sections of THSC, Chapter 382 (also known as the Texas Clean Air Act and the TWC), which are cited in the Statutory Authority section of this preamble. Further, the proposed rules do not exceed a standard set by federal law or 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. Therefore, this proposed rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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 Texas Constitution §17 or §19, Article I; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for the proposed rulemaking action under the Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking, as discussed elsewhere in this preamble, is to implement provisions in HB 788 to establish the TCEQ as the permitting authority for major sources of emissions of GHGs in Texas and to do so consistent with federal law. Specifically, proposed amendments to Chapter 116 would add the following terms to nonattainment and PSD definitions: GHGs, and CO_2e emissions. The rulemaking will also amend definitions and the PSD rules in Subchapter B to subject GHGs to PSD permitting requirements at specific Tailoring Rule thresholds.

The proposed rules will not create any additional burden on private real property. The proposed 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 proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the 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 the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Advisory Committee and determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed rules amend and update rules that govern the applicability of the PSD program to major sources of GHG emissions. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking 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.

Effect on Sites Subject to the Federal Operating Permits Program

Prevention of Significant Deterioration is an applicable requirement under Chapter 122, Federal Operating Permits. This rulemaking affects the issuance or amendment of a PSD permit for major GHG sources, and therefore would result in new or revised federal operating permits for those sources.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 5, 2013, at 2:00 p.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 Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-040-116-AI. The comment period closes December 9, 2013. 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 Tasha Burns, Operational Support, Air Permits Division at (512) 239-5868.

SUBCHAPTER A. DEFINITIONS

30 TAC §116.12

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, 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), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical

property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with this chapter; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.0517, concerning Determination of Administrative Completion of Application, which specifies when the commission shall determine applications are administratively complete; THSC, §382.0518, concerning Preconstruction Permit, which authorizes the commission to issue preconstruction permits; and THSC, §382.05102, which relates to the permitting authority of the commission for emissions of GHGs. Additional relevant sections are Texas Government Code, §2006.004, concerning Requirements to Adopt Rules of Practice and Index Rules, Orders, Decisions, which requires state agencies to adopt procedural rules and, Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation. The amendment is also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The proposed amendment implements House Bill 788, 83rd Legislature, 2013, THSC, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.0513, 382.05102, 382.0515, 382.0517, 382.0518, and 383.05195; and Texas Government Code, §2001.004 and §2001.006; and FCAA, 42 USC, §§7401 *et seq.*

§116.12. Nonattainment and Prevention of Significant Deterioration Review Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. [~~The terms in this section are applicable to permit review for major source construction and major source modification in nonattainment areas.~~] In addition to the terms that are defined by the TCAA, and in §101.1 of this title (relating to Definitions), the following words and terms, when used in [~~Chapter 116,~~] Subchapter B, Divisions 5 and 6 of this chapter [~~title~~] (relating to Nonattainment Review Permits and Prevention of Significant Deterioration Review); and [~~Chapter 116,~~] Subchapter C, Division 1 of this chapter [~~title~~] (relating to Plant-Wide Applicability Limits), have the following meanings, unless the context clearly indicates otherwise.

(1) Actual emissions--Actual emissions as of a particular date are equal to the average rate, in tons per year, at which the unit actually emitted the pollutant during the 24-month period that precedes the particular date and that is representative of normal source operation, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a plant-wide applicability limit. Instead, paragraph (3) of this section relating to baseline actual emissions shall apply for this purpose. The executive director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. The executive director may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions, e.g., when the allowable limit is reflective of actual emissions. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) Allowable emissions--The emissions rate of a stationary source, calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits that restrict the operating rate, or hours of operation, or both), and the most stringent of the following:

(A) the applicable standards specified in 40 Code of Federal Regulations Part 60 or 61;

(B) the applicable state implementation plan emissions limitation including those with a future compliance date; or

(C) the emissions rate specified as a federally enforceable permit condition including those with a future compliance date.

(3) Baseline actual emissions--The rate of emissions, in tons per year, of a federally regulated new source review pollutant.

(A) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The executive director shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(B) For an existing facility (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the facility actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the ten-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received for a permit. The rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply with the exception of those required under 40 Code of Federal Regulations Part 63, had such major stationary source been required to comply with such limitations during the consecutive 24-month period.

(C) For a new facility, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and for all other purposes during the first two years following initial operation, shall equal the unit's potential to emit.

(D) The actual average rate shall be adjusted downward to exclude any non-compliant emissions that occurred during the consecutive 24-month period. For each regulated new source review pollutant, when a project involves multiple facilities, only one consecutive 24-month period must be used to determine the baseline actual emissions for the facilities being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount. Baseline emissions cannot occur prior to November 15, 1990.

(E) The actual average emissions rate shall include fugitive emissions to the extent quantifiable. Until March 1, 2016,

emissions previously demonstrated as resulting from planned maintenance, startup, or shutdown activities; historically unauthorized; and subject to reporting under Chapter 101 of this title (relating to General Air Quality Rules) shall be included to the extent that they have been authorized, or are being authorized.

(4) Basic design parameters--For a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British thermal units content shall be used for determining the basic design parameters for a coal-fired electric utility steam generating unit. The basic design parameters for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator shall consider the primary product or primary raw material when selecting a basic design parameter. The owner or operator may propose an alternative basic design parameter for the source's process units to the executive director if the owner or operator believes the basic design parameter as defined in this paragraph is not appropriate for a specific industry or type of process unit. If the executive director approves of the use of an alternative basic design parameter, that basic design parameter shall be identified and compliance required in a condition in a permit that is legally enforceable.

(A) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter.

(B) If design information is not available for a process unit, the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.

(C) Efficiency of a process unit is not a basic design parameter.

(5) Begin actual construction--In general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

(6) Building, structure, facility, or installation--All of the pollutant-emitting activities that belong to the same industrial grouping, are located in one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities are considered to be part of the same industrial grouping if they belong to the same "major group" (i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

(7) Carbon dioxide equivalent (CO_2e) emissions--shall represent

(A) an amount of greenhouse gases (GHGs) emitted, and shall be computed by multiplying the mass amount of emissions in tons per year (tpy) for the GHGs, as defined in §101.1 of this title (relating to Definitions), by the gas's associated global warming potential as published in 40 Code of Federal Regulations Part 98, Subpart A, Table A-1 - Global Warming Potentials, and summing the resultant values.

(B) for purposes of this paragraph, prior to July 21, 2014, the mass of the GHG carbon dioxide (CO_2) shall not include CO_2 emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

(8) [~~(7)~~] Clean coal technology--Any technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

(9) [~~(8)~~] Clean coal technology demonstration project--A project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2.5 billion for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the United States Environmental Protection Agency. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

(10) [~~(9)~~] Commence--As applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(A) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(B) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(11) [~~(10)~~] Construction--Any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions.

(12) [~~(11)~~] Contemporaneous period--For major sources the period between:

(A) the date that the increase from the particular change occurs; and

(B) 60 months prior to the date that construction on the particular change commences.

(13) [~~(12)~~] *De minimis* threshold test (netting)--A method of determining if a proposed emission increase will trigger nonattainment or prevention of significant deterioration review. The summation of the proposed project emission increase in tons per year with all other creditable source emission increases and decreases during the contemporaneous period is compared to the significant level for that pollutant. If the significant level is exceeded, then prevention of significant deterioration and/or nonattainment review is required.

(14) [~~(13)~~] Electric utility steam generating unit--Any steam electric generating unit that is constructed for the purpose of

supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is included in determining the electrical energy output capacity of the affected facility.

(15) [~~(14)~~] Federally regulated new source review pollutant--As defined in subparagraphs (A) - (E) [~~(D)~~] of this paragraph:

(A) any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the United States Environmental Protection Agency;

(B) any pollutant that is subject to any standard promulgated under Federal Clean Air Act (FCAA), §111;

(C) any Class I or II substance subject to a standard promulgated under or established by FCAA, Title VI; [~~or~~]

(D) any pollutant that otherwise is subject to regulation under the FCAA; except that any or all hazardous air pollutants either listed in FCAA, §112 or added to the list under FCAA, §112(b)(2), which have not been delisted under FCAA, §112(b)(3), are not regulated new source review pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under FCAA, §108; or [~~.~~]

(E) greenhouse gases that meet or exceed the thresholds established in §116.164 of this title (relating to Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources).

(16) Greenhouse gases (GHGs)--as defined in §101.1 of this title (relating to Definitions).

(17) [~~(15)~~] Lowest achievable emission rate--For any emitting facility, that rate of emissions of a contaminant that does not exceed the amount allowable under applicable new source performance standards promulgated by the United States Environmental Protection Agency under 42 United States Code, §7411, and that reflects the following:

(A) the most stringent emission limitation that is contained in the rules and regulations of any approved state implementation plan for a specific class or category of facility, unless the owner or operator of the proposed facility demonstrates that such limitations are not achievable; or

(B) the most stringent emission limitation that is achieved in practice by a specific class or category of facilities, whichever is more stringent.

(18) [~~(16)~~] Major facility--Any facility that emits or has the potential to emit 100 tons per year or more of the plant-wide applicability limit (PAL) pollutant in an attainment area; or any facility that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant in Table I of this section for nonattainment areas.

(19) [~~(17)~~] Major stationary source--Any stationary source that emits, or has the potential to emit, a threshold quantity of emissions or more of any air contaminant (including volatile organic compounds (VOCs)) for which a national ambient air quality standard has been issued. The major source thresholds are identified in Table I of this section for nonattainment pollutants and the major source thresholds for prevention of significant deterioration pollutants are identified in 40 Code of Federal Regulations (CFR) §51.166(b)(1). For greenhouse gases, the major source thresholds are specified in §116.164 of this title (relating to Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources). A source that emits, or has the potential to emit a federally regulated new source review pollutant at levels greater than those identified in 40 CFR §51.166(b)(1) is considered major for all prevention of significant deterioration pollutants. A major stationary source that is major for VOCs or nitrogen oxides is considered to be major for ozone. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this definition whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in 40 CFR §51.165(a)(1)(iv)(C).

(20) [~~(18)~~] Major modification--As follows.

(A) Any physical change in, or change in the method of operation of a major stationary source that causes a significant project emissions increase and a significant net emissions increase for any federally regulated new source review pollutant. At a stationary source that is not major prior to the increase, the increase by itself must equal or exceed that specified for a major source. At an existing major stationary source, the increase must equal or exceed that specified for a major modification to be significant. The major source and significant thresholds are provided in Table I of this section for nonattainment pollutants. The major source and significant thresholds for prevention of significant deterioration pollutants are identified in 40 Code of Federal Regulations §51.166(b)(1) and (23), respectively and in §116.164 of this title (relating to Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources).

Figure: 30 TAC §116.12(20)(A)

[~~Figure: 30 TAC §116.12(18)(A)~~]

(B) A physical change or change in the method of operation shall not include:

(i) routine maintenance, repair, and replacement;

(ii) use of an alternative fuel or raw material by reason of an order under the Energy Supply and Environmental Coordination Act of 1974, §2(a) and (b) (or any superseding legislation) or by reason of a natural gas curtailment plan under the Federal Power Act;

(iii) use of an alternative fuel by reason of an order or rule of 42 United States Code, §7425;

(iv) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before December 21, 1976 (unless such change would be prohibited under any federally enforceable permit condition established after December 21, 1976) or the source is approved to use under any permit issued under regulations approved under this chapter;

(vi) an increase in the hours of operation or in the production rate (unless the change is prohibited under any federally enforceable permit condition that was established after December 21, 1976);

(vii) any change in ownership at a stationary source;

(viii) any change in emissions of a pollutant at a site that occurs under an existing plant-wide applicability limit;

(ix) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated;

(x) for prevention of significant deterioration review only, the installation or operation of a permanent clean coal technology demonstration project that constitutes re-powering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis; or

(xi) for prevention of significant deterioration review only, the reactivation of a clean coal-fired electric utility steam generating unit.

(21) [~~(19)~~] Necessary preconstruction approvals or permits--Those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations that are part of the applicable state implementation plan.

(22) [~~(20)~~] Net emissions increase--The amount by which the sum of the following exceeds zero: the project emissions increase plus any sourcewide creditable contemporaneous emission increases, minus any sourcewide creditable contemporaneous emission decreases. Baseline actual emissions shall be used to determine emissions increases and decreases.

(A) An increase or decrease in emissions is creditable only if the following conditions are met:

(i) it occurs during the contemporaneous period;

(ii) the executive director has not relied on it in issuing a federal new source review permit for the source and that permit is in effect when the increase in emissions from the particular change occurs; and

(iii) in the case of prevention of significant deterioration review only, an increase or decrease in emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(B) An increase in emissions is creditable if it is the result of a physical change in, or change in the method of operation of a stationary source only to the extent that the new level of emissions exceeds the baseline actual emission rate. Emission increases at facilities under a plant-wide applicability limit are not creditable.

(C) A decrease in emissions is creditable only to the extent that all of the following conditions are met:

(i) the baseline actual emission rate exceeds the new level of emissions;

(ii) it is federally enforceable at and after the time that actual construction on the particular change begins;

(iii) the executive director has not relied on it in issuing a prevention of significant deterioration or a nonattainment permit;

(iv) the decrease has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(v) in the case of nonattainment applicability analysis only, the state has not relied on the decrease to demonstrate attainment or reasonable further progress.

(D) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(23) [~~(21)~~] Offset ratio--For the purpose of satisfying the emissions offset reduction requirements of 42 United States Code, §7503(a)(1)(A), the emissions offset ratio is the ratio of total actual reductions of emissions to total emissions increases of such pollutants. The minimum offset ratios are included in Table I of this section under the definition of major modification. In order for a reduction to qualify as an offset, it must be certified as an emission credit under Chapter 101, Subchapter H, Division 1 or 4 of this title (relating to Emission Credit Banking and Trading; or Discrete Emission Credit Banking and Trading), except as provided for in §116.170(b) of this title (relating to Applicability of Emission Reductions as Offsets). The reduction must not have been relied on in the issuance of a previous nonattainment or prevention of significant deterioration permit.

(24) [~~(22)~~] Plant-wide applicability limit--An emission limitation expressed, in tons per year, for a pollutant at a major stationary source, that is enforceable and established in a plant-wide applicability limit permit under §116.186 of this title (relating to General and Special Conditions).

(25) [~~(23)~~] Plant-wide applicability limit effective date--The date of issuance of the plant-wide applicability limit permit.

(26) [~~(24)~~] Plant-wide applicability limit major modification--Any physical change in, or change in the method of operation of the plant-wide applicability limit source that causes it to emit the plant-wide applicability limit pollutant at a level equal to or greater than the plant-wide applicability limit.

(27) [~~(25)~~] Plant-wide applicability limit permit--The new source review permit that establishes the plant-wide applicability limit.

(28) [~~(26)~~] Plant-wide applicability limit pollutant--The pollutant for which a plant-wide applicability limit is established at a major stationary source.

(29) [~~(27)~~] Potential to emit--The maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or enforceable operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, may be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions, as defined in 40 Code of Federal Regulations §51.165(a)(1)(viii), do not count in determining the potential to emit for a stationary source.

(30) [~~(28)~~] Project net--The sum of the following: the project emissions increase, minus any sourcewide creditable emission decreases proposed at the source between the date of application for the modification and the date the resultant modification begins emitting. Baseline actual emissions shall be used to determine emissions increases and decreases. Increases and decreases must meet the creditability criteria listed under the definition of net emissions increase in this section.

(31) [~~(29)~~] Projected actual emissions--The maximum annual rate, in tons per year, at which an existing facility is projected to emit a federally regulated new source review pollutant in any rolling 12-month period during the five years following the date the facility resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the facility's design capacity or its potential to emit that federally regulated new source review pollutant. In determining the projected actual emissions, the owner or operator of the major stationary source shall include unauthorized emissions from planned maintenance, startup, or shutdown activities, which were historically unauthorized and subject to reporting under Chapter 101 of this title (relating to General Air Quality Rules), to

the extent they have been authorized, or are being authorized; and fugitive emissions to the extent quantifiable; and shall consider all relevant information, including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved state implementation plan.

(32) [~~(30)~~] Project emissions increase--The sum of emissions increases for each modified or affected facility determined using the following methods:

(A) for existing facilities, the difference between the projected actual emissions and the baseline actual emissions. In calculating any increase in emissions that results from the project, that portion of the facility's emissions following the project that the facility could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth may be excluded from the project emission increase. The potential to emit from the facility following completion of the project may be used in lieu of the projected actual emission rate; and

(B) for new facilities, the difference between the potential to emit from the facility following completion of the project and the baseline actual emissions.

(33) [~~(31)~~] Replacement facility--A facility that satisfies the following criteria:

(A) the facility is a reconstructed unit within the meaning of 40 Code of Federal Regulations §60.15(b)(1), or the facility replaces an existing facility;

(B) the facility is identical to or functionally equivalent to the replaced facility;

(C) the replacement does not alter the basic design parameters of the process unit;

(D) the replaced facility is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable. If the replaced facility is brought back into operation, it shall constitute a new facility. No creditable emission reductions shall be generated from shutting down the existing facility that is replaced. A replacement facility is considered an existing facility for the purpose of determining federal new source review applicability.

(34) [~~(32)~~] Secondary emissions--Emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the source or modification itself. Secondary emissions must be specific, well-defined, quantifiable, and impact the same general area as the stationary source or modification that causes the secondary emissions. Secondary emissions include emissions from any off-site support facility that would not be constructed or increase its emissions, except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions that come directly from a mobile source such as emissions from the tail pipe of a motor vehicle, from a train, or from a vessel.

(35) [~~(33)~~] Significant facility--A facility that emits or has the potential to emit a plant-wide applicability limit (PAL) pollutant in an amount that is equal to or greater than the significant level for that PAL pollutant.

(36) [~~(34)~~] Small facility--A facility that emits or has the potential to emit the plant-wide applicability limit (PAL) pollutant in an amount less than the significant level for that PAL pollutant.

(37) [~~(35)~~] Stationary source--Any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under 42 United States Code, §§7401 *et seq*.

(38) [~~(36)~~] Temporary clean coal technology demonstration project--A clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER B. NEW SOURCE REVIEW PERMITS

DIVISION 1. PERMIT APPLICATION

30 TAC §116.111

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, 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), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with this chapter; THSC, §382.0515, concerning Application

for Permit, which specifies permit application requirements; THSC, §382.0517, concerning Determination of Administrative Completion of Application, which specifies when the commission shall determine applications are administratively complete; THSC, §382.0518, concerning Preconstruction Permit, which authorizes the commission to issue preconstruction permits; and THSC, §382.05102, which relates to the permitting authority of the commission for emissions of greenhouse gases. Additional relevant sections are Texas Government Code, §2006.004, concerning Requirements to Adopt Rules of Practice and Index Rules, Orders, Decisions, which requires state agencies to adopt procedural rules and, Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation. The amendment is also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The proposed amendment implements House Bill 788, 83rd Legislature, 2013, THSC, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.0513, 382.05102, 382.0515, 382.0517, 382.0518, and 383.05195; and Texas Government Code, §2001.004 and §2001.006; and FCAA, 42 USC, §§7401 *et seq.*

§116.111. General Application.

(a) In order to be granted a permit, amendment, or special permit amendment, the application must include:

(1) a completed Form PI-1 General Application signed by an authorized representative of the applicant. All additional support information specified on the form must be provided before the application is complete;

(2) information which demonstrates that emissions from the facility, including any associated dockside vessel emissions, meet all of the following.

(A) Protection of public health and welfare.

(i) The emissions from the proposed facility will comply with all rules and regulations of the commission and with the intent of the Texas Clean Air Act (TCAA), including protection of the health and property of the public.

(ii) For issuance of a permit for construction or modification of any facility within 3,000 feet of an elementary, junior high/middle, or senior high school, the commission shall consider any possible adverse short-term or long-term side effects that an air contaminant or nuisance odor from the facility may have on the individuals attending the school(s).

(B) Measurement of emissions. The proposed facility will have provisions for measuring the emission of significant air contaminants as determined by the executive director. This may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the "Texas Commission on Environmental Quality Sampling Procedures Manual."

(C) Best available control technology (BACT) must be evaluated for and applied to all facilities subject to the TCAA. Prior to evaluation of BACT under the TCAA, all facilities with pollutants subject to regulation under Title I Part C of the Federal Clean Air Act (FCAA) shall evaluate and apply BACT as defined in §116.160(c)(1)(A) of this title (relating to Prevention of Significant Deterioration Requirements).

(D) New Source Performance Standards (NSPS). The emissions from the proposed facility will meet the requirements of any applicable NSPS as listed under 40 Code of Federal Regulations (CFR) Part 60, promulgated by the United States Environmental Protection Agency (EPA) under FCAA, §111, as amended.

(E) National Emission Standards for Hazardous Air Pollutants (NESHAP). The emissions from the proposed facility will meet the requirements of any applicable NESHAP, as listed under 40 CFR Part 61, promulgated by EPA under FCAA, §112, as amended.

(F) NESHAP for source categories. The emissions from the proposed facility will meet the requirements of any applicable maximum achievable control technology standard as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR Part 63)).

(G) Performance demonstration. The proposed facility will achieve the performance specified in the permit application. The applicant may be required to submit additional engineering data after a permit has been issued in order to demonstrate further that the proposed facility will achieve the performance specified in the permit application. In addition, dispersion modeling, monitoring, or stack testing may be required.

(H) Nonattainment review. If the proposed facility is located in a nonattainment area, it shall comply with all applicable requirements in this chapter concerning nonattainment review.

(I) Prevention of Significant Deterioration (PSD) review.

(i) If the proposed facility is located in an attainment area, it shall comply with all applicable requirements in this chapter concerning PSD review.

(ii) If the proposed facility or modification meets or exceeds the applicable greenhouse gases thresholds defined in §116.164 of this title (relating to Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources) then it shall comply with all applicable requirements in this chapter concerning PSD review for sources of greenhouse gases.

(J) Air dispersion modeling. Computerized air dispersion modeling may be required by the executive director to determine air quality impacts from a proposed new facility or source modification. In determining whether to issue, or in conducting a review of, a permit application for a shipbuilding or ship repair operation, the commission will not require and may not consider air dispersion modeling results predicting ambient concentrations of non-criteria air contaminants over coastal waters of the state. The commission shall determine compliance with non-criteria ambient air contaminant standards and guidelines at land-based off-property locations.

(K) Hazardous air pollutants. Affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) for hazardous air pollutants shall comply with all applicable requirements under Subchapter E of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(L) Mass cap and trade allowances. If subject to Chapter 101, Subchapter H, Division 3, of this title (relating to Mass Emissions Cap and Trade Program), the proposed facility, group of facilities, or account must obtain allowances to operate.

(b) In order to be granted a permit, amendment, or special permit amendment, the owner or operator must comply with the following notice requirements.

(1) Applications declared administratively complete before September 1, 1999, are subject to the requirements of [~~Chapter 116, Subchapter B,~~] Division 3 of this subchapter (relating to Public Notification and Comment Procedures).

(2) Applications declared administratively complete on or after September 1, 1999, are subject to the requirements of Chapter 39 of this title (relating to Public Notice) and Chapter 55 of this title (relating to Request for Reconsideration and Contested Case Hearings; Public Comment). Upon request by the owner or operator of a facility which previously has received a permit or special permit from the commission, the executive director or designated representative may exempt the relocation of such facility from the provisions in Chapter 39 of this title if there is no indication that the operation of the facility at the proposed new location will significantly affect ambient air quality and no indication that operation of the facility at the proposed new location will cause a condition of air pollution.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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DIVISION 6. PREVENTION OF SIGNIFICANT DETERIORATION REVIEW

30 TAC §§116.160, 116.164, 116.169

Statutory Authority

The amendments and new sections are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments and new sections are also proposed under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.003, concerning Definitions, which defines certain terms used in the Chapter 382; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.05101 concerning De Minimis Air Contaminants, which authorizes the commission to develop by rule criteria to establish a de minimis level of air contaminants below which a permit, standard permit or permit by rule is not required; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with this chapter; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.0517, concerning Determination of Administrative Completion of Application, which specifies when the commission shall determine applications are administratively complete; THSC, §382.0518, concerning Preconstruction Permit, which authorizes the commission to issue preconstruction permits; and THSC, §382.05102, which relates to the permitting authority of the commission for emissions of greenhouse gases. Additional relevant sections are Texas Government Code, §2006.004, concerning Requirements to Adopt Rules of Practice and Index Rules, Orders, Decisions, which requires state agencies to adopt procedural rules and, Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation. The amendments and new sections are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The proposed new and amended sections implement House Bill 788, 83rd Legislature, 2013, THSC, §§382.002, 382.003, 382.011, 382.012, 382.017, 382.051, 382.05101, 382.0513, 382.05102, 382.0515, 382.0517, 382.0518, and 383.05195; and Texas Government Code, §2001.004 and §2001.006; and FCAA, 42 USC, §§7401 *et seq.*

§116.160. Prevention of Significant Deterioration Requirements.

(a) Each proposed new major source or major modification in an attainment or unclassifiable area shall comply with the requirements of this section. In addition, each proposed new major source of greenhouse gases (GHGs) or major modification involving GHGs shall comply with the applicable requirements of this section. The owner or operator of a proposed new or modified facility that will be a new major stationary source for the prevention of significant deterioration air contaminant shall meet the additional requirements of subsection (c)(1) - (4) of this section.

(b) *De minimis* [~~The *de minimis*~~] threshold test (netting):

(1) is required for all modifications to existing major sources of federally regulated new source review pollutants, unless the proposed emissions increases associated with a project, without regard to decreases, are less than major modification thresholds for the pollutant identified in 40 Code of Federal Regulations (CFR) §52.21(b)(23); and[~~.~~]

(2) is required for GHGs at existing major sources if the proposed modification results in an emissions increase, without regard to decreases, as required in §116.164(a)(2) and (4)(B) of this title (relating to Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources).

(c) In applying the *de minimis* threshold test (netting), if the net emissions increases are greater than the major modification levels for the pollutant identified in 40 CFR §52.21(b)(23) and for GHGs in §116.164 of this title, the following requirements apply.

(1) In addition to those definitions in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions) the following definitions from prevention of significant deterioration of air quality regulations promulgated by the United States Environmental Protection Agency (EPA) in 40 CFR §52.21 and the definitions for protection of visibility and promulgated in 40 CFR §51.301 as amended July 1, 1999, are incorporated by reference:

(A) 40 CFR §52.21(b)(12) - (15), concerning best available control technology, baseline concentrations, dates, and areas;

(B) 40 CFR §52.21(b)(19), concerning innovative control technology; and

(C) 40 CFR §52.21(b)(24) - (28), concerning federal land manager, terrain, and Indian reservations/governing bodies.

(2) The following requirements from prevention of significant deterioration of air quality regulations promulgated by the EPA in 40 CFR §52.21 are hereby incorporated by reference:

(A) 40 CFR §52.21(c) - (k), concerning increments, ambient air ceilings, restrictions on area classifications, exclusions from increment consumption, redesignation, stack heights, exemptions, control technology review, and source impact analysis;

(B) 40 CFR §52.21(m) - (p), concerning air quality analysis, source information, additional impact analysis, and sources impacting federal Class I areas;

(C) 40 CFR §52.21(r)(4), concerning relaxation of an enforceable limitation; and

(D) 40 CFR §52.21(v), concerning innovative technology.

(3) The term "facility" shall replace the words "emissions unit" in the referenced sections of the CFR.

(4) The term "executive director" shall replace the word "administrator" in the referenced sections of the CFR except in 40 CFR §52.21(g) and (v).

(d) All estimates of ambient concentrations required under this subsection shall be based on the applicable air quality models and modeling procedures specified in the EPA Guideline on Air Quality Models, as amended, or models and modeling procedures currently approved by the EPA for use in the state program, and other specific provisions made in the prevention of significant deterioration state implementation plan. If the air quality impact model approved by the EPA or specified in the guideline is inappropriate, the model may be modified or another model substituted on a case-by-case basis, or a generic basis for the state program, where appropriate. Such a change shall be subject to notice and opportunity for public hearing and written approval of the administrator of the EPA.

§116.164. Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources.

(a) Greenhouse Gases (GHGs) are subject to Prevention of Significant Deterioration review under the following conditions:

(1) New source, major for non-GHGs. The stationary source is a new major stationary source for a federally regulated new source review (NSR) pollutant that is not GHGs, and will emit or have the potential to emit 75,000 tons per year (tpy) or more carbon dioxide equivalent (CO_2e); or

(2) Existing source, major for non-GHGs. The stationary source is an existing major stationary source for a federally regulated NSR pollutant that is not GHGs, and will have a significant net emissions increase of a federally regulated NSR pollutant that is not GHGs, and a net emissions increase greater than zero tpy GHGs on a mass basis and 75,000 tpy or more CO_2e.

(3) New source, major for GHGs Only. The new stationary source that will emit or has the potential to emit greater than or equal to 100 tpy GHGs on a mass basis, if the source is listed on the named source category list in 40 Code of Federal Regulations (CFR) §51.166(b)(1)(i), or greater than or equal to 250 tpy GHGs on a mass basis; and 100,000 tpy or more CO_2e.

(4) GHGs major modification at an existing major source.

(A) The existing stationary source emits or has the potential to emit greater than or equal to 100 tpy GHGs on a mass basis, if the source is listed on the named source category list in 40 CFR §51.166(b)(1)(i), or greater than or equal to 250 tpy GHGs on a mass basis; and 100,000 tpy or more CO_2e; and

(B) the stationary source undertakes a physical change or change in the method of operation that will result in a net emissions increase greater than zero tpy GHGs on a mass basis, and a net emissions increase of 75,000 tpy or more CO_2e.

(5) Existing source that is not major. The existing stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase greater than or equal to 100 tpy GHGs on a mass basis, if the source is listed on the named source category list in 40 CFR §51.166(b)(1)(i), or greater than or equal to 250 tpy GHGs on a mass basis; and 100,000 tpy or more CO_2e.

(b) New stationary sources with emissions of GHGs, or existing stationary sources that undertake a physical change or change in the method of operations that includes emissions of GHGs, that do not meet any of the conditions in subsection (a) of this section do not require authorization under this subchapter, Subchapter F of this chapter (relating to Standard Permits), Subchapter G of this chapter (relating to Flexible Permits), and Chapter 106 of this title (relating to Permits by Rule) for emissions of GHGs. Owners or operators of these sources must keep records sufficient to demonstrate the amount of emissions from the source. Records must be made available at the request of personnel from the commission or any local air pollution control agency having jurisdiction.

§116.169. Greenhouse Gases (GHGs) Application Transition.

Upon the effective date of the United States Environmental Protection Agency (EPA) approval of this chapter and rescission of the Federal Implementation Plan as published in the May 3, 2011, issue of the *Federal Register* (76 FR 25178), the commission will accept transfer of and review applications previously filed with EPA for greenhouse gas prevention of significant deterioration permits. These applications will be subject to the applicable requirements of this chapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER F. STANDARD PERMITS

30 TAC §116.610, §116.611

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with this chapter; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.0517, concerning Determination of Administrative Completion of Application, which specifies when the commission shall determine applications are administratively complete; THSC, §382.0518, concerning Preconstruction Permit, which authorizes the commission to issue preconstruction permits; THSC, §382.05102, which relates to the permitting authority of the commission for emissions of GHGs; and THSC, §382.05195 concerning Standard Permits, which authorizes the commission to issue standard permits for new or existing similar facilities. Additional relevant sections are Texas Government Code, §2006.004, concerning Requirements to Adopt Rules of Practice and Index Rules, Orders, Decisions, which requires state agencies to adopt procedural rules and, Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation. The amendments are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The proposed amendments implement House Bill 788, 83rd Legislature, 2013, THSC, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.0513, 382.05102, 382.0515, 382.0517, 382.0518 and 383.05195; and Texas Government Code, §2001.004 and §2001.006; and FCAA, 42 USC, §§7401 *et seq.*

§116.610. Applicability.

(a) Under the Texas Clean Air Act, §382.051, a project that meets the requirements for a standard permit listed in this subchapter or issued by the commission is hereby entitled to the standard permit, provided the following conditions listed in this section are met. For the purposes of this subchapter, project means the construction or modification of a facility or a group of facilities submitted under the same registration.

(1) Any project that results in a net increase in emissions of air contaminants from the project other than [~~carbon dioxide,~~] water, nitrogen, [~~methane,~~] ethane, hydrogen, oxygen, or greenhouse gases (GHGs) as defined in §101.1 of this title (relating to Definitions), or those for which a national ambient air quality standard has been established must meet the emission limitations of §106.261 of this title (relating to Facilities (Emission Limitations)), unless otherwise specified by a particular standard permit.

(2) Construction or operation of the project must be commenced prior to the effective date of a revision to this subchapter under which the project would no longer meet the requirements for a standard permit.

(3) The proposed project must comply with the applicable provisions of the Federal Clean Air Act (FCAA), §111 (concerning New Source Performance Standards) as listed under 40 Code of Federal Regulations (CFR) Part 60, promulgated by the United States Environmental Protection Agency (EPA).

(4) The proposed project must comply with the applicable provisions of FCAA, §112 (concerning Hazardous Air Pollutants) as listed under 40 CFR Part 61, promulgated by the EPA.

(5) The proposed project must comply with the applicable maximum achievable control technology standards as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA, §112, 40 CFR Part 63)).

(6) If subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) the proposed facility, group of facilities, or account must obtain allocations to operate.

(b) Any project that constitutes a new major stationary source or major modification as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions) because of emissions of air contaminants other than greenhouse gases is subject to the requirements of §116.110 of this title (relating to Applicability) rather than this subchapter. A new major stationary source or major modification which is subject to Subchapter B, Division 6 of this chapter (relating to Prevention of Significant Deterioration Review) due solely to emissions of greenhouse gases may use a standard permit under this chapter for air contaminants that are not greenhouse gases.

(c) Persons may not circumvent by artificial limitations the requirements of §116.110 of this title.

(d) Any project involving a proposed affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) shall comply with all applicable requirements under Subchapter E of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g),

40 CFR Part 63)). Affected sources subject to Subchapter E of this chapter may use a standard permit under this subchapter only if the terms and conditions of the specific standard permit meet the requirements of Subchapter E of this chapter.

§116.611. Registration to Use a Standard Permit.

(a) If required, registration to use a standard permit shall be sent by certified mail, return receipt requested, or hand delivered to the executive director, the appropriate commission regional office, and any local air pollution program with jurisdiction, before a standard permit can be used. The registration must be submitted on the required form and must document compliance with the requirements of this section, including, but not limited to:

(1) the basis of emission estimates;

(2) quantification of all emission increases and decreases associated with the project being registered;

(3) sufficient information as may be necessary to demonstrate that the project will comply with §116.610(b) of this title (relating to Applicability);

(4) information that describes efforts to be taken to minimize any collateral emissions increases that will result from the project;

(5) a description of the project and related process; and

(6) a description of any equipment being installed.

(b) Construction may begin any time after receipt of written notification from the executive director that there are no objections or 45 days after receipt by the executive director of the registration, whichever occurs first, except where a different time period is specified for a particular standard permit or the source obtains a prevention of significant deterioration permit for greenhouse gases as provided in §116.164(a) of this title (relating to Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources).

(c) In order to avoid applicability of Chapter 122 of this title (relating to Federal Operating Permits), a certified registration shall be submitted. The certified registration must state the maximum allowable emission rates and must include documentation of the basis of emission estimates and a written statement by the registrant certifying that the maximum emission rates listed on the registration reflect the reasonably anticipated maximums for operation of the facility. The certified registration shall be amended if the basis of the emission estimates changes or the maximum emission rates listed on the registration no longer reflect the reasonably anticipated maximums for operation of the facility. The certified registration shall be submitted to the executive director; to the appropriate commission regional office; and to all local air pollution control agencies having jurisdiction over the site. Certified registrations must also be maintained in accordance with the requirements of §116.115 of this title (relating to General and Special Conditions).

(1) Certified registrations established prior to December 11, 2002, [~~the effective date of this rule~~] shall be submitted on or before February 3, 2003.

(2) Certified registrations established on or after December 11, 2002, [~~the effective date of this rule~~] shall be submitted no later than the date of operation.

(3) Certified registrations established for greenhouse gases (as defined in §101.1 of this title (relating to Definitions)) on or after the effective date of EPA's final action approving amendments to §122.122 of this title (relating to Potential to Emit) into the State Implementation Plan:

(A) for existing sites that emit or have the potential to emit greenhouse gases, no later than 90 days after the effective date of EPA's final action on §122.122 of this title; or

(B) for new sites that emit or have the potential to emit greenhouse gases, no later than the date of operation.

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CHAPTER 122. FEDERAL OPERATING PERMITS PROGRAM

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes amendments to §§122.10, 122.122 and 122.130.

If adopted, the commission will submit §122.122 to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

In *Massachusetts v. EPA* (549 U.S. 497 (2007)) the Supreme Court of the United States ruled that greenhouse gases (GHGs) fit within the Federal Clean Air Act (FCAA or Act) definition of air pollutant. This ruling gave EPA the authority to regulate GHGs from new motor vehicles and engines if EPA made a finding under FCAA, §202(a) that six key GHGs taken in combination endanger both public health and welfare, and that combined emissions of GHGs from new motor vehicles and engines contribute to pollution that endangers public health and welfare. EPA issued its "Endangerment Finding" for GHGs on December 15, 2009 (Endangerment and Cause or Contribute Findings for Greenhouse Gases Under §202(a) of the Clean Air Act, Final Rule, as published in the December 15, 2009, issue of the *Federal Register* (74 FR 66496)). Based on the Endangerment Finding, EPA subsequently adopted new emissions standards for motor vehicles (the "Tailpipe Rule" as published in the May 7, 2010, issue of the *Federal Register* (75 FR 25324)). The rule established standards for light-duty motor vehicles to improve fuel economy thereby reducing emissions of GHGs. The standards were effective January 2, 2011. EPA also reconsidered its interpretation of the timing of applicability of Prevention of Significant Deterioration (PSD) under the FCAA (the "Timing Rule" as published in the April 2, 2010, issue of the *Federal Register* (75 FR 17004)). EPA's interpretation of the FCAA is that PSD requirements for stationary sources of GHGs take effect when the first national rule subjects GHGs to regulation under the Act. EPA determined that once GHGs were actually being controlled under any part of the Act they were subject to regulation under the PSD program. Specifically, EPA took the position that beginning on January 2, 2011, GHGs control

requirements would be required under the PSD and Title V permitting programs because national standards for GHGs under the Tailpipe Rule were effective on January 2, 2011.

EPA's regulation of GHGs under the FCAA presented substantial difficulties for the EPA and states, particularly with regard to the PSD program. For instance, the most common of the GHGs, carbon dioxide (CO_2), is emitted in quantities that dwarf the Act's major source thresholds for program applicability. As a result, under EPA's Timing Rule, PSD requirements could have expanded from approximately 500 issued permits annually to more than 81,000 nationwide, as published in the June 3, 2010, issue of the *Federal Register* (75 FR 31514, 31537 and 31538). To avoid this result, EPA excluded much of this new construction activity from the PSD program by altering the Act's statutory emission rate applicability thresholds for GHGs. This "Tailoring Rule," as published in the June 3, 2010, issue of the *Federal Register* (75 FR 31514) newly defined the statutory term "subject to regulation" and established higher GHGs emission thresholds for applicability of PSD and Title V permitting than specified in the FCAA. The Tailoring Rule also phased in permitting requirements in a multi-stepped process.

Before the *Massachusetts* decision in 2007, EPA took the position that GHGs are not regulated under the FCAA, and GHGs unquestionably were not regulated when EPA approved Texas' SIP in 1992. Texas has had an approved SIP since 1972, as published in the May 31, 1972, issue of the *Federal Register* (37 FR 10842). In 1983, Texas was delegated authority to implement the PSD program, as published in the February 9, 1983, issue of the *Federal Register* (48 FR 6023). Following this delegation, Texas submitted several SIP revisions to enable it to administer the PSD program (collectively the "PSD SIP submission"). EPA approved Texas' PSD SIP in 1992, granting the state full authority to implement the PSD program, as published in the June 24, 1992, issue of the *Federal Register* (57 FR 28093).

The Texas PSD SIP submission and approval proceedings produced a well-developed record on how Texas would address the applicability of newly regulated pollutants under the PSD program. During the SIP submission process, Texas consistently explained to EPA that the PSD provisions in the SIP are not prospective rulemaking, and do not incorporate future EPA interpretations of the Act or its regulations.

EPA's GHGs regulations created practical difficulties about how EPA could apply its Tailoring Rule in states with approved SIPs. In August 2010, Texas advised EPA that it could not retroactively reinterpret its SIP to cover GHGs, which were not regulated at the time Texas' SIP was approved in 1992 and were, in fact, a composite pollutant defined for the first time in the Tailoring Rule. Texas also explained that the PSD program only encompassed National Ambient Air Quality Standard (NAAQS) pollutants, but confirmed as a regulatory matter that the approved PSD program encompasses all federally regulated new source review (NSR) pollutants, including any pollutant that otherwise is subject to regulation under the FCAA, as stated in 30 TAC §116.12(14)(D).

Following promulgation of the Tailoring Rule, EPA issued a proposed "Finding of Substantial Inadequacy and SIP Call," as published in the September 2, 2010, issue of the *Federal Register* (75 FR 53892). This action proposed finding the SIPs of 13 states, including Texas', "substantially inadequate" because these SIPs did not apply PSD requirements to GHGs-emitting sources. EPA proposed to require these states (through their SIP-approved PSD programs) to regulate GHGs as defined in the Tailoring Rule. EPA also proposed a Federal Implementation Plan (FIP) that would apply specifically to states that did not or could not agree to reinterpret their SIPs to impose the Tailoring Rule and did not meet SIP submission deadlines. EPA finalized its GHG SIP Call in the December 12, 2010, issue of the *Federal Register* (75 FR 77698) and required Texas to submit revisions to its SIP by December 1, 2011.

EPA published an interim final rule partially disapproving Texas' SIP; imposing the GHGs FIP effective as of its date of publication, as published in the December 30, 2010, issue of the *Federal Register* (75 FR 82430). EPA stated that FCAA, §110(k)(6) authorized it to change its previous approval of Texas' PSD SIP into a partial approval and partial disapproval. EPA's basis was that it had erroneously approved Texas' PSD SIP submission because the SIP did not appropriately address the applicability of newly regulated pollutants to the PSD program in the future. EPA further stated that its action was independent of the GHG SIP Call because that action was aimed at a narrower issue of applicability to GHGs, whereas its decision retroactively disapproving Texas' PSD SIP submission was addressed to Texas' purported failure to address, or assure the legal authority for, application of PSD to all pollutants newly subject to regulation. EPA published the final rule retroactively disapproving Texas' PSD SIP in part and promulgating the FIP as published in the May 3, 2011, issue of the *Federal Register* (76 FR 25178).

The effect of EPA's FIP is that major source preconstruction permitting authority is divided between two authorities - EPA for GHGs and the state of Texas for all other pollutants. Currently, major construction projects and expansions in Texas that require PSD permits must file applications with both EPA Region 6 (for GHGs) and TCEQ (for all non-GHG pollutants).

Although Texas has an EPA-approved Title V operating permit program, it currently lacks the approval to permit sources that are major sources subject to Title V as a result of their emissions of GHG. In EPA's "Action to Ensure Authority to Implement Title V Permitting Programs Under the Greenhouse Gas Tailoring Rule," as published in the December, 30, 2010, issue of the *Federal Register* (75 FR 82254), EPA stated in footnote 8 that in this situation, there is no obligation for these major GHG sources to apply for a Title V permit until such time as the state amends its rules to make the permit program applicable to them.

House Bill (HB) 788, 83rd Legislature, 2013, added new Texas Health and Safety Code (THSC), §382.05102. The new section grants TCEQ authority to authorize emissions of GHGs consistent with THSC, §382.051, to the extent required under federal law. THSC, §382.05102 directs the commission to adopt implementing rules, including a procedure to transition GHG PSD applications currently under EPA review to the TCEQ. Upon adoption, the rules must be submitted to EPA for review and approval into the Texas SIP. THSC, §382.05102 excludes permitting processes for GHGs from the contested case hearing procedures in THSC, Chapter 382; Texas Water Code, Chapter 5; and Texas Government Code, Chapter 2001. THSC, §382.05102 also requires that the commission repeal the rules adopted under this authority and submit a SIP revision to EPA, if (at a future date) emissions of GHGs are no longer required to be authorized under federal law. The amendments to §§122.10, 122.122 and 122.130 will be submitted to EPA for approval as revisions to Texas' Federal Operating Permits Program.

The commission is initiating this rulemaking to fulfill the directive from the Legislature. The legislature found that "in the interest of the continued vitality and economic prosperity of the

state, the Texas Commission on Environmental Quality, because of its technical expertise and experience in processing air quality permit applications, is the preferred authority for emissions of {GHGs}."

Texas has challenged in federal court EPA's GHG regulations as well as EPA's SIP Call and FIP. Implementation of HB 788 through this rulemaking is not adverse to Texas' claims in its ongoing challenges to EPA's actions regarding GHGs generally or relating to the SIP. The commission's action to conduct rulemaking for submittal and approval by EPA is consistent with Texas' position that state law does not give EPA the authority to automatically change state regulations.

Concurrently with this proposal, the commission is proposing new and amended rules to 30 TAC Chapters 39 (Public Notice), 55 (Requests for Reconsideration and Contested Case Hearings; Public Comment), 101 (General Air Quality Rules), 106 (Permits by Rule), and 116 (Control of Air Pollution by Permits for New Construction or Modification) to implement HB 788. Except where specifically noted, all proposed changes to Chapters 39, 55, 101, 106, 116, and 122 are necessary to achieve the goal of implementation of HB 788, obtaining SIP approval of certain rules, and rescission of the FIP.

Section by Section Discussion

§122.10, Definitions

The commission proposes to amend §122.10 by modifying the definition of air pollutant to include the pollutant GHGs, amend the definition of applicable requirement, add the definition of carbon dioxide equivalent (CO_2e) emissions, and amend the definition of major source. The commission also proposes non-substantive amendments to correct errors and appropriately renumber paragraphs.

The commission proposes to amend the definition of "Air pollutant" in §122.10(1) to include the pollutant GHGs. The proposed definition of GHGs establishes that the regulated pollutant GHGs is the aggregate group of six GHGs including: CO_2, nitrous oxide (N_2O), methane (CH_4), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6). This proposed definition is consistent with EPA's definition in 40 Code of Federal Regulations (CFR) §51.166(b)(48). HFCs are compounds containing only hydrogen, fluorine, and carbon atoms. PFCs are compounds containing only carbon and fluorine atoms. Other gases that are commonly considered GHGs are not included in the definition of the pollutant GHGs.

The definition of "Applicable requirement" in §122.10(2)(I)(xi) is proposed to be amended to add EPA-issued PSD permits to the list of federal requirements applicable to a site. Federal operating permits must include all state and federal air quality related requirements applicable to the particular site covered by the permit. This addition is necessary to incorporate EPA-issued GHG permits in operating permits as applicable requirements, as these are not currently included in the definition.

The proposed definition of CO_2e emissions in §122.10(3) is consistent with EPA's definition in 40 CFR §51.166(b)(48). The new definition is necessary to establish the threshold for sites to be considered major for GHGs, consistent with EPA's Tailoring Rule. The CO_2e emissions are determined by multiplying the mass amount (in tons per year (tpy)) of emissions of each of the gases (that are included in the definition of the pollutant GHGs) by the global warming potential (GWP) of the gas, and adding the results. The GWPs are published in the 40 CFR Part 98, Subpart A, Table A-1 - Global Warming Potentials. For example, a site has the potential to emit 5 tpy CO_2, 25 tpy of CH_4, and 10 tpy of the hydrofluorcarbon trifluoromethane (CHF_3). The GWP of CO_2e is 1, the GWP of CH_4 is 21, and the GWP of CHF_3 is 11,700. The CO_2e emissions of the source would be 117,530 tpy CO_2e. This value is reached by multiplying 5 tpy CO_2 times 1, 25 tpy CH_4 by 21, and 10 tpy CHF3 by 11,700; then adding each result to total 117,530 tpy CO_2e.

The proposed definition of CO_2e emissions includes EPA's deferral for CO_2 emissions from bioenergy and other biogenic sources as published in the July 20, 2011, issue of the *Federal Register* (76 FR 43490). This deferral established that biogenic CO_2 emissions are not required to be counted for applicability purposes under the PSD program and the Title V program until July 21, 2014. EPA committed to conduct a detailed examination of the science associated with biogenic CO_2 emissions from stationary sources during the deferral period. In the meantime, certain CO_2 emissions from the combustion or decomposition of non-fossilized and biodegradable organic material are not required to be included in the total mass of CO_2 used to determine CO_2e emissions. For example, CO_2 generated from the combustion of biogas collected from (or the biological decomposition of) waste in landfills, wastewater treatment, or manure management processes is not required to be included in the calculation of CO_2e emissions. Also exempted is CO_2 generated from the following: fermentation during ethanol production; combustion of the biological fraction of municipal solid waste or biosolids; combustion of the biological fraction of tire-derived fuel; and combustion of biological material, including all types of wood and wood waste, forest residue, and agricultural material. Additional information regarding the deferral for biogenic sources is available on EPA's Web site *http://www.epa.gov/climatechange/ghgemissions/biogenic-emissions.html.*

The commission proposes to amend the definition of major source in §122.10(14) to establish the specific Title V permitting major source thresholds for emissions of GHGs. The major source thresholds for Title V sources are contained in proposed subparagraph (H) and referenced in subparagraph (C). Consistent with EPA's Tailoring Rule, sites that emit or have the potential to emit GHGs must evaluate both their emissions of GHGs on a mass basis and as CO_2e emissions to determine Title V applicability. To evaluate the mass basis element of applicability, the potential emissions (in tpy) of each of the six GHGs would be added together. If the total meets or exceeds 100 tpy, the CO_2e emissions total must also be calculated to determine Title V applicability. The potential emissions of each of the six GHGs would be multiplied by its respective GWP, and the results would be added together. If the total is greater than or equal to 100,000 tpy CO_2e, the site would be subject to the Title V permitting program. If either one of the thresholds is not met or exceeded, the site is not subject to the Title V permitting program. For example, a site emits or has the potential to emit 10,000 tpy CO_2 and 3,500 tpy CH_4. The total emissions of GHGs on a mass basis exceed 100 tpy GHGs, so the CO_2e emissions must be calculated. The GWP of CO_2 is one and the GWP of CH_4 is 21. Multiply 10,000 tpy CO_2 by the GWP of 1, multiply 3,500 tpy CH_4 by the GWP of 21, and add the two results to get 83,500 tpy CO_2e. This site would not be subject to the Title V permitting program, because both thresholds were not exceeded.

In another example, a site emits or has the potential to emit 20,000 tpy CO_2 and 4,500 tpy CH_4. This site would be a major source and subject to the Title V permitting program because

the 24,500 tpy GHGs on a mass basis is equal to or greater than 100 tpy GHGs, and the 114,500 CO_2e emissions are greater than 100,000 tpy CO_2e. To get this result, multiply 20,000 tpy CO_2 by the GWP of 1, multiply 4,500 tpy CH_4 by the GWP of 21, and add the two results to get 114,500 tpy CO_2e.

The commission proposes to amend §122.10(2)(F)(iii) and (J)(vii) to correct the title of referenced sections.

§122.122, Potential to Emit

The commission proposes to amend §122.122(e) to clarify that existing sites may certify emissions below major source thresholds. Since the pollutant GHGs is being added to the Title V (and PSD) permitting program, sites with sources of GHGs which are currently operating may have the potential to emit over the major source thresholds, but actual emissions may be below the thresholds. These sites will have 90 days after EPA's final action approving amendments to §122.122 into the SIP to certify emissions of GHGs in order to avoid applicability of Title V permitting. Sites with new sources of GHGs would be required to certify emissions no later than the date of operation. The commission invites comments regarding the timing allotted for certifying emissions of GHGs.

Subsection (e)(1) and (2) was updated to reflect the current requirements and reference the specific date those provisions were effective.

§122.130, Initial Application Due Dates

The commission proposed subsection (b)(3) to establish the deadline for sources that are subject to Title V permitting to submit an application. If a source becomes subject to the Title V program for the first time because of emissions of GHGs, owners or operators will have to submit an abbreviated application no later than 12 months after either EPA's final action approving the amendments to Chapter 122, or EPA's final action approving amended §122.122 in to the SIP, whichever action occurs later in time.

The commission proposes nonsubstantive amendments to §122.130(c) to expand the acronym for Code of Federal Regulations.

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, significant fiscal implications are anticipated for the agency and, for some other units of state or local government as a result of administration or enforcement of the proposed rules. Sites owned or operated by units of state or local government with major air emissions of GHGs may become subject to Title V federal operating permit requirements and subject to paying emissions fees.

The proposed rules would implement provisions in HB 788, 83rd Legislature, 2013, to establish the TCEQ as the permitting authority for major sources of emissions of GHGs in Texas, consistent with federal law. The proposed changes to Chapter 122 are part of a concurrent rulemaking that involves changes to other TAC chapters intended to implement HB 788. Other chapters in the rulemaking include Chapters 39, 55, 101, 106, and 116. Fiscal notes for proposed revisions to those chapters will be provided separately.

HB 788 requires that TCEQ adopt rules to allow for permitting of emissions of GHGs, under the PSD and Federal Operating Permits (Title V) programs.

The proposed changes to Chapter 122 rules will require sites with major emissions of GHGs to become subject to Title V federal operating permit requirements. The proposed changes revise the definition of "Air pollutant" under §122.10(1)(G) so that GHGs will now be covered as a pollutant subject to federal operating permit requirements. The proposed changes also revise the §122.10(14) definition of "Major source" to set a 100,000 tpy CO_2e threshold for sites which will be required to obtain a Title V permit. (Sites must also exceed 100 tpy of GHG on a mass basis to become a major source.) A definition of "Carbon dioxide equivalent (CO_2e) emissions" is also added to §122.10(3) to specify how that value is calculated.

It is anticipated that as a result of these proposed rules, TCEQ will have to review Title V permit applications for the large number (estimated to be approximately 1,800 over the first five years the proposed rules are in effect) of additional sites that will now be subject to Title V federal operating permits due to emissions of GHGs. Additional resources also will be required to support enforcement and compliance with these permits.

The agency is required by federal law to assess and collect fees sufficient enough to support the Title V permitting program. It is anticipated that increased emissions fee revenue will be sufficient to cover the costs of implementing the Title V operating permit program. Although there is not a direct fee assessed on emissions of GHGs, the rule changes will cause a substantial number of additional sites to become subject to the §101.27 emissions fee rule, which will require them to pay fees on their emission of non-GHGs pollutants. Estimated revenue to Account 5094 Operating Permit Fees is estimated to be $76,460 in Fiscal Year 2014, $886,722 in Fiscal Year 2015, and increase up to $3,049,989 in Fiscal Year 2018.

The Legislature appropriated TCEQ $58,680 in Fiscal Year 2014 and $726,682 in Fiscal Year 2015 out of Operating Permit Fees Account 5094 to implement HB 788. The agency was also granted authority for one additional full time equivalent (FTE) position in Fiscal Year 2014 and ten FTEs in Fiscal Year 2015. Starting in Fiscal Year 2016, it is anticipated that the TCEQ would need to add nine additional FTEs to perform compliance investigations for GHG Title V permits, process and issue GHG Title V permits, perform emissions inventories, load emissions data, enhance reporting tools, assess emission fees, provide reporting assistance, review inventories, and audit fee data. Starting in Fiscal Year 2017, the TCEQ would need to add an estimated ten additional FTEs to perform compliance investigations for GHG Title V permits, supervise the additional regional investigators, perform emission inventory activities, and process enforcement cases. Starting in Fiscal Year 2018, the TCEQ would need to add an estimated ten additional FTEs to perform compliance investigations for GHG Title V permits, supervise the additional regional investigators, perform emissions inventory activities, and process enforcement cases. The agency will need a total of 39 FTEs as of Fiscal Year 2018 to implement HB 788.

State agencies which operate a stationary source of emissions of GHGs of sufficient size may require a Title V permit, and thus may become subject to emission fees. Agencies may have boilers, incinerators, or other equipment that could be subject to Title V requirements because of emissions of GHGs. Agency staff does not have enough information to know how many state agencies could be affected. Some units of local government operate stationary sources of GHGs of sufficient size to be affected and would include sites of an industrial or commercial nature,

such as power generating stations and landfills. Sites with CO_2e emissions meeting or exceeding 100,000 tpy (and 100 tpy GHGs on a mass basis) would be required to obtain a Title V permit, and would become subject to emission fees for their non-GHG emissions. Some of these sites will already have a Title V permit and already be subject to fees due to major emissions of other pollutants. Based on available information, staff estimate approximately 270 local government sites could be affected for the five-year period after the rules are implemented (270 sites would be 15% of the 1,800 total sites estimated to be affected).

Assuming 15% of the total new emissions fee revenue comes from units of local government, it is estimated that costs to units of government who own or operate affected sites would be $11,469 in Fiscal Year 2014, $470,516 in Fiscal Year 2015, $571,201 in Fiscal Year 2016, $684,549 in Fiscal Year 2017, and $794,998 in Fiscal Year 2018. A typical Title V application for these additional GHGs Title V sites is estimated to cost the applicant $5,000 to develop and produce the application. Assuming that GHGs Title V permitting begins in Fiscal Year 2015, and one fourth of the projected 270 sites will be permitted each year, then total permit application costs for local governments each year are estimated to be $337,500. Total annual emissions fee costs and application costs beginning in Fiscal Year 2015 are estimated to be $808,016 in Fiscal Year 2015, $908,701 in Fiscal Year 2016, $1,022,049 in Fiscal Year 2017, and $1,132,498 in Fiscal Year 2018.

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 the continued protection of the public health and safety through the implementation of an efficient and effective state GHGs Title V permitting process, while maintaining compliance with state and federal law.

The proposed rules will have a fiscal impact on businesses that own or operate a site which has stationary sources which emit GHGs in quantities that meet or exceed 100,000 tpy CO_2e. The proposed rules are not anticipated to have direct fiscal implications for individuals unless they own or operate affected facilities. In order to comply, affected businesses will be required to obtain a Title V federal operating permit and pay emission fees.

Staff estimates that approximately 1,530 (about 85% of the total estimated 1,800 affected sites) industrial sites will be affected by the proposed rule changes. These sites are likely to be in the oil and gas industry, petrochemical industry, electric utilities, and general manufacturing, but also may include other types of industries.

Assuming 85% of the total new emission fee revenue comes from business and industry, it is estimated that emission fee costs to businesses that own or operate affected sites would be $64,991 in Fiscal Year 2014, $753,756 in Fiscal Year 2015, $1,324,306 in Fiscal Year 2016, $1,966,611 in Fiscal Year 2017, and $2,592,490 in Fiscal Year 2018. A typical Title V application for these additional GHGs Title V sites is estimated to cost the applicant $5,000 to develop and produce the application. Assuming that GHGs Title V permitting begins in Fiscal Year 2015, and one fourth of the projected 1,530 sites will be permitted each year, then total permit application costs each year are estimated to be $1,912,500. Total annual emission fee costs and application costs beginning in Fiscal Year 2015 are estimated to be $2,666,256 in Fiscal Year 2015, $3,236,806 in Fiscal Year 2016, $3,879,111 in Fiscal Year 2017, and $4,504,990 in Fiscal Year 2018.

Small Business and Micro-Business Assessment

Adverse fiscal implications are anticipated for small or micro-businesses for the first five year period the proposed rules are in effect. The proposed rules will have a fiscal impact on small or micro-businesses that own or operate a site which has stationary sources which emit GHGs in quantities that meet or exceed 100,000 tpy CO_2e. In order to comply, affected businesses will be required to obtain a Title V federal operating permit and pay emissions fees. There is not enough data on emissions of GHGs from small businesses to predict how many will be affected with a high degree of accuracy. Staff estimates that at least 150 (about 10% of the total 1,530 affected sites owned by business) small business sites could be affected by the proposed requirements, at a minimum, but the number could be substantially higher. These sites are likely to be in the oil and gas industry, petrochemical industry, electric utilities, and general manufacturing, but may also be in other types of industries.

If 10% of the total new emission fee revenue from business and industry comes from small or micro-businesses, it is estimated then that emission fee costs to businesses that own or operate affected sites would be $6,499 in Fiscal Year 2014, $75,375 in Fiscal Year 2015, $132,430 in Fiscal Year 2016, $196,661 in Fiscal Year 2017, and $259,249 in Fiscal Year 2018. A typical Title V application for these additional GHGs Title V sites is estimated to cost the applicant $5,000 to develop and produce the application. Assuming that GHGs Title V permitting begins in Fiscal Year 2015, and one fourth of the projected 150 sites will be permitted each year, then total permit application costs each year are estimated to be $187,500. Total annual emission fee costs and application costs beginning in Fiscal Year 2015 are estimated to be $262,875 in Fiscal Year 2015, $319,930 in Fiscal Year 2016, $384,161 in Fiscal Year 2017, and $446,749 in Fiscal Year 2018.

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 by state and federal law and therefore are consistent with the health, safety, or environmental and economic welfare of the state.

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 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 specific intent of the proposed revisions to Chapter 122 is to implement relevant provisions of HB 788 to add six GHGs to the pollutants subject to the Operating Permits program and to establish the emissions thresholds for applicability of the program consistent with federal requirements in the final Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule in the June 3, 2010, issue of the *Federal Register* (75 FR 31514).

Additionally, even if the rules met the definition of a major environmental rule, 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 proposed rules would implement requirements of the FCAA. Under 42 United States Code (USC), §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, attain, maintain, and enforce the NAAQS within the state. One of the requirements of 42 USC, §7410 is for states to include programs for the regulation of the modification and construction of any stationary source within the area covered by the plan as necessary to assure that the NAAQS are achieved, including a permit program as required in FCAA, Parts C and D, or NSR. Title V of the FCAA (42 USC, §§7661 - 7661e) requires each state to adopt and implement an operating permits program consistent with EPA regulations. This rulemaking will implement provisions in HB 788 to establish the TCEQ as the Title V permitting authority for major sources of emissions of GHGs in Texas and will do so consistent with federal law governing this program. Specifically, the proposed amendments to Chapter 122 would add six GHGs to the pollutants subject to the Operating Permits program and establish the emissions thresholds for applicability of the program consistent with federal requirements in the Tailoring Rule, and to ensure that relevant sections of Chapter 122 can be a federally approved part of the Texas SIP.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633, 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded, "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the Legislative Budget Board, the commission believes that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the proposed rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, the proposed rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *(Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue,* 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ). Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied);* and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978)).

The commission's interpretation of the RIA requirements is also supported by a change made to the 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" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The proposed rules do not exceed an express requirement in federal or state law. This rulemaking implements relevant provisions of THSC, §382.05102, as added by HB 788, 83rd Legislature, 2013. The proposed rules do not exceed a requirement of a delegation agreement or any contract between the state and a federal agency, because there is no agreement applicable to this rulemaking, and are not adopted solely under the general powers of the agency but are authorized by specific sections of THSC, Chapter 382 (also known as the Texas Clean Air Act (TCAA)), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble. Therefore, this proposed

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

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 Texas Constitution §17 or §19, Article I; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for the proposed rulemaking under the Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking, as discussed elsewhere in this preamble, is to implement provisions in HB 788 to establish the TCEQ as the permitting authority for major sources of emissions of GHGs in Texas and to do so consistent with federal law. Specifically, the proposed amendments to Chapter 122 would add six GHGs to the pollutants subject to the Federal Operating Permits program and to establish the emissions thresholds for applicability of the program consistent with federal requirements in the Tailoring Rule.

The proposed rules will not create any additional burden on private real property. The proposed 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 proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the 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 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 the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Advisory Committee and determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed rules amend and update rules that govern the applicability of the Title V program to major sources of emissions of GHGs. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking 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.

Effect on Sites Subject to the Federal Operating Permits Program

This proposal impacts owners and operators of sites subject to the Texas Operating Permits Program (Title V) requiring applications for or revisions to operating permits. The proposal would also create new Title V sources subject to the program for only emissions of GHGs.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 5, 2013, at 2:00 p.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 Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-040-116-AI. The comment period closes December 9, 2013. 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 Tasha Burns, Operational Support, Air Permits Division at (512) 239-5868.

SUBCHAPTER A. DEFINITIONS

30 TAC §122.10

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, 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), §382.011, concerning General Powers and Duties, which authorizes the commission to administer the requirements of the Texas Clean Air Act (TCAA), THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with this chapter; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits; THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits; and THSC, §382.05102, which relates to the permitting authority of the commission for emissions of greenhouse gases. Additional relevant sections are Texas Government Code, §2006.004, concerning Requirements to Adopt Rules of Practice and Index Rules, Orders, Decisions, which requires state agencies to adopt procedural rules and, Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation. The amendment is also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7661 - 7661e, which requires states to develop and submit permit programs to EPA that implement the requirements of the Title V program.

The proposed amendment implements House Bill 788, 83rd Legislature, 2013, TWC, §§5.102, 5.103, and 5.105; THSC, §§382.011, 382.017, 382.051, 382.0513, 382.0515, 382.054, 382.0541, 382.0543, 382.05102, 382.0515, and 382.0518; Texas Government Code, §2001.004 and §2001.006; and FCAA, 42 USC, §§7661 - 7661e.

§122.10. General Definitions.

The definitions in the Texas Clean Air Act, Chapter 101 of this title (relating to General Air Quality Rules), and Chapter 3 of this title (relating to Definitions) apply to this chapter. In addition, the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Air pollutant--Any of the following regulated air pollutants:

(A) nitrogen oxides;

(B) volatile organic compounds;

(C) any pollutant for which a national ambient air quality standard has been promulgated;

(D) any pollutant that is subject to any standard promulgated under Federal Clean Air Act (FCAA), §111 (Standards of Performance for New Stationary Sources);

(E) unless otherwise specified by the United States Environmental Protection Agency (EPA) by rule, any Class I or II substance subject to a standard promulgated under or established by FCAA, Title VI (Stratospheric Ozone Protection); [~~or~~]

(F) any pollutant subject to a standard promulgated under FCAA, §112 (Hazardous Air Pollutants) or other requirements established under §112, including §112(g), (j), and (r), including any of the following:

(i) any pollutant subject to requirements under FCAA, §112(j). If the EPA fails to promulgate a standard by the date established under FCAA, §112(e), any pollutant for which a subject site would be major shall be considered to be regulated on the date 18 months after the applicable date established under FCAA, §112(e); and

(ii) any pollutant for which the requirements of FCAA, §112(g)(2) have been met, but only with respect to the individual site subject to FCAA, §112(g)(2) requirement; or[~~.~~]

(G) greenhouse gases (GHGs)--as defined in §101.1 of this title (relating to Definitions).

(2) Applicable requirement--All of the following requirements, including requirements that have been promulgated or approved by the United States Environmental Protection Agency (EPA) through rulemaking at the time of issuance but have future-effective compliance dates:

(A) all of the requirements of Chapter 111 of this title (relating to Control of Air Pollution From Visible Emissions and Particulate Matter) as they apply to the emission units at a site;

(B) all of the requirements of Chapter 112 of this title (relating to Control of Air Pollution from Sulfur Compounds) as they apply to the emission units at a site;

(C) all of the requirements of Chapter 113 of this title (relating to Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants), as they apply to the emission units at a site;

(D) all of the requirements of Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds) as they apply to the emission units at a site;

(E) all of the requirements of Chapter 117 of this title (relating to Control of Air Pollution From Nitrogen Compounds) as they apply to the emission units at a site;

(F) the following requirements of Chapter 101 of this title (relating to General Air Quality Rules):

(i) Chapter 101, Subchapter A of this title (relating to General Rules), §101.1 of this title (relating to Definitions), insofar as the terms defined in this section are used to define the terms used in other applicable requirements;

(ii) Chapter 101, Subchapter A, §101.3 and §101.10 of this title (relating to Circumvention; and Emissions Inventory Requirements);

(iii) Chapter 101, Subchapter A, §101.8 and §101.9 of this title (relating to Sampling; and Sampling Ports [~~Reports~~]) if the commission or the executive director has requested such action;

(iv) Chapter 101, Subchapter F of this title (relating to Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities), §§101.201, 101.211, 101.221, 101.222, and 101.223 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements; Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements; Operational Requirements; Demonstrations; and Actions to Reduce Excessive Emissions); and

(v) Chapter 101, Subchapter H of this title (relating to Emissions Banking and Trading) as it applies to the emission units at a site;

(G) any site-specific requirement of the state implementation plan;

(H) all of the requirements under Chapter 106, Subchapter A of this title (relating to Permits by Rule), or Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) and any term or condition of any preconstruction permit;

(I) all of the following federal requirements as they apply to the emission units at a site:

(i) any standard or other requirement under Federal Clean Air Act (FCAA), §111 (Standards of Performance for New Stationary Sources);

(ii) any standard or other requirement under FCAA, §112 (Hazardous Air Pollutants);

(iii) any standard or other requirement of the Acid Rain or Clean Air Interstate Rule Programs;

(iv) any requirements established under FCAA, §504(b) or §114(a)(3) (Monitoring and Analysis or Inspections, Monitoring, and Entry);

(v) any standard or other requirement governing solid waste incineration under FCAA, §129 (Solid Waste Combustion);

(vi) any standard or other requirement for consumer and commercial products under FCAA, §183(e) (Federal Ozone Measures);

(vii) any standard or other requirement under FCAA, §183(f) (Tank Vessel Standards);

(viii) any standard or other requirement under FCAA, §328 (Air Pollution from Outer Continental Shelf Activities);

(ix) any standard or other requirement under FCAA, Title VI (Stratospheric Ozone Protection), unless EPA has determined that the requirement need not be contained in a permit; [~~and~~]

(x) any increment or visibility requirement under FCAA, Title I, Part C or any national ambient air quality standard, but only as it would apply to temporary sources permitted under FCAA, §504(e) (Temporary Sources); and

(xi) any FCAA, Title I, Part C (relating to Prevention of Significant Deterioration) permit issued by EPA; and

(J) the following are not applicable requirements under this chapter, except as noted in subparagraph (I)(x) of this paragraph:

(i) any state or federal ambient air quality standard;

(ii) any net ground level concentration limit;

(iii) any ambient atmospheric concentration limit;

(iv) any requirement for mobile sources;

(v) any asbestos demolition or renovation requirement under 40 Code of Federal Regulations (CFR) Part 61, Subpart M (National Emissions Standards for Asbestos);

(vi) any requirement under 40 CFR Part 60, Subpart AAA (Standards of Performance for New Residential Wood Heaters); and

(vii) any state only requirement (including §111.131 of this title (relating to Definitions), §111.133 of this title (relating to Testing Requirements), §111.135 of this title (relating to Control Requirements for Surfaces with Coatings Containing Lead), §111.137 of this title (relating to Control Requirements for Surfaces with [~~Surface~~] Coatings Containing Less Than [~~containing less than~~] 1.0% Lead), and §111.139 of this title (relating to Exemptions).

(3) Carbon dioxide equivalent (CO_2e) emissions--shall represent

(A) an amount of greenhouse gases (GHGs) emitted, and shall be computed by multiplying the mass amount of emissions in tons per year (tpy) for the GHGs, as defined in §101.1 of this title (relating to Definitions), by the gas's associated global warming potential as published in 40 Code of Federal Regulations Part 98, Subpart A, Table A-1 - Global Warming Potentials, and summing the resultant values.

(B) For purposes of this paragraph, prior to July 21, 2014, the mass of the GHG carbon dioxide (CO_2) shall not include CO_2 emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

(4) [~~(3)~~] Continuous compliance determination method--For purposes of Subchapter G of this chapter (relating to Periodic Monitoring and Compliance Assurance Monitoring), a method, specified by an applicable requirement, which satisfies the following criteria:

(A) the method is used to determine compliance with an emission limitation or standard on a continuous basis consistent with the averaging period established for the emission limitation or standard; and

(B) the method provides data either in units of the emission limitation or standard or correlated directly with the emission limitation or standard.

(5) [~~(4)~~] Control device--For the purposes of compliance assurance monitoring applicability, specified in §122.604 of this title (relating to Compliance Assurance Monitoring Applicability), the control device definition specified in 40 Code of Federal Regulations Part 64, concerning Compliance Assurance Monitoring, applies.

(6) [~~(5)~~] Deviation--Any indication of noncompliance with a term or condition of the permit as found using compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit and any other credible evidence or information.

(7) [~~(6)~~] Deviation limit--A designated value(s) or condition(s) which establishes the boundary for an indicator of performance. Operation outside of the boundary of the indicator of performance shall be considered a deviation.

(8) [~~(7)~~] Draft permit--The version of a permit available for the 30-day comment period under public announcement or public notice and affected state review. The draft permit may be the same document as the proposed permit.

(9) [~~(8)~~] Emission unit--A discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a point of origin of air pollutants, including appurtenances.

(A) A point of origin of fugitive emissions from individual pieces of equipment, e.g., valves, flanges, pumps, and compres-

sors, shall not be considered an individual emission unit. The fugitive emissions shall be collectively considered as an emission unit based on their relationship to the associated process.

(B) The term may also be used in this chapter to refer to a group of similar emission units.

(C) This term is not meant to alter or affect the definition of the term "unit" for purposes of the Acid Rain Program.

(10) [~~(9)~~] Federal Clean Air Act, §502(b)(10) changes--Changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(11) [~~(10)~~] Final action--Issuance or denial of the permit by the executive director.

(12) [~~(11)~~] General operating permit--A permit issued under Subchapter F of this chapter (relating to General Operating Permits), under which multiple similar stationary sources may be authorized to operate.

(13) [~~(12)~~] Large pollutant-specific emission unit--An emission unit with the potential to emit, taking into account control devices, the applicable air pollutant in an amount equal to or greater than 100% of the amount, in tons per year, required for a source to be classified as a major source, as defined in this section.

(14) [~~(13)~~] Major source--

(A) For pollutants other than radionuclides, any site that emits or has the potential to emit, in the aggregate the following quantities:

(i) ten tons per year (tpy) or more of any single hazardous air pollutant listed under Federal Clean Air Act (FCAA), §112(b) (Hazardous Air Pollutants);

(ii) 25 tpy or more of any combination of hazardous air pollutant listed under FCAA, §112(b); or

(iii) any quantity less than those identified in clause (i) or (ii) of this subparagraph established by the United States Environmental Protection Agency (EPA) through rulemaking.

(B) For radionuclides regulated under FCAA, §112, the term "major source" has the meaning specified by the EPA by rule.

(C) Any site which directly emits or has the potential to emit, 100 tpy or more of any air pollutant except for greenhouse gases (GHGs). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major source, unless the stationary source belongs to one of the following categories of stationary sources:

(i) coal cleaning plants (with thermal dryers);

(ii) kraft pulp mills;

(iii) portland cement plants;

(iv) primary zinc smelters;

(v) iron and steel mills;

(vi) primary aluminum ore reduction plants;

(vii) primary copper smelters;

(viii) municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) hydrofluoric, sulfuric, or nitric acid plants;

(x) petroleum refineries;

(xi) lime plants;

(xii) phosphate rock processing plants;

(xiii) coke oven batteries;

(xiv) sulfur recovery plants;

(xv) carbon black plants (furnace process);

(xvi) primary lead smelters;

(xvii) fuel conversion plant;

(xviii) sintering plants;

(xix) secondary metal production plants;

(xx) chemical process plants;

(xxi) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units (Btu) per hour heat input;

(xxii) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) taconite ore processing plants;

(xxiv) glass fiber processing plants;

(xxv) charcoal production plants;

(xxvi) fossil fuel-fired steam electric plants of more than 250 million Btu per hour heat input; or

(xxvii) any stationary source category regulated under FCAA, §111 (Standards of Performance for New Stationary Sources) or §112 for which the EPA has made an affirmative determination under FCAA, §302(j) (Definitions).

(D) Any site, except those exempted under FCAA, §182(f) (NO_x Requirements), which, in whole or in part, is a major source under FCAA, Title I, Part D (Plan Requirements for Nonattainment Areas), including the following:

(i) any site with the potential to emit 100 tpy or more of volatile organic compounds (VOC) or nitrogen oxides (NO_x) in any ozone nonattainment area classified as "marginal or moderate";

(ii) any site with the potential to emit 50 tpy or more of VOC or NO_x in any ozone nonattainment area classified as "serious";

(iii) any site with the potential to emit 25 tpy or more of VOC or NO_x in any ozone nonattainment area classified as "severe";

(iv) any site with the potential to emit ten tpy or more of VOC or NO_x in any ozone nonattainment area classified as "extreme";

(v) any site with the potential to emit 100 tpy or more of carbon monoxide (CO) in any CO nonattainment area classified as "moderate";

(vi) any site with the potential to emit 50 tpy or more of CO in any CO nonattainment area classified as "serious";

(vii) any site with the potential to emit 100 tpy or more of inhalable particulate matter (PM-10) in any PM-10 nonattainment area classified as "moderate";

(viii) any site with the potential to emit 70 tpy or more of PM-10 in any PM-10 nonattainment area classified as "serious"; and

(ix) any site with the potential to emit 100 tpy or more of lead in any lead nonattainment area.

(E) The fugitive emissions of a stationary source shall not be considered in determining whether it is a major source under subparagraph (D) of this paragraph, unless the stationary source belongs to one of the categories of stationary sources listed in subparagraph (C) of this paragraph.

(F) Any temporary source which is located at a site for less than six months shall not affect the determination of a major source for other stationary sources at a site under this chapter or require a revision to the existing permit at the site.

(G) Emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not the units are in a contiguous area or under common control, to determine whether the units or stations are major sources under subparagraph (A) of this paragraph.

(H) For GHGs, any site that emits or has the potential to emit 100 tpy or more of GHGs on a mass basis and 100,000 tpy carbon dioxide equivalent (CO_2e) emissions or more. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major source, unless the stationary source belongs to one of the categories of stationary sources listed in subparagraph (C) of this paragraph.

(15) [~~(14)~~] Notice and comment hearing--Any hearing held under this chapter. Hearings held under this chapter are for the purpose of receiving oral and written comments regarding draft permits.

(16) [~~(15)~~] Permit or federal operating permit--

(A) any permit, or group of permits covering a site, that is issued, renewed, or revised under this chapter; or

(B) any general operating permit issued, renewed, or revised by the executive director under this chapter.

(17) [~~(16)~~] Permit anniversary--The date that occurs every 12 months after the initial permit issuance, the initial granting of the authorization to operate, or renewal.

(18) [~~(17)~~] Permit application--An application for an initial permit, permit revision, permit renewal, permit reopening, general operating permit, or any other similar application as may be required.

(19) [~~(18)~~] Permit holder--A person who has been issued a permit or granted the authority by the executive director to operate under a general operating permit.

(20) [~~(19)~~] Permit revision--Any administrative permit revision, minor permit revision, or significant permit revision that meets the related requirements of this chapter.

(21) [~~(20)~~] Potential to emit--The maximum capacity of a stationary source to emit any air pollutant under its physical and operational design or configuration. Any certified registration established under §106.6 of this title (relating to Registration of Emissions), §116.611 of this title (relating to Registration to Use a Standard Permit), or §122.122 of this title (relating to Potential to Emit), or a permit by rule under Chapter 106 of this title (relating to Permits by Rule) or other new source review permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) restricting emissions or any physical or operational limitation on the capacity of a stationary source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the United States Environmental Protection Agency. This term does not alter or affect the use of this term for any other purposes under the Federal Clean Air Act (FCAA), or the term "capacity factor" as used in Acid Rain provisions of the FCAA or the Acid Rain rules.

(22) [~~(21)~~] Preconstruction authorization--Any authorization to construct or modify an existing facility or facilities under Chapter 106 and Chapter 116 of this title (relating to Permits by Rule; and Control of Air Pollution by Permits for New Construction or Modification). In this chapter, references to preconstruction authorization will also include the following:

(A) any requirement established under Federal Clean Air Act (FCAA), §112(g) (Modifications); and

(B) any requirement established under FCAA, §112(j) (Equivalent Emission Limitation by Permit).

(23) [~~(22)~~] Predictive emission monitoring system--A system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard.

(24) [~~(23)~~] Proposed permit--The version of a permit that the executive director forwards to the United States Environmental Protection Agency for a 45-day review period. The proposed permit may be the same document as the draft permit.

(25) [~~(24)~~] Provisional terms and conditions--Temporary terms and conditions, established by the permit holder for an emission unit affected by a change at a site, or the promulgation or adoption of an applicable requirement or state-only requirement, under which the permit holder is authorized to operate prior to a revision or renewal of a permit or prior to the granting of a new authorization to operate.

(A) Provisional terms and conditions will only apply to changes not requiring prior approval by the executive director.

(B) Provisional terms and conditions shall not authorize the violation of any applicable requirement or state-only requirement.

(C) Provisional terms and conditions shall be consistent with and accurately incorporate the applicable requirements and state-only requirements.

(D) Provisional terms and conditions for applicable requirements and state-only requirements shall include the following:

(i) the specific regulatory citations in each applicable requirement or state-only requirement identifying the emission limitations and standards;

(ii) the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards identified under clause (i) of this subparagraph; and

(iii) where applicable, the specific regulatory citations identifying any requirements that no longer apply.

(26) [~~(25)~~] Renewal--The process by which a permit or an authorization to operate under a general operating permit is renewed at the end of its term under §§122.241, 122.501, or 122.505 of this title (relating to Permit Renewals; General Operating Permits; or Renewal of the Authorization to Operate Under a General Operating Permit).

(27) [~~(26)~~] Reopening--The process by which a permit is reopened for cause and terminated or revised under §122.231 of this title (relating to Permit Reopenings).

(28) [~~(27)~~] Site--The total of all stationary sources located on one or more contiguous or adjacent properties, which are under common control of the same person (or persons under common control).

A research and development operation and a collocated manufacturing facility shall be considered a single site if they each have the same two-digit Major Group Standard Industrial Classification (SIC) code (as described in the Standard Industrial Classification Manual, 1987) or the research and development operation is a support facility for the manufacturing facility.

(29) [(28)] State-only requirement--Any requirement governing the emission of air pollutants from stationary sources that may be codified in the permit at the discretion of the executive director. State-only requirements shall not include any requirement required under the Federal Clean Air Act or under any applicable requirement.

(30) [(29)] Stationary source--Any building, structure, facility, or installation that emits or may emit any air pollutant. Nonroad engines, as defined in 40 Code of Federal Regulations Part 89 (Control of Emissions from New and In-use Nonroad Engines), shall not be considered stationary sources for the purposes of this chapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
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For further information, please call: (512) 239-0779

SUBCHAPTER B. PERMIT REQUIREMENTS
DIVISION 2. APPLICABILITY

30 TAC §122.122

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), §382.011, concerning General Powers and Duties, which authorizes the commission to administer the requirements of the Texas Clean Air Act (TCAA), THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with this chapter; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits; THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits; and THSC, §382.05102, which relates to the permitting authority of the commission for emissions of GHGs. Additional relevant sections are Texas Government Code, §2006.004, concerning Requirements to Adopt Rules of Practice and Index Rules, Orders, Decisions, which requires state agencies to adopt procedural rules and, Texas Government Code §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation. The amendments are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7661 - 7661e, which requires states to develop and submit permit programs to the United States Environmental Protection Agency that implement the requirements of the Title V program.

The proposed amendment implements House Bill 788, 83rd Legislature, 2013, TWC, §§5.102, 5.103, and 5.105; THSC, §§382.011, 382.017, 382.051, 382.0513, 382.0515, 382.054, 382.0541, 382.0543, 382.05102, 382.0515, and 382.0518; Texas Government Code, §2001.004 and §2001.006; and FCAA, 42 USC, §§7661 - 7661e.

§122.122. Potential to Emit.

(a) For purposes of determining applicability of the Federal Operating Permit Program under this chapter, the owner or operator of stationary sources without any other federally-enforceable emission rate may limit their sources' potential to emit by maintaining a certified registration of emissions, which shall be federally-enforceable. Emission rates in new source review permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) and certified registrations provided for under Chapter [Chapters] 106 of this title (relating to Permits by Rule) or Chapter 116 of this title are also federally-enforceable emission rates.

(b) All representations in any registration of emissions under this section with regard to emissions, production or operational limits, monitoring, and reporting shall become conditions upon which the stationary source shall operate. It shall be unlawful for any person to vary from such representation unless the registration is first revised.

(c) The registration of emissions shall include documentation of the basis of emission rates and a certification, in accordance with §122.165 of this title (relating to Certification by a Responsible Official), that the maximum emission rates listed on the registration reflect the reasonably anticipated maximums for operation of the stationary source.

(d) In order to qualify for registrations of emissions under this section, the maximum emission rates listed in the registration must be less than those rates defined for a major source in §122.10 of this title (relating to General Definitions).

(e) The certified registrations of emissions shall be submitted to the executive director; to the appropriate commission regional office; and to all local air pollution control agencies having jurisdiction over the site.

(1) Certified registrations established prior to December 11, 2002, [the effective date of this rule] shall be submitted on or before February 3, 2003.

(2) Certified registrations established on or after December 11, 2002, [the effective date of this rule] shall be submitted no later than the date of operation.

(3) Certified registrations established for greenhouse gases (GHGs) (as defined in §101.1 of this title (relating to Definitions)) on or after the effective date of the United States Environmental Protection Agency's final action approving amendments to this section shall be submitted:

(A) for existing sites that emit or have the potential to emit GHGs, no later than 90 days after the effective date of EPA's final action on this section; or

(B) for new sites that emit or have the potential to emit GHGs, no later than the date of operation.

(f) All certified registrations and records demonstrating compliance with a certified registration shall be maintained on-site and shall be provided, upon request, during regular business hours to representatives of the appropriate commission regional office and any local air pollution control agency having jurisdiction over the site. If however, the site normally operates unattended, certified registrations and records demonstrating compliance with the certified registration must be maintained at an office within Texas having day-to-day operational control of the site. Upon request, the commission shall make any such records of compliance available to the public in a timely manner.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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DIVISION 3. PERMIT APPLICATION

30 TAC §122.130

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), §382.011, concerning General Powers and Duties, which authorizes the commission to administer the requirements of the Texas Clean Air Act (TCAA), THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with this chapter; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits; THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits; and THSC, §382.05102, which relates to the permitting authority of the commission for emissions of GHGs. Additional relevant sections are Texas Government Code, §2006.004, concerning Requirements to Adopt Rules of Practice and Index Rules, Orders, Decisions, which requires state agencies to adopt procedural rules and, Texas Government Code §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation. The amendments are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7661 - 7661e, which requires states to develop and submit permit programs to the United States Environmental Protection Agency that implement the requirements of the Title V program.

The proposed amendments implement House Bill 788, 83rd Legislature, 2013, TWC, §§5.102, 5.103, and 5.105; THSC, §§382.011, 382.017, 382.051, 382.0513, 382.0515, 382.054, 382.0541, 382.0543, 382.05102, 382.0515, and 382.0518; Texas Government Code, §2001.004 and §2001.006; and FCAA, 42 USC, §§7661 - 7661e.

§122.130. Initial Application Due Dates.

(a) Owners or operators of any site subject to the requirements of this chapter on February 1, 1998, shall submit abbreviated initial applications by February 1, 1998. The executive director shall inform the applicant in writing of the deadline for submitting the remaining application information.

(b) Owners and operators of sites identified in §122.120 of this title (relating to Applicability) that become subject to the requirements of this chapter after February 1, 1998 are subject to the following requirements.

(1) If the site is a new site or a site that will become subject to the program as the result of a change at the site, the owner or operator shall not operate the change, or the new emission units, before an abbreviated application is submitted under this chapter. The executive director shall inform the applicant in writing of the deadline for submitting the remaining information.

(2) If the site becomes subject to the program as the result of an action by the executive director or the United States Environmental Protection Agency (EPA) [EPA], the owner or operator will submit an abbreviated application no later than 12 months after the action that subjects the site to the requirements of this chapter.

(3) If the site becomes subject to the program as a result of rulemaking that adds greenhouse gas sources to the Federal Operating Permits Program, the owner or operator will submit an abbreviated application no later than 12 months after EPA's final action approving either the Federal Operating Permits Program revision or the revision of §122.122 of this title (relating to Potential to Emit) into the State Implementation Plan, whichever is later.

(c) Applications submitted under 40 Code of Federal Regulations (CFR) Part [CFR] 71 (Federal Operating Permit Programs).

(1) If 40 CFR Part 71 is implemented in Texas by the EPA, applications will only be required to be submitted to the EPA.

(2) If all or part of 40 CFR Part 71 is delegated to the commission, information required by this chapter and consistent with the delegation will be required to be submitted to the commission.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 1. ORGANIZATION AND ADMINISTRATION
SUBCHAPTER J. AIRCRAFT OPERATIONS

37 TAC §1.143

The Texas Department of Public Safety (the department) proposes new §1.143, concerning Use of Unmanned Aircraft by a Law Enforcement Authority. The 83rd Legislative Session enacted House Bill 912 which created Texas Government Code, Chapter 423, the Texas Privacy Act. Texas Government Code, §423.007 authorizes the department to adopt rules and guidelines for use of an unmanned aircraft by a law enforcement authority in Texas. This proposal is necessary to establish those guidelines.

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

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

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be publication of the guidelines related to the use of unmanned aircraft by law enforcement authority in Texas.

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

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

Comments on this proposal may be submitted to Chief Bill Nabors, Texas Department of Public Safety, 5805 N. Lamar Boulevard, Austin, Texas 78773-0001. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and §423.007 which authorizes the department to adopt rules and guidelines for use of an unmanned aircraft by a law enforcement authority in Texas.

Texas Government Code, §411.004(3) and §423.007 are affected by this proposal.

§1.143. Use of Unmanned Aircraft by a Law Enforcement Authority.

(a) General. Texas Government Code, §423.007 provides for the department to adopt rules and guidelines for use of an unmanned aircraft by a law enforcement authority in Texas.

(b) Rules and Guidelines. Each law enforcement authority in Texas that uses unmanned aircraft shall comply with the Federal Aviation Administration minimum requirements as contained in the Memorandum of Understanding Between Federal Aviation Administration, Unmanned Aircraft Systems Integration Office, and the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice Concerning Operation of Unmanned Aircraft Systems by Law Enforcement Agencies. The memorandum and attachments may be viewed at: http://www.txdps.state.tx.us/Director_Staff/MOU/MOU.pdf.

(c) Reporting by Agency. Not earlier than January 1 and not later than January 15 of each odd-numbered year, each state law enforcement agency and each county or municipal law enforcement agency located in a county or municipality, as applicable, with a population greater than 150,000, that used or operated an unmanned aircraft during the preceding 24 months shall issue a written report to the governor, the lieutenant governor, and each member of the legislature as provided by Texas Government Code, §423.008.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER I. RELEASE OF DRIVER RECORD INFORMATION

37 TAC §15.142

The Texas Department of Public Safety (the department) proposes amendments to §15.142, concerning Agreement to Purchase Driver Record Information. The 81st Texas Legislature enacted House Bill 2730 which added Texas Transportation Code, §521.060 and the 82nd Texas Legislature enacted House Bill 2657, which renumbered §521.060 to §521.062, allowing the department to establish a driver record monitoring pilot program by rule for a period not to exceed one year. The amendments to this rule establish the department's intent to initiate a pilot monitoring program with up to three persons eligible pursuant to Texas Transportation Code, §521.062(b). All requirements relating to privacy and the release of information are contained within the statute. If the department determines that the program will be recommended as a permanent program, a formal report will be prepared and submitted to the lieutenant governor, the speaker of the house of representatives and each member of the legislature in accordance with Texas Transportation Code, §521.062(m), prior to a request being submitted to the Public Safety Commission. This rule will then be modified to accommodate a permanent program.

In the June 21, 2013, issue of the *Texas Register* (38 TexReg 3892), the department published proposed amendments to §15.142. The department received four written comments on the June 21st proposal. In response to these written comments, the department withdrew the proposal and redrafted the text of the rule to include all persons eligible under Texas Transportation Code, §521.062(b) in the pilot program. Additionally, the department identified a minimum and maximum range for fees in the driver record monitoring program.

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

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

In addition, Ms. Hudson has determined that for the first year the rule is in effect the public benefit anticipated as a result of the rule will be that the insurance industry can monitor more drivers and ensure increased safety on the roadways of Texas.

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

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

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

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.062(a), which authorizes the department to establish by rule a driver record monitoring pilot program.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.062 are affected by this proposal.

§15.142. Agreement to Monitor Certain Records and Purchase Driver Record Information.

(a) The department approved Agreement Form will be used by all parties desiring to monitor certain records and/or purchase driver record information.

(1) The pilot for a driver record monitoring program will be limited to persons eligible under Texas Transportation Code, §521.062(b). Solicitation for participation will be announced in the *Texas Register,* and selection criteria will be established so that agreements will be made with a maximum of three participants.

(2) Fees for the driver record monitoring program will be set by contract based on the volume of records purchased during the period of the contract, and will be no less than $ .06 per record per month monitored to no more than $ .20 per record per month monitored.

(b) The department will review all agreements to determine the requestor's eligibility to enter into this agreement.

(c) The agreement will require the following information:

(1) All names used by the requestor, including names of all sub parties and companies making up the requestor's entity.

(2) All web address internet sites (Uniform Resource Locator - URL) used by the requestor.

(3) Nature of the entity's business practices.

(4) Detailed explanation of the intended uses of the requested information.

(5) Copies of agreements used by the requestor to release driver record information to third parties.

(6) Any additional material provided to third party requestors detailing the process in which they obtain driver record information and describing their limitations as to how this information may be used.

(d) If the department determines any of the information provided is incomplete, inaccurate, or does not meet statutory requirements the department will not enter into an agreement to release driver record information.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins
General Counsel
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CHAPTER 27. CRIME RECORDS
SUBCHAPTER D. MISSING PERSONS CLEARINGHOUSE
37 TAC §27.42

The Texas Department of Public Safety (the department) proposes amendments to §27.42, concerning Criteria for Entry into the Missing Persons Bulletin. This rule relates to the acceptable documentation a law enforcement agency must possess before information on a missing or unidentified deceased/living person can be entered into the Texas Department of Public Safety Missing Persons Online Bulletin. The amendments are necessary because the bulletin is now published online, updated as necessary, and therefore agencies may submit entries at any time.

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

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

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be improved efficiency of law enforcement agencies by allowing submission of entries for the Missing Persons Online Bulletin at any time.

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

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

Comments on this proposal may be submitted to Heidi Prather, Texas Department of Public Safety, 5805 N. Lamar Boulevard, Austin, Texas 78773-0001. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

Texas Government Code, §411.004(3) is affected by this proposal.

§27.42. Criteria for Entry into the Missing Persons Online Bulletin.

The [~~following~~] guidelines in this section must be met before information on a missing or unidentified deceased/living person can be entered into the Texas Department of Public Safety Missing Persons Online Bulletin.

(1) Missing person (information on a Texas missing person or a person missing from another state but believed to be in Texas).

(A) The parent, spouse, or guardian must contact a law enforcement agency and file a missing person report. The missing person must be entered into the National Crime Information Center (NCIC) files by the law enforcement agency.

(B) The prescribed form must be signed, completed, and returned to the Missing Persons Clearinghouse (MPCH). (Forms can be obtained from MPCH.)

(C) A current, original photograph [~~(preferably black and white)~~] must be received by MPCH. (Note: do not write on back of photo.)

[~~(D) All entries to be published in the Missing Persons Bulletin must be submitted no later than the 10th of each month to appear in the next month's bulletin.~~]

(D) [~~(E)~~] In cases of parental abductions, a copy of the court-certified custody order stating that the reporting parent has custody must be received by MPCH. (Note: if it is requested that the noncustodial parent's photograph be included in the bulletin, a copy of a court-certified active felony warrant, which is presently in Texas Crime Information Center (TCIC)/National Crime Information Center (NCIC), must be made available to MPCH prior to publication of the photograph.)

(E) [~~(F)~~] The parent, spouse, guardian, or investigating officer must notify MPCH immediately of the location or return of the missing person.

(2) Unidentified deceased/living person.

(A) The unidentified deceased/living person must be entered into the NCIC [~~National Crime Information Center (NCIC)~~] files by the law enforcement agency.

(B) Submit as much pertinent information on the unidentified person as possible to include photographs, [~~such as a black and white photograph (if available),~~] dental records, fingerprints, etc.

[~~(C) All entries to be published in the Missing Persons Bulletin must be submitted no later than the 10th of each month to appear in the next month's bulletin.~~]

(C) [~~(D)~~] The law enforcement agency must notify MPCH immediately upon identification.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 425. FIRE SERVICE INSTRUCTORS

37 TAC §§425.3, 425.5, 425.7

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 425, Fire Service Instructors, §425.3, concerning Minimum Standards for Fire Service Instructor I Certification; §425.5, concerning Minimum Standards for Fire Service Instructor II Certification; and §425.7, concerning Minimum Standards for Fire Service Instructor III Certification.

The purpose of the proposed amendments is to allow an individual who has obtained a National Board on Fire Service Professional Qualifications (ProBoard) certificate issued by the Texas A&M Engineering Extension Service to obtain certification from the commission. There is also proposed amendments referencing another chapter of the commission rules.

Tim Rutland, Interim Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is it will allow an additional path for individuals seeking certification from the commission as Fire Service Instructor I or Fire Service Instructor II. There will be no effect on micro businesses, small businesses or persons required to comply with the amendments as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Interim Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The proposed amendments implement Texas Government Code, §419.008 and §419.032.

§425.3. Minimum Standards for Fire Service Instructor I Certification.

In order to become certified as a Fire Service Instructor I an individual must:

(1) have a minimum of three years of experience (as defined in §421.5(46) [~~§421.5(43)~~] of this title (relating to Definitions)) in fire protection in one or more or any combination of the following:

(A) a paid, volunteer, or regulated non-governmental fire department; or

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities; and

(2) possess valid documentation as a Fire Instructor I, II or III [~~of accreditation~~] from either:

(A) the International Fire Service Accreditation Congress (IFSAC) [~~as a Fire Instructor I or II or III~~]; or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2007 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1(a)(2) of this title (relating to Requirements--General); or

(3) have completed the appropriate curriculum for Fire Service Instructor I contained in Chapter 8 of the commission's Certification Curriculum Manual, or meet the equivalence as specified in §425.1(d) or (e) of this title (relating to Minimum Standards for Fire Service Instructor Certification); and

(4) successfully pass the applicable commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification).

§425.5. Minimum Standards for Fire Service Instructor II Certification.

In order to become certified as a Fire Service Instructor II, an individual must:

(1) hold as a prerequisite a Fire Instructor I certification as defined in §425.3 of this title (relating to Minimum Standards for Fire Service Instructor I Certification); and

(2) have a minimum of three years of experience (as defined in §421.5(46) [~~§421.5(43)~~] of this title (relating to Definitions)) in fire protection in one or more or any combination of the following:

(A) a paid, volunteer, or regulated non-governmental fire department; or

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities; and

(3) possess valid documentation as a Fire Instructor I, II or III [~~of accreditation~~] from either:

(A) the International Fire Service Accreditation Congress (IFSAC) [~~as a Fire Instructor II, or III~~]; or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2007 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1(a)(2) of this title (relating to Requirements--General); or

(4) have completed the appropriate curriculum for Fire Service Instructor II contained in Chapter 8 of the commission's Certification Curriculum Manual, or meet the equivalence as specified in §425.1(d) or (e) of this title (relating to Minimum Standards for Fire Service Instructor Certification); and

(5) successfully pass the applicable commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification).

§425.7. Minimum Standards for Fire Service Instructor III Certification.

In order to become certified as a Fire Service Instructor III an individual must:

(1) hold as a prerequisite, a Fire Instructor II Certification as defined in §425.5 of this title (relating to Minimum Standards for Fire Service Instructor II Certification); and

(2) have a minimum of three years of experience (as defined in §421.5(46) [~~§421.5(43)~~] of this title (relating to Definitions)) in fire protection in one or more or any combination of the following:

(A) a paid, volunteer, or regulated non-governmental fire department; or

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities; and

(3) possess valid documentation of accreditation from the International Fire Service Accreditation Congress (IFSAC) as a Fire Instructor III; or

(4) have completed the appropriate curriculum for Fire Service Instructor III contained in Chapter 8 of the commission's Certification Curriculum Manual, or meet the equivalence as specified in §425.1(d) or (e) of this title (relating to Minimum Standards for Fire Service Instructor Certification); and

(5) successfully pass the applicable commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification); and either:

(A) hold as a prerequisite an advanced structural fire protection personnel certification, an advanced aircraft fire protection personnel certification, advanced marine fire protection personnel certification, advanced inspector certification, advanced fire investigator, or advanced arson investigator certification; or

(B) have 60 college hours from a regionally accredited educational institution; or

(C) hold an associate's degree from a regionally accredited educational institution.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 427. TRAINING FACILITY CERTIFICATION

SUBCHAPTER C. TRAINING PROGRAMS FOR ON-SITE AND DISTANCE TRAINING PROVIDERS

37 TAC §427.307

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 427, Training Facility Certification, Subchapter C, Training Programs for On-Site and Distance Training Providers, §427.307, concerning On-Site and Distance Training Provider Staff Requirements.

The purpose of the proposed amendments is to delete the definition of a guest instructor in this chapter. The language was added to Chapter 421, §421.5 of commission rules.

Tim Rutland, Interim Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is clear and concise definitions located within one chapter of the commission rules. There will be no effect on micro businesses, small businesses or persons required to comply with the amendments as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Interim Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.028, which provides the commission the authority to adopt rules regarding approval of certifying individuals as qualified fire protection personnel instructors.

The proposed amendments implement Texas Government Code, §419.008 and §419.028.

§427.307. On-Site and Distance Training Provider Staff Requirements.

(a) The chief training officer of a training facility, as a minimum, must possess Fire Service Instructor III certification.

(b) All training instructors (except guest instructors) must possess fire instructor certification. The instructor(s) must be certified in the applicable discipline or be approved by the commission to instruct in the applicable subject.

(c) The lead instructor, as a minimum, shall possess a Fire Service Instructor II certification and must be certified by the commission in the applicable discipline, except as stated in subsections (h)(2) and (i)(2) of this section.

(d) Guest instructors are not required to be certified as instructors. [~~A guest instructor is defined as an individual with special knowledge, skill, and expertise in a specific subject area who has the ability to enhance the effectiveness of the training. Guest instructors shall teach under the endorsement of the lead instructor.~~]

(e) In order to teach fire officer certification courses, an individual who does not meet the requirements of subsection (a) or (c) of

this section, shall possess a minimum of a bachelor's degree in management or its equivalent.

(f) In order to teach an instructor certification training course for Fire Service Instructor I, an individual must hold one of the following three qualifications:

(1) Hold a Fire Service Instructor II or higher; or

(2) A Bachelor's degree with the following:

(A) as [~~As~~] a minimum, a minor in education; and

(B) three [~~Three~~] years of teaching experience in a fire department, department of a state agency, educational institution, or political subdivision of the state, during which time the individual taught a minimum of 200 class hours; or

(3) An Associate's degree with the following:

(A) twelve semester hours of education instructional courses; and

(B) five years of teaching experience in a fire department, department of a state agency, educational institution, or political subdivision of the state, during which time the individual taught a minimum of 400 class hours.

(g) In order to teach an instructor certification training course for Fire Service Instructor II or III, an individual must hold one of the following three qualifications:

(1) Hold a Fire Service Instructor III; or

(2) A Bachelor's degree with the following:

(A) as [~~As~~] a minimum, a minor in education; and

(B) three [~~Three~~] years of teaching experience in a fire department, department of a state agency, educational institution, or political subdivision of the state, during which time the individual taught a minimum of 200 class hours; or

(3) An Associate's degree with the following:

(A) twelve semester hours of education instructional courses; and

(B) five years of teaching experience in a fire department, department of a state agency, educational institution, or political subdivision of the state, during which time the individual taught a minimum of 400 class hours.

(h) In order to teach a certification course for Basic Wildland Fire Protection:

(1) The unit instructor must hold Basic Wildland Fire Protection certification and a Texas Commission on Fire Protection Instructor I certification.

(2) The lead instructor must hold Intermediate Wildland Fire Protection certification and a Texas Commission on Fire Protection Instructor I certification.

(3) The lead instructor must be present in any class being taught.

(i) In order to teach a certification course for Intermediate Wildland Fire Protection:

(1) The unit instructor must hold an Intermediate Wildland Fire Protection certification and a Texas Commission on Fire Protection Instructor I certification.

(2) The lead instructor must hold an Intermediate Wildland Fire Protection certification and a Texas Commission on Fire Protection Instructor I certification.

(3) The lead instructor must be present in any class being taught.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION

37 TAC §429.203

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 429, Minimum Standards for Fire Inspector Certification, §429.203, concerning Minimum Standards for Basic Fire Inspector Certification.

The purpose of the proposed amendments is to allow an individual who has obtained a National Board on Fire Service Professional Qualifications (ProBoard) certificate issued by the Texas A&M Engineering Extension Service to obtain certification from the commission. The commission is also proposing to change the name of Chapter 429 to Minimum Standards for Fire Inspector Certification and delete the reference to Subchapter B. The commission repealed Chapter 429, Subchapter A in 2011 and feels there is no need for the rule to continue to reference a Subchapter B.

Tim Rutland, Interim Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is it will allow an additional path for individuals seeking certification from the commission as a Fire Inspector I, Fire Inspector II and Plan Examiner I. There will be no effect on micro businesses, small businesses or persons required to comply with the amendments as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Interim Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the au-

thority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The proposed amendments implement Texas Government Code, §419.008 and §419.032.

§429.203. Minimum Standards for Basic Fire Inspector Certification.

In order to be certified as a basic fire inspector, an individual must:

(1) possess valid documentation as an Inspector I, Inspector II, and Plan Examiner I [of accreditation] from either:

(A) the International Fire Service Accreditation Congress [as an Inspector I, Inspector II, and Plans Examiner I]; or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1(a)(2) of this title (relating to Requirements--General); or

(2) complete a commission [Commission-]approved Basic Fire Inspector program and successfully pass the commission [Commission] examination(s) as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved basic fire inspection training program shall consist of one or any combination of the following:

(A) completion of the commission [Commission-]approved Basic Fire Inspector Curriculum, as specified in Chapter 4 of the commission's [Commission's] Certification Curriculum Manual; or

(B) successful completion of an out-of-state, NFA, and/or military training program which has been submitted to the commission [Commission] for evaluation and found to meet the minimum requirements as listed in the commission [Commission-]approved Basic Fire Inspector Curriculum as specified in Chapter 4 of the commission's [Commission's] Certification Curriculum Manual; or

(C) successful completion of the following college courses:

(i) Fire Protection Systems, three semester hours;

(ii) Fire Prevention Codes and Inspections, three semester hours;

(iii) Building Construction in the Fire Service or Building Codes and Construction, three semester hours;

(iv) Hazardous Materials I, II, or III, three semester hours[.] (total [Total] semester hours, 12).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 431. FIRE INVESTIGATION

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 431, Fire Investigation, Subchapter A, Minimum Standards for Arson Investigator Certification, §431.1, concerning Minimum Standards for Arson Investigation Personnel; §431.3, concerning Minimum Standards for Basic Arson Investigator Certification; §431.5, concerning Minimum Standards for Intermediate Arson Investigator Certification; and §431.7, concerning Minimum Standards for Advanced Arson Investigator Certification; and Subchapter B, Minimum Standards for Fire Investigator Certification, §431.209, concerning Minimum Standards for Master Fire Investigator Certification.

The purpose of the proposed amendments is to change the name of the Texas Commission on Law Enforcement Officer Standards and Education to reflect the new agency name (Texas Commission on Law Enforcement) per legislation passed by the 83rd Legislature. There is also proposed amendments that will allow an individual to use criminal justice subjects related to fire and/or arson investigation to obtain certification as a Master Fire Investigator; as well as some grammatical changes.

Tim Rutland, Interim Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is it will allow additional college courses in fire or arson investigation to be used in order to obtain the commission's Master Fire Investigator Certification. There will be no effect on micro businesses, small businesses or persons required to comply with the amendments as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Interim Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

SUBCHAPTER A. MINIMUM STANDARDS FOR ARSON INVESTIGATOR CERTIFICATION

37 TAC §§431.1, 431.3, 431.5, 431.7

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The proposed amendments implement Texas Government Code, §419.008 and §419.032.

§431.1. Minimum Standards for Arson Investigation Personnel.

(a) Fire protection personnel who are appointed arson investigation duties must be certified, as a minimum, as a basic arson investigator as specified in §431.3 of this title (relating to Minimum Standards for Basic Arson Investigator Certification) within one year from the date of initial appointment to such position.

(b) Prior to being appointed to arson investigation duties, fire protection personnel must complete a commission approved basic fire investigator training program, successfully pass the commission examination pertaining to that curriculum, and possess a current peace officer license from the Texas Commission on Law Enforcement [~~Officer Standards and Education~~] or document that the individual is a federal law enforcement officer.

(c) Personnel holding any level of arson investigation certification shall be required to comply with the continuing education requirements in §441.15 of this title (relating to Continuing Education for Arson Investigator or Fire Investigator).

§431.3. Minimum Standards for Basic Arson Investigator Certification.

In order to be certified by the commission [~~Commission~~] as a Basic Arson Investigator an individual must:

(1) possess a current basic peace officer's license from the Texas Commission on Law Enforcement [~~Officer Standards and Education~~] or documentation that the individual is a federal law enforcement officer;

(2) hold a current license as a peace officer and notify the commission [~~Commission~~] on the prescribed form regarding the law enforcement agency currently holding the individual's peace officer license; and

(3) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as a Fire Investigator; or

(4) complete a commission [~~Commission-~~]approved basic fire investigation training program and successfully pass the commission [~~Commission~~] examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved fire investigation training program shall consist of one of the following:

(A) completion of the commission [~~Commission-~~]approved Fire Investigator Curriculum, as specified in Chapter 5 of the commission's [~~Commission's~~] Certification Curriculum Manual;

(B) successful completion of an out-of-state, NFA, or military training program which has been submitted to the commission [~~Commission~~] for evaluation and found to meet the minimum requirements as listed in the commission [~~Commission-~~]approved Fire Investigator Curriculum as specified in Chapter 5 of the commission's [~~Commission's~~] Certification Curriculum Manual; or

(C) successful completion of the following college courses: Fire and Arson Investigation I or II, 3 semester hours; Hazardous Materials I, II, or III, 3 semester hours; Building Construction in the Fire Service or Building Codes and Construction, 3 semester hours; Fire Protection Systems, 3 semester hours. Total semester hours, 12.

§431.5. Minimum Standards for Intermediate Arson Investigator Certification.

(a) Applicants for Intermediate Arson Investigator Certification must complete the following requirements:

(1) hold as a prerequisite a Basic Arson Investigator Certification as defined in §431.3 of this title (relating to Minimum Standards for Basic Arson Investigator Certification); and

(2) acquire a minimum of four years of fire protection experience and complete the requirements listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission that the courses comply with subsections (b) and (c) of this section; or

(B) Option 2--Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses[~~.~~] (See the exception outlined in subsection (c) of this section); or

(C) Option 3--Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1 with either one A-List course or four B-List courses (See the exception outlined in subsection (c) of this section); or

(D) Option 4--Hold current Intermediate Peace Officer certification from the Texas Commission on Law Enforcement [~~Officer Standards and Education (TCLEOSE)~~] with four additional law enforcement courses applicable for fire investigations[~~.~~] (See exception outlined in subsection (c) of this section[~~.~~]).

(b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's Certification Curriculum Manual or for experience in the fire service, may not be counted toward this level of certification.

(c) The training required in this section must be in addition to any training used to qualify for any lower level of Arson Investigator Certification. Repeating a course or a course of similar content cannot be used towards this level of certification.

§431.7. Minimum Standards for Advanced Arson Investigator Certification.

(a) Applicants for Advanced Arson Investigator certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Arson Investigator Certification as defined in §431.5 of this title (relating to Minimum Standards for Intermediate Arson Investigator Certification); and

(2) acquire a minimum of eight years of fire protection experience and complete the requirements listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission that the courses comply with subsections (b) and (c) of this section; or

(B) Option 2--Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses[~~.~~] (See the exception outlined in subsection (c) of this section); or

(C) Option 3--Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1 with either one A-List course or four B-List courses (See the exception outlined in subsection (c) of this section); or

(D) Option 4--Advanced Arson for Profit or Complex Arson Investigative Techniques (Bureau of Alcohol, Tobacco, Firearms, and Explosives resident or field course, 80 hours); or

(E) Option 5--Hold current Advanced Peace Officer certification from the Texas Commission on Law Enforcement [~~Officer Standards & Education (TCLEOSE)~~] with four additional law enforcement courses applicable for fire investigations[~~.~~] (See exception outlined in subsection (c) of this section[~~.~~]).

(b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's Certification Curriculum Manual or for experience in the fire service, may not be counted toward this level of certification.

(c) The training required in this section must be in addition to any training used to qualify for any lower level of Arson Investigator Certification. Repeating a course or a course of similar content cannot be used towards this level of certification.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INVESTIGATOR CERTIFICATION

37 TAC §431.209

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The proposed amendments implement Texas Government Code, §419.008 and §419.032.

§431.209. Minimum Standards for Master Fire Investigator Certification.

(a) Applicants for Master Fire Investigator Certification must complete the following requirements:

(1) hold as a prerequisite an Advanced Fire Investigator Certification as defined in §431.207 of this title (relating to Minimum Standards for Advanced Fire Investigator Certification); and

(2) acquire a minimum of twelve years of fire protection experience;[~~,~~] and

(3) sixty college semester hours or an associate degree, that must include [~~which includes~~] at least eighteen college semester hours in fire science subjects or criminal justice subjects related to fire and/or arson investigation.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Fire Investigator Certification.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 433. MINIMUM STANDARDS FOR DRIVER/OPERATOR-PUMPER

37 TAC §433.3

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 433, Minimum Standards for Driver/Operator-Pumper, §433.3, concerning Minimum Standards for Driver/Operator-Pumper Certification.

The purpose of the proposed amendments is to allow an individual who has obtained a National Board on Fire Service Professional Qualifications (ProBoard) certificate issued by the Texas A&M Engineering Extension Service to obtain certification from the commission. There is also some grammatical changes included.

Tim Rutland, Interim Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is it will allow an additional path for individuals seeking certification from the commission as Driver/Operator-Pumper. There will be no effect on micro businesses, small businesses or persons required to comply with the amendments section as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Interim Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The proposed amendments implement Texas Government Code §419.008 and §419.032.

§433.3. Minimum Standards for Driver/Operator-Pumper Certification.

(a) In order to obtain Driver/Operator-Pumper certification, the individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and

(2) possess [~~posses~~] valid documentation as a Driver/Operator-Pumper [~~of accreditation~~] from either:

(A) the International Fire Service Accreditation Congress [~~as Driver/Operator-Pumper~~]; or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1(a)(2) of this title (relating to Requirements--General); or

(3) complete a commission [~~Commission-~~]approved Driver/Operator-Pumper Curriculum and successfully pass the commission [~~Commission~~] examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved driver/operator-pumper program must consist of one of the following:

(A) complete a commission [~~Commission-~~]approved Driver/Operator-Pumper Curriculum as specified in Chapter 7 of the commission's [~~Commission's~~] Certification Curriculum Manual;[~~.~~]

(B) complete an out-of-state training program that has been submitted to the commission [~~Commission~~] for evaluation and found to be equivalent to or exceeds the commission [~~Commission-~~]approved Driver/Operator-Pumper Curriculum; or[~~.~~]

(C) complete a military training program that has been submitted to the commission [~~Commission~~] for evaluation and found to be equivalent to or exceeds the commission [~~Commission-~~]approved Driver/Operator-Pumper Curriculum.

(b) Out-of-state or military training programs, which are submitted to the commission [~~Commission~~] for the purpose of determining equivalency, will be considered equivalent if all competencies set forth in Chapter 7 (pertaining to Driver/Operator-Pumper) of the commission's [~~Commission's~~] Certification Curriculum Manual are met.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 437. FEES

37 TAC §§437.1, 437.3, 437.5, 437.7, 437.15, 437.17

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 437, Fees, §437.1, concerning Purpose and Scope; §437.3, concerning Certification Fees; §437.5, concerning Renewal Fees; §437.7, concerning Standards Manual and Certification Curriculum Manual Fees; §437.15, concerning International Fire Service Accreditation Congress (IFSAC) Seal Fees; and §437.17, concerning Records Review Fees. The commission is also proposing to change the title of §437.3 to Certification Application Processing Fees.

The purpose of the proposed amendments is to inform individuals who apply to take a commission examination for certification or conduct a criminal background check that additional charges (fees) may be charged by service providers other than the commission. There are other grammatical changes being proposed to more clearly identify which type of fee is being collected by the commission.

Tim Rutland, Interim Executive Director has determined that for each year of the first five year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is clear and concise rules regarding the identification of any additional fees collected and whom is collecting those fees. There will be no effect on micro businesses, small businesses or persons required to comply with the amendments as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Interim Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; §419.026, which provides the commission the authority to set and collect a fee for each certification issued as well as each examination given; and §419.025 which gives the commission the authority to set and collect a fee for a manual of its rules and minimum standards for fire protection personnel.

The proposed amendments implement Texas Government Code §§419.008, 419.025, and 419.026.

§437.1. Purpose and Scope.

(a) The purpose of this chapter is to set forth requirements governing the fees charged by the commission [~~for the issuance of certificates to fire protection personnel, to establish the procedures for the collection of annual renewal fees and copying fees~~] as prescribed by Texas [~~the~~] Government Code, Chapter 419, §419.025 and §419.026, and commission rule.

(b) This chapter shall govern all proceedings before and dealing with the commission concerning [~~certification fees, renewal fees, and copying~~] fees. Hearings and appellate proceedings regarding these fees shall be governed by this chapter where applicable and by the rules of the practice and procedure of the commission and the Administrative Procedure Act and Texas Register Act, Chapter 2001, of the Texas Government Code.

(c) If a fee submitted in the form of a check is returned for insufficient funds the certification, seal or test for which the fee was collected will be invalidated.

(d) Additional fees, such as those charged for exam administration or criminal background checks, may be charged to applicants and regulated entities by service providers other than the commission. The commission does not charge and will not collect these additional fees. Payment of the additional fees shall be made via a separately established agreement between the individual or regulated entity and the applicable service provider.

§437.3. Certification Application Processing Fees.

(a) A non-refundable application processing fee of $85 is required for each certificate issued by the commission [~~Commission~~]. If a certificate is issued within the time provided in §401.125 of this title (relating to Processing Periods), the fee will be applied to the certification. If the certificate is denied, the applicant must pay a new certification application processing fee to file a new application.

(b) The regulated employing entity shall be responsible for all certification application processing fees required as a condition of appointment.

(c) Nothing in this section shall prohibit an individual from paying a certification application processing fee for any certificate which he or she is qualified to hold, providing the certificate is not required as a condition of appointment (see subsection (b) of this section concerning certification fees).

[~~(d) Any person who holds a certificate, and is no longer employed by an entity that is regulated by the Commission may submit in writing, a request, together with the required fee to receive a one-time certificate stating the level of certification in each discipline held by the person on the date that person left employment pursuant to the Texas Government Code, §419.033(b). Multiple certifications may be listed on the one-time certificate. The one-time fee for the one-time certificate shall be limited to the maximum amount allowed by §419.033(b) of the Texas Government Code.~~]

(d) [~~(e)~~] A facility that provides [~~basic level~~] training for any discipline for which the commission [~~Commission~~] has established a curriculum [~~Basic Curriculum~~] must be certified by the commission [~~Commission~~]. The training facility will be charged a separate certification application processing fee for each discipline or level of discipline for which application is made.

§437.5. Renewal Fees.

(a) A non-refundable annual renewal fee of $85 shall be assessed for each certified individual and certified training facility. If an individual or certified training facility holds more than one certificate, the commission [~~Commission~~] may collect only one renewal fee of $85, which will renew all certificates held by the individual or certified training facility.

(b) A regulated employing entity shall pay the renewal fee for each individual who is required to possess certification [~~all certificates which a person must possess~~] as a condition of employment.

(c) If a person re-enters the fire service whose certificate(s) has been expired for less than one year, the regulated entity must pay all applicable renewal fee(s) and any applicable additional fee(s). Upon payment of the required fees, the certificates previously held by the individual, for which he or she continues to qualify, will be renewed.

(d) If a person wishes to renew [~~reapplies for~~] a certificate(s) which has been expired less than one year and the individual is not employed by a regulated employing entity as defined in subsection (b) of this section, the individual must pay all applicable renewal fee(s) and any applicable additional fee(s). Upon payment of the required fee(s), the certificate(s) previously held by the individual, for whom he or she continues to qualify, will be renewed.

(e) Nothing in this section shall prohibit an individual from paying a renewal fee for any certificate which he or she is qualified to hold providing the certificate is not required as a condition of employment.

(f) Certification renewal information will be sent to all regulated employing entities and individuals holding certification at least 60 days prior to October 31 of each calendar year. Certification renewal information will be sent to certified training facilities at least 60 days prior to February 1 of each calendar year.

(g) If renewal payment is submitted by mail, all [~~All~~] certification renewal fees must be submitted [~~returned~~] with the renewal invoice [~~statement~~] to the commission [~~Commission~~].

(h) All certification renewal fees must be paid on or before the last day of the certification period (see subsection (i) of this section) [~~renewal date posted on the certification renewal statement~~] to avoid additional fee(s).

(i) The certification period shall be a period not to exceed one year. The certification period for employees of regulated employing entities, and individuals holding certification is November 1 to October 31. The certification period of certified training facilities is February 1 to January 31.

(j) All certification renewal fees received from one to 30 days after the last day of the certification period [~~renewal date posted on the renewal notice~~] will cause the individual or entity responsible for payment to be assessed a non-refundable late fee of $42.50 in addition to the renewal fee for each individual or training provider for which a renewal fee was due.

(k) All certification renewal fees received more than 30 days after the last day of the certification period [~~renewal date posted on the renewal notice~~] will cause the individual or entity responsible for payment to be assessed a non-refundable late fee of $85 in addition to the renewal fee for each individual or training provider for which a renewal fee was due.

(l) In addition to any non-refundable late fee(s) assessed for certification renewal, the commission [~~Commission~~] may hold an informal conference to determine if any further action(s) is to be taken.

(m) An individual or entity may petition the commission [~~Commission~~] for a waiver of the late fees required by this section if the person's certificate expired because of the individual or regulated employing entity's good faith clerical error, or expired as a result of termination of the person's employment where the person has been restored to employment through a disciplinary procedure or a court action. [~~All required renewal fees including applicable late fees and all required continuing education must be submitted before the waiver request may be considered.~~]

(1) Applicants claiming good faith clerical error must submit a sworn statement together with any supporting documentation that evidences the applicant's good faith efforts to comply with commission [~~Commission~~] renewal requirements and that failure to comply was due to circumstances beyond the control of the applicant.

(2) Applicants claiming restoration to employment as a result of a disciplinary or court action must submit a certified copy of the order restoring the applicant to employment.

(n) An individual, upon returning from activation to military service, whose certification has expired, must notify the commission [~~Commission~~] in writing. The individual will have any normally associated late fees waived and will be required to pay a renewal fee of $85.

§437.7. Standards Manual and Certification Curriculum Manual Fees.

(a) Current versions of the Standards Manual for Fire Protection Personnel and Certification Curriculum Manual are available on the commission's website.

(b) The commission [~~Commission~~] does not provide printed copies of the manuals. A printed copy of the commission's [~~Commission's~~] standards may be obtained from Thomson West, 610 Opperman Drive, Eagan, MN 55123, by requesting "Title 37, Public Safety and Corrections" of the Texas Administrative Code. The web address for Thomson West is www.west.thomson.com.

§437.15. International Fire Service Accreditation Congress (IFSAC) Seal Fees.

A non-refundable $15 fee shall be charged for each IFSAC seal issued by the commission [~~effective October 1, 2012~~].

§437.17. Records Review Fees.

(a) A non-refundable fee of $35 shall be charged for each training records review conducted by the commission for the purpose of determining equivalency to the appropriate commission training program or to establish eligibility to test. Applicants submitting training records for review shall receive a written analysis from the commission.

(b) The fee provided for in this section shall not apply to an individual who holds an advanced or Fire Fighter II certificate from the State Firemen's and Fire Marshals' Association of Texas.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

37 TAC §439.1

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 439, Examinations for Certification, Subchapter A, Examinations for On-Site Delivery Training, §439.1, concerning Requirements--General.

The purpose of the proposed amendments is to provide clear and concise rules on the administration of examinations by the commission as well as the National Board on Fire Service Professional Qualifications (ProBoard) administered by the Texas A&M Engineering Extension Service. The proposed amendments also define relevant information which must be included on the ProBoard certificate in order for the certificate to be acceptable for use by an individual to obtain commission certification.

Tim Rutland, Interim Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is it will provide a clear and concise set of rules for administering an examination to obtain certification by the commission. There will be no effect on micro businesses, small businesses or persons required to comply with the amendments as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Interim Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.035 which provides the commission the authority to administer certification examinations.

The proposed amendments implement Texas Government Code §419.008 and §419.035.

§439.1. Requirements--General.

(a) The administration of examinations for certification, including performance skill evaluations, shall be conducted in compliance with [~~the~~] commission rules and; as applicable, with: [~~International Fire Service Accreditation Congress (IFSAC) regulations. It is incumbent upon commission staff, committee members, training officers and field examiners to maintain the integrity of any state examination (or portion thereof) for which they are responsible.~~]

(1) International Fire Service Accreditation Congress (IFSAC) regulations; or

(2) National Board on Fire Service Professional Qualifications (Pro Board) regulations for examinations administered by the Texas A&M Engineering Extension Service. Only Pro Board examinations administered by the Texas A&M Engineering Extension Service will be accepted by the commission for certification. In order for a Pro Board document to be accepted for certification, it must:

(A) List the commission issued course approval number for which the examination was conducted;

(B) Indicate that the examination was conducted in English; and

(C) List any special accommodations provided to the examinee. The commission may not issue a certificate for an examination conducted under special accommodations other than those specified in §439.13 of this title (relating to Special Accommodations for Testing).

(b) It is incumbent upon commission staff, committee members, training officers and field examiners to maintain the integrity of the state certification examination process (or portion thereof) for which they are responsible.

(c) The commission shall reserve the authority to conduct an annual review of Pro Board examinations, procedures, test banks, and facilities utilized by the Texas A&M Engineering Extension Service.

The commission may also conduct a review at any time for cause and as deemed necessary to ensure the integrity of the certification examination process.

(d) [~~(b)~~] Exams will be based on the job performance requirements and knowledge and skill components of the applicable NFPA standard for that discipline, if a standard exists and has been adopted by the commission. If a standard does not exist or has not been adopted by the commission, the exam will be based on curricula as currently adopted in the commission's Certification Curriculum Manual.

(e) [~~(c)~~] Commission examinations that receive a passing grade shall expire two years from the date of the examination.

[~~(d) The commission shall prescribe the content of any certification examination that tests the knowledge and/or skill of the examinee concerning the discipline addressed by the examination.~~]

(f) [~~(1)~~] An examination for Basic Structure Fire Protection shall [~~based on Chapter 1, "Basic Fire Suppression Curriculum" as identified in the Certification Curriculum Manual may~~] consist of four sections: Fire Fighter I, Fire Fighter II, Hazardous Materials Awareness Level, and Hazardous Materials Operations Level including the Mission-Specific Competencies for Personal Protective Equipment and Product Control. [~~First Responder Awareness, and First Responder Operations~~].

(g) [~~(2)~~] An examination for Basic Fire Inspector shall [~~based on Chapter 4, "Basic Fire Inspector Curriculum" as identified in the Certification Curriculum Manual may~~] consist of three sections: Inspector I, Inspector II, and Plan Examiner I.

(h) [~~(3)~~] An examination for Basic Structure Fire Protection and Intermediate Wildland Fire Protection [~~based on the applicable chapters for "Basic Fire Suppression Curriculum" and "Wildland Fire Protection Curriculum" in the Certification Curriculum Manual~~] shall consist of five sections: Fire Fighter I, Fire Fighter II, First Responder Awareness, First Responder Operations, and Intermediate Wildland Fire Protection.

(i) [~~(4)~~] All other state examinations consist of only one section.

(j) [~~(e)~~] The individual who fails to pass a commission examination for state certification will be given one additional opportunity to pass the examination or section thereof. This opportunity must be exercised within 180 days after the date of the first failure. An individual who passes the applicable state certification examination but fails to pass a section thereof for an IFSAC seal(s) will be given one additional opportunity to pass the section thereof. This opportunity must be exercised within two years after the date of the first attempt. An examinee who fails to pass the examination within the required time may not sit for the same examination again until the examinee has re-qualified by repeating the curriculum applicable to that examination.

(k) [~~(f)~~] An individual may obtain a new certificate in a discipline which was previously held by passing a commission proficiency examination.

(l) [~~(g)~~] If an individual who has never held certification in a discipline defined in §421.5 of this title (relating to Definitions), seeks certification in that discipline, the individual shall complete all certification requirements.

(m) [~~(h)~~] If an individual completes an approved training program that has been evaluated and deemed equivalent to a certification curriculum approved by the commission, such as an out-of-state or military training program or a training program administered by the State Firemen's and Fire Marshals' Association of Texas, the individual must pass a commission examination for certification status and meet any other certification requirements in order to become eligible for certification by the commission as fire protection personnel.

(n) [~~(i)~~] An individual or entity may petition the commission for a waiver of the examination required by this section if the person's certificate expired because of the individual's or employing entity's good faith clerical error, or expired as a result of termination of the person's employment where the person has been restored to employment through a disciplinary procedure or a court action. All required renewal fees including applicable late fees and all required continuing education must be submitted before the waiver request may be considered.

(1) Applicants claiming good faith clerical error must submit a sworn statement together with any supporting documentation that evidences the applicant's good faith efforts to comply with commission renewal requirements and that failure to comply was due to circumstances beyond the control of the applicant.

(2) Applicants claiming restoration to employment as a result of a disciplinary or court action must submit a certified copy of the order, ruling or agreement restoring the applicant to employment.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 451. FIRE OFFICER

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 451, Fire Officer, Subchapter A, Minimum Standards for Fire Officer I, §451.3, concerning Minimum Standards for Fire Officer I Certification; Subchapter B, Minimum Standards for Fire Officer II, §451.203, concerning Minimum Standards for Fire Officer II Certification; Subchapter C, Minimum Standards for Fire Officer III, §451.303, concerning Minimum Standards for Fire Officer III Certification; and Subchapter D, Minimum Standards for Fire Officer IV, §451.403, concerning Minimum Standards for Fire Officer IV Certification.

The purpose of the proposed amendments is to allow an individual who has obtained a National Board on Fire Service Professional Qualifications (ProBoard) certificate issued by the Texas A&M Engineering Extension Service to obtain certification from the commission. There is also special provision language added for individuals who have previously obtained a ProBoard certificate for Fire Officer III and Fire Officer IV under the National Fire Protection Association Standard identified to apply for the commission's certification in those disciplines. There is also proposed grammatical changes.

Tim Rutland, Interim Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is it will allow an additional path for individuals seeking certification from the commission as Fire Officer I, Fire Officer II, Fire Officer III, and Fire Officer IV. There will be no effect on micro businesses, small businesses or persons required to comply with the amendments as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Interim Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE OFFICER I

37 TAC §451.3

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The proposed amendments implement Texas Government Code, §419.008 and §419.032.

§451.3. Minimum Standards for Fire Officer I Certification.

(a) In order to be certified as a Fire Officer I an individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and

(2) hold Fire Service Instructor I certification through the commission [~~Commission~~]; and

(A) possess valid documentation as a Fire Fighter II and Fire Officer I [~~of accreditation~~] from either:

(i) the International Fire Service Accreditation Congress [~~as Fire Fighter II and Fire Officer I~~]; or

(ii) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1(a)(2) of this title (relating to Requirements--General); or

(B) complete a commission [~~Commission-~~]approved Fire Officer I program and successfully pass the commission [~~Commission~~] examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Fire Officer I program must consist of one of the following:

(i) completion of a commission [~~Commission-~~]approved Fire Officer I Curriculum as specified in Chapter 9 of the commission's [~~Commission's~~] Certification Curriculum Manual;

(ii) completion of an out-of-state and/or military training program that has been submitted to the commission [~~Commission~~] for evaluation and found to be equivalent to or exceed the commission [~~Commission~~] approved Fire Officer I Curriculum; or

(iii) successful completion of 12 college semester hours consisting of the following courses or their equivalent:

(I) Fire Prevention Codes and Inspections, 3 semester hours;

(II) Fire and Arson Investigation I or II, 3 semester hours;

(III) Fire Administration I, 3 semester hours; and

(IV) Firefighting Strategies and Tactics I or II, 3 semester hours.

(b) Out-of-state or military training programs which are submitted to the commission [~~Commission~~] for the purpose of determining equivalency will be considered equivalent if all competencies set forth in Chapter 9 (pertaining to Fire Officer I) of the commission's [~~Commission's~~] Certification Curriculum Manual are met.

(c) College courses will be considered equivalent if the course description is substantially similar to the course description contained in the Workforce Education Course Manual (WECM) from the Texas Higher Education Coordinating Board.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE OFFICER II

37 TAC §451.203

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The proposed amendments implement Texas Government Code, §419.008 and §419.032.

§451.203. Minimum Standards for Fire Officer II Certification.

(a) In order to be certified as a Fire Officer II an individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and

(2) hold Fire Officer I certification through the commission [~~Commission~~]; and

(3) hold, as a minimum, Fire Service Instructor I certification through the commission [~~Commission~~]; and

(A) possess valid documentation as a Fire Officer II [~~of accreditation~~] from either:

(i) the International Fire Service Accreditation Congress [as ~~Fire Officer II~~]; or

(ii) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1(a)(2) of this title (relating to Requirements--General); or

(B) complete a commission [~~Commission-~~]approved Fire Officer II program and successfully pass the commission [~~Commission~~] examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Fire Officer II program must consist of one of the following:

(i) completion of a commission [~~Commission-~~]approved Fire Officer II Curriculum as specified in Chapter 9 of the commission's [~~Commission's~~] Certification Curriculum Manual;

(ii) completion of an out-of-state and/or military training program that has been submitted to the commission [~~Commission~~] for evaluation and found to be equivalent to or exceed the commission [~~Commission-~~]approved Fire Officer II Curriculum; or

(iii) successful completion of 15 college semester hours consisting of the following courses or their equivalent:

(I) Fire Prevention Codes and Inspections, 3 semester hours;

(II) Fire and Arson Investigation I or II, 3 semester hours;

(III) Fire Administration I, 3 semester hours;

(IV) Fire Administration II or Company Fire Officer, 3 semester hours; and

(V) Firefighting Strategies and Tactics I or II, 3 semester hours.

(b) Out-of-state or military training programs which are submitted to the commission [~~Commission~~] for the purpose of determining equivalency will be considered equivalent if all competencies set forth in Chapter 9 (pertaining to Fire Officer) of the commission's [~~Commission's~~] Certification Curriculum Manual are met.

(c) College courses will be considered equivalent if the course description is substantially similar to the course description contained in the Workforce Education Course Manual (WECM) from the Texas Higher Education Coordinating Board.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER C. MINIMUM STANDARDS FOR FIRE OFFICER III

37 TAC §451.303

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The proposed amendments implement Texas Government Code, §419.008 and §419.032.

§451.303. Minimum Standards for Fire Officer III Certification.

(a) In order to be certified as a Fire Officer III an individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and

(2) hold Fire Officer II certification through the commission; and

(3) hold, as a minimum, Fire Service Instructor II certification through the commission; and

(4) document completion of ICS-300: Intermediate Incident Command System; and

(5) possess valid documentation as a Fire Officer III [~~of accreditation~~] from either:

(A) the International Fire Service Accreditation Congress [as ~~Fire Officer III~~]; or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1(a)(2) of this title (relating to Requirements--General); or

(6) complete a commission approved Fire Officer III program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Fire Officer III program must consist of one of the following:

(A) completion of a commission approved Fire Officer III Curriculum as specified in Chapter 9 of the commission's Certification Curriculum Manual;

(B) completion of an out-of-state and/or military training program that has been submitted to the commission for evaluation and found to be equivalent to or exceed the commission approved Fire Officer III Curriculum; or

(C) successful completion of 15 college semester hours of upper level coursework from a four-year regionally accredited institution in any of the following subject areas:

(i) Administration/Management,

(ii) Budget/Finance,

(iii) Planning/Organization,

(iv) Leadership/Ethics,

(v) Risk Management,

(vi) Safety and Health; or

(vii) Community Risk Reduction.

(7) Special temporary provision: Through February 2014 [Within one year following the effective date of this rule], an individual is eligible to take the commission examination for Fire Officer III upon documentation to the commission that the individual has completed training that covers the requirements of NFPA 1021, Chapter 6. The documentation of completed training must be a certificate of completion from a nationally recognized training provider. During the one year period, the commission examination shall consist of a written exam. The examination requirements in §451.305(b) of this subchapter (relating to Examination Requirements) must still be met. [This paragraph expires one year from the effective date of this rule.]

(8) Special temporary provision: Through February 2015, an individual is eligible for Fire Officer III certification upon documentation of the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 edition of the NFPA standard applicable to this discipline.

(9) [(8)] The application processing fee for the initial examination is waived for individuals in paragraphs (6) and (7) of this subsection who have completed the training requirement and submit the application for the commission examination for one year from the effective date of this rule. After this date, the application processing fee for examinations will be required.

(b) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if all competencies set forth in Chapter 9 (pertaining to Fire Officer) of the commission's Certification Curriculum Manual are met.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER D. MINIMUM STANDARDS FOR FIRE OFFICER IV

37 TAC §451.403

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The proposed amendments implement Texas Government Code, §419.008 and §419.032.

§451.403. Minimum Standards for Fire Officer IV Certification.

(a) In order to be certified as a Fire Officer IV an individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and

(2) hold Fire Officer III certification through the commission; and

(3) document completion of ICS-400: Advanced Incident Command System; and

(4) possess valid documentation as a Fire Officer IV [of accreditation] from either:

(A) the International Fire Service Accreditation Congress [as Fire Officer IV]; or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1(a)(2) of this title (relating to Requirements--General); or

(5) complete a commission approved Fire Officer IV program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Fire Officer IV program must consist of one of the following:

(A) completion of a commission approved Fire Officer IV Curriculum as specified in Chapter 9 of the commission's Certification Curriculum Manual;

(B) completion of an out-of-state and/or military training program that has been submitted to the commission for evaluation and found to be equivalent to or exceed the commission approved Fire Officer IV Curriculum; or

(C) successful attainment of a bachelor's degree or higher from a regionally accredited institution in any of the following:

(i) Fire Science/Administration/Management;

(ii) Emergency Management;

(iii) Public Administration;

(iv) Emergency Medicine;

(v) Business Management/Administration;

(vi) Political Science;

(vii) Human Resources Management;

(viii) Public Health;

(ix) Risk Management;

(x) Criminal Justice; or

(xi) a related management/administration/leadership degree.

(6) Special temporary provision: Through February 2014 [Within one year following the effective date of this rule], an individual is eligible to take the commission examination for Fire Officer IV upon documentation to the commission that the individual has completed training that covers the requirements of NFPA 1021, Chapter 7. The documentation of completed training must be a certificate of completion from a nationally recognized training provider. During the one year period, the commission examination shall consist of a written exam. The examination requirements in §451.405(b) of this subchapter (relating to Examination Requirements) must still be met. [This paragraph expires one year from the effective date of this rule.]

(7) Special temporary provision: Through February 2015, an individual is eligible for Fire Officer IV certification upon documentation of the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 edition of the NFPA standard applicable to this discipline through February 2015.

(8) [(7)] The application processing fee for the initial examination is waived for individuals in paragraphs (5) and (6) of this subsection who have completed the training requirement and submit the application for the commission examination for one year from the effective date of this rule. After this date, the application processing fee for examinations will be required.

(b) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if all competencies set forth in Chapter 9 (pertaining to Fire Officer) of the commission's Certification Curriculum Manual are met.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 453. HAZARDOUS MATERIALS

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 453, Hazardous Materials, Subchapter A, Minimum Standards for Hazardous Materials Technician, §453.3, concerning Minimum Standards for Hazardous Materials Technician Certification; and Subchapter B, Minimum Standards for Hazardous Materials Incident Commander, §453.203, concerning Minimum Standards for Hazardous Materials Incident Commander.

The purpose of the proposed amendments is to allow an individual who has obtained a National Board on Fire Service Professional Qualifications (ProBoard) certificate issued by the Texas A&M Engineering Extension Service to obtain certification from the commission. There is also special provision language added for individuals who have previously obtained a ProBoard certificate for Hazardous Materials Incident Commander under the National Fire Protection Association Standard identified to apply for the commission's certification in that discipline.

Tim Rutland, Interim Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is it will allow an additional path for individuals seeking certification from the commission as Hazardous Materials Technicians and Hazardous Materials Incident Commander. There will be no effect on micro businesses, small businesses or persons required to comply with the amendments as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Interim Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

SUBCHAPTER A. MINIMUM STANDARDS FOR HAZARDOUS MATERIALS TECHNICIAN

37 TAC §453.3

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The proposed amendments implement Texas Government Code, §419.008 and §419.032.

§453.3. Minimum Standards for Hazardous Materials Technician Certification.

(a) In order to be certified as a Hazardous Materials Technician an individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and

(2) possess valid documentation as a Hazardous Materials Technician [of accreditation] from either:

(A) the International Fire Service Accreditation Congress [as a Hazardous Materials Technician]; or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2008 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1(a)(2) of this title (relating to Requirements--General); or

(3) complete a commission approved Hazardous Materials Technician program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Hazardous Materials Technician program must consist of one of the following:

(A) completion of a commission approved Hazardous Materials Technician Curriculum as specified in Chapter 6 of the commission's Certification Curriculum Manual; or[.]

(B) completion of an out-of-state and/or military training program that has been submitted to the commission for evaluation and found to be equivalent to, or exceeds the commission approved Hazardous Materials Technician Curriculum.

(b) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if all competencies set forth in Chapter 6 (pertaining to Hazardous Materials Technician) of the commission's Certification Curriculum Manual are met.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 25, 2013.

TRD-201304857
Tim Rutland
Interim Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 8, 2013
For further information, please call: (512) 936-3813

SUBCHAPTER B. MINIMUM STANDARDS FOR HAZARDOUS MATERIALS INCIDENT COMMANDER

37 TAC §453.203

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The proposed amendments implement Texas Government Code, §419.008 and §419.032.

§453.203. Minimum Standards for Hazardous Materials Incident Commander.

(a) In order to be certified as Hazardous Materials Incident Commander an individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and

(2) possess valid documentation as a Hazardous Materials Incident Commander [~~of accreditation~~] from either:

(A) the International Fire Service Accreditation Congress [~~as a Hazardous Materials Incident Commander~~]; or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2008 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1(a)(2) of this title (relating to Requirements--General); or

(3) complete a commission approved Hazardous Materials Incident Commander program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Hazardous Materials Incident Commander program must consist of one of the following:

(A) completion of a commission approved Hazardous Materials Incident Commander curriculum as specified in Chapter 6 of the commission's Certification Curriculum Manual; or[~~.~~]

(B) completion of an out-of-state and/or military training program that has been submitted to the commission for evaluation and found to be equivalent to, or exceeds the commission approved Hazardous Materials Incident Commander curriculum.

(4) Special temporary provision: Through February 2014 [~~Within one year following the effective date of this rule~~], an individual is eligible to take the commission examination for Hazardous Materials Incident Commander upon documentation to the commission that the individual has completed training that covers the requirements of NFPA 472, Chapter 8. The documentation must be a certificate of completion from a nationally recognized training provider. During the one-year period, the commission examination shall consist of a written exam. The examination requirements in §453.205(b) of this subchapter (relating to Examination Requirements) must still be met. [~~This paragraph expires one year from the effective date of this rule.~~]

(5) Special temporary provision: Through February 2015, an individual is eligible for Hazardous Materials Incident Commander certification upon documentation of the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2008 edition of the NFPA standard applicable to this discipline.

(6) [~~(5)~~] The application processing fee for the initial examination is waived for individuals in paragraphs (3) and (4) of this subsection who have completed the training requirement and submit the application for the commission examination for one year from the effective date of this rule. After this date, the application processing fee for examinations will be required.

(b) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if all competencies set forth in Chapter 6 (pertaining to Hazardous Materials Incident Commander) of the commission's Certification Curriculum Manual are met.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 25, 2013.

TRD-201304858
Tim Rutland
Interim Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 8, 2013
For further information, please call: (512) 936-3813

CHAPTER 457. MINIMUM STANDARDS FOR INCIDENT SAFETY OFFICER CERTIFICATION

37 TAC §457.3

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 457, Minimum Standards for Incident Safety Officer Certification, §457.3, concerning Minimum Standards for Incident Safety Officer Certification.

The purpose of the proposed amendments is to delete obsolete language and other minor grammatical changes.

Tim Rutland, Interim Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is it will provide clear and concise rules regarding Incident Safety Officer Certification. There will be no effect on micro businesses, small businesses or persons required to comply with the amendments as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Interim Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The proposed amendments implement Texas Government Code, §419.008 and §419.032.

§457.3. Minimum Standards for Incident Safety Officer Certification.

In order to be certified as an Incident Safety Officer an individual must:

(1) hold commission certification as Fire Officer I, and[~~;~~]

(2) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as an Incident Safety Officer; or

(3) complete a commission [~~commission-~~]approved Incident Safety Officer program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Incident Safety Officer program must consist of one of the following:

(A) completion of a commission [~~commission-~~]approved Incident Safety Officer curriculum as specified in the applicable chapter of the commission's Certification Curriculum Manual; or

(B) completion of the National Fire Academy Incident Safety Officer course; or

(C) completion of the Fire Department Safety Officers Association Incident Safety Officer course; or

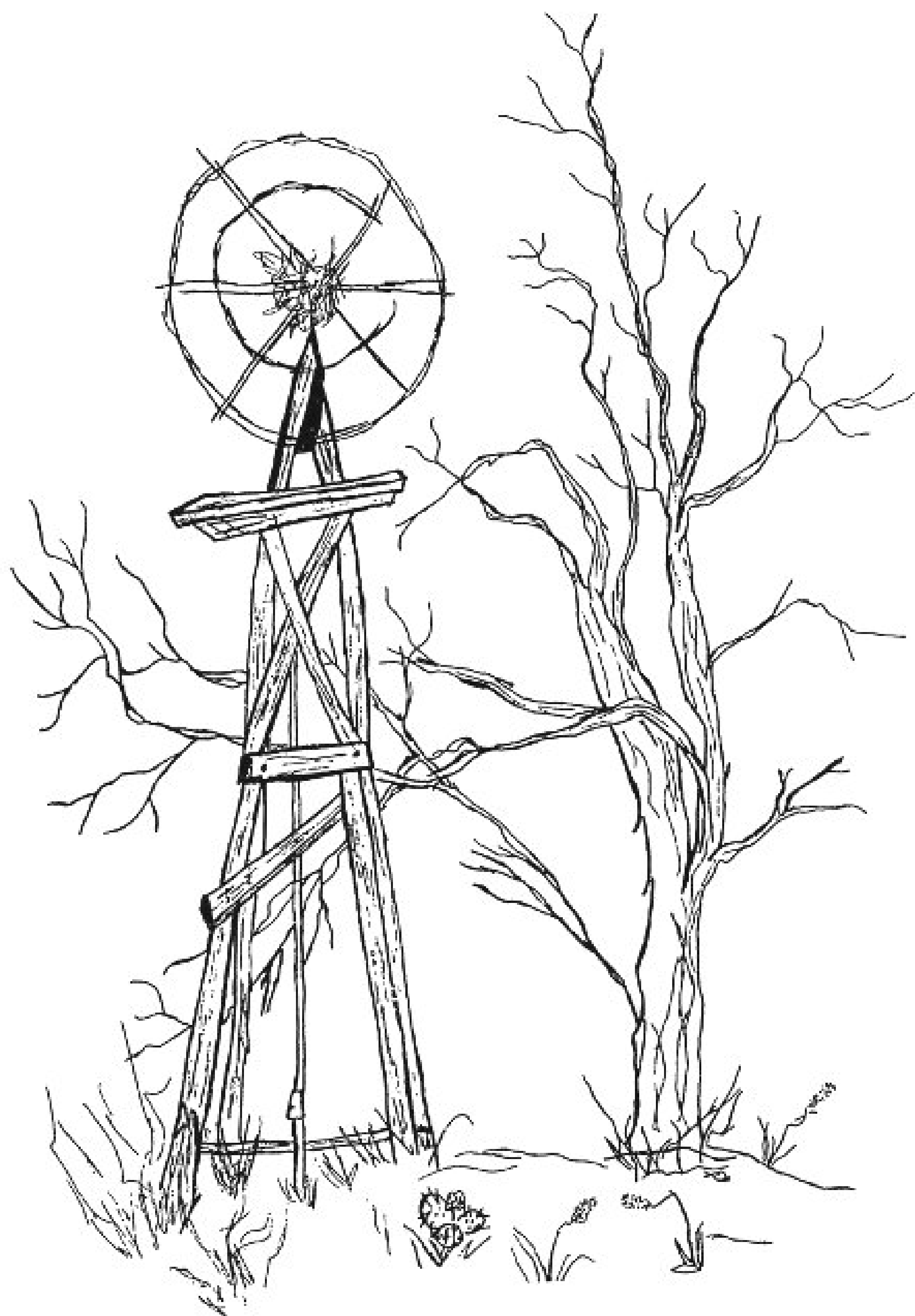
(D) completion of an out-of-state, educational institution of higher education, and/or military training program that has been submitted to the commission for evaluation and found to be equivalent to, or exceeds the commission [~~commission-~~]approved Incident Safety Officer curriculum.

[~~(4) The commission examination requirement is waived for individuals who have completed one of the training programs in paragraph (3)(B) - (D) of this section and apply for certification by August 31, 2013. After this date, individuals must successfully pass the commission examination prior to applying for certification.~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 25, 2013.

TRD-201304859
Tim Rutland
Interim Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 8, 2013
For further information, please call: (512) 936-3813



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 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 355. NON-SECURE CORRECTIONAL FACILITIES

SUBCHAPTER A. DEFINITIONS

37 TAC §355.100

The Texas Juvenile Justice Department withdraws the emergency adoption of new §355.100 which appeared in the June 14, 2013, issue of the *Texas Register* (38 TexReg 3709).

Filed with the Office of the Secretary of State on October 23, 2013.

TRD-201304830
Brett Bray
General Counsel
Texas Juvenile Justice Department
Effective date: November 15, 2013
For further information, please call: (512) 490-7014

SUBCHAPTER B. APPLICABILITY AND GENERAL PROVISIONS

37 TAC §§355.204, 355.208, 355.212, 355.216

The Texas Juvenile Justice Department withdraws the emergency adoption of new §§355.204, 355.208, 355.212, and 355.216 which appeared in the June 14, 2013, issue of the *Texas Register* (38 TexReg 3709).

Filed with the Office of the Secretary of State on October 23, 2013.

TRD-201304831
Brett Bray
General Counsel
Texas Juvenile Justice Department
Effective date: November 15, 2013
For further information, please call: (512) 490-7014

SUBCHAPTER C. PHYSICAL PLANT AND FIRE SAFETY

37 TAC §§355.300, 355.304, 355.312, 355.316, 355.320, 355.332, 355.336, 355.344, 355.348, 355.352, 355.360, 355.364, 355.368, 355.372, 355.376, 355.380

The Texas Juvenile Justice Department withdraws the emergency adoption of new §§355.300, 355.304, 355.312, 355.316, 355.320, 355.332, 355.336, 355.344, 355.348, 355.352, 355.360, 355.364, 355.368, 355.372, 355.376, and 355.380 which appeared in the June 14, 2013, issue of the *Texas Register* (38 TexReg 3709).

Filed with the Office of the Secretary of State on October 23, 2013.

TRD-201304832
Brett Bray
General Counsel
Texas Juvenile Justice Department
Effective date: November 15, 2013
For further information, please call: (512) 490-7014

SUBCHAPTER D. FACILITY MANAGEMENT AND OPERATIONS

37 TAC §§355.400, 355.408, 355.412, 355.416, 355.420, 355.424, 355.428, 355.432, 355.436, 355.440, 355.444, 355.448, 355.452, 355.456, 355.480

The Texas Juvenile Justice Department withdraws the emergency adoption of new §§355.400, 355.408, 355.412, 355.416, 355.420, 355.424, 355.428, 355.432, 355.436, 355.440, 355.444, 355.448, 355.452, 355.456, and 355.480 which appeared in the June 14, 2013, issue of the *Texas Register* (38 TexReg 3709).

Filed with the Office of the Secretary of State on October 23, 2013.

TRD-201304833
Brett Bray
General Counsel
Texas Juvenile Justice Department
Effective date: November 15, 2013
For further information, please call: (512) 490-7014

SUBCHAPTER E. RESIDENT HEALTH AND SAFETY

37 TAC §§355.512, 355.516, 355.520, 355.524, 355.528, 355.532, 355.540, 355.544, 355.552

The Texas Juvenile Justice Department withdraws the emergency adoption of new §§355.512, 355.516, 355.520, 355.524, 355.528, 355.532, 355.540, 355.544, and 355.552, which appeared in the June 14, 2013, issue of the *Texas Register* (38 TexReg 3709).

Filed with the Office of the Secretary of State on October 23, 2013.

TRD-201304834
Brett Bray
General Counsel
Texas Juvenile Justice Department
Effective date: November 15, 2013
For further information, please call: (512) 490-7014

SUBCHAPTER F. RESIDENT RIGHTS AND PROGRAMMING

37 TAC §§355.600, 355.608, 355.612, 355.616, 355.620, 355.632, 355.636, 355.640, 355.644, 355.648, 355.652, 355.654, 355.656, 355.658, 355.664, 355.668, 355.676, 355.680

The Texas Juvenile Justice Department withdraws the emergency adoption of new §§355.600, 355.608, 355.612, 355.616, 355.620, 355.632, 355.636, 355.640, 355.644, 355.648, 355.652, 355.654, 355.656, 355.658, 355.664, 355.668, 355.676, and 355.680 which appeared in the June 14, 2013, issue of the *Texas Register* (38 TexReg 3709).

Filed with the Office of the Secretary of State on October 23, 2013.

TRD-201304835
Brett Bray
General Counsel
Texas Juvenile Justice Department
Effective date: November 15, 2013
For further information, please call: (512) 490-7014

SUBCHAPTER G. RESTRAINTS

37 TAC §§355.800, 355.804, 355.808, 355.812, 355.816

The Texas Juvenile Justice Department withdraws the emergency adoption of new §§355.800, 355.804, 355.808, 355.812, and 355.816 which appeared in the June 14, 2013, issue of the *Texas Register* (38 TexReg 3709).

Filed with the Office of the Secretary of State on October 23, 2013.

TRD-201304836
Brett Bray
General Counsel
Texas Juvenile Justice Department
Effective date: November 15, 2013
For further information, please call: (512) 490-7014

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 5. TEXAS FACILITIES COMMISSION

CHAPTER 111. ADMINISTRATION

SUBCHAPTER B. GENERAL PROVISIONS

1 TAC §111.25

Introduction and Background.

The Texas Facilities Commission (the "Commission") adopts new §111.25, concerning Negotiated Rulemaking. This new rule is adopted pursuant to the Commission's rulemaking authority found in Texas Government Code §2152.066, Act of May 26, 2013, 83rd Leg., R.S., S.B. 211, §6 (to be codified at Texas Government Code §2152.066), requiring the Commission to develop negotiated rulemaking procedures and Texas Government Code §2001.004(1) (Vernon 2008), which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The rule is adopted without changes to the proposed text as published in the August 2, 2013, issue of the *Texas Register* (38 TexReg 4829).

Justification for the Rule.

The new rule provides clarification concerning the process to be followed by the Commission when undertaking negotiated rulemaking pursuant to Chapter 2008 of the Texas Government Code, the Negotiated Rulemaking Act.

Summary of Comments.

The comment period ended September 1, 2013. No comments were received.

Statutory Authority.

The new rule is adopted pursuant to Texas Government Code §2152.066, Act of May 26, 2013, 83rd Leg., R.S., S.B. 211, §6 (to be codified at Texas Government Code §2152.066) requiring the Commission to develop a negotiated rulemaking policy and procedures and Texas Government Code §2001.004(1) (Vernon 2008), which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Cross Reference to Statute.

The statutory provisions affected by the adopted new rule are those set forth in Texas Government Code §2152.066, Act of May 26, 2013, 83rd Leg., R.S., S.B. 211, §6 (to be codified at Texas Government Code §2152.066).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 23, 2013.

TRD-201304837
Kay Molina
General Counsel
Texas Facilities Commission
Effective date: November 12, 2013
Proposal publication date: August 2, 2013
For further information, please call: (512) 463-4257

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 8. PIPELINE SAFETY REGULATIONS

SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

16 TAC §8.201

The Railroad Commission of Texas (Commission) adopts amendments to §8.201, relating to Pipeline Safety and Regulatory Program Fees, without changes to the proposed text published in the August 23, 2013, issue of the *Texas Register* (38 TexReg 5381). The adopted amendments implement provisions of Senate Bill 1, 83rd Legislature (Regular Session, 2013).

Senate Bill 1 authorizes 20 additional full-time equivalent employees (FTEs) for pipeline safety activities, including inspection of intrastate pipeline and pipeline facilities, with an appropriation of $2,631,828. The appropriation of revenue to the natural gas regulatory program is contingent upon the Commission increasing the pipeline safety and regulatory fee, which will allow the Commission's current activities related to pipeline safety programs to be better staffed. Natural gas utilities affected by the adopted amendments are authorized to recover pipeline safety and regulatory program fees from their customers by applying an annual surcharge to customer bills.

In the adopted amendments, the pipeline safety and regulatory program fee, which is assessed by the Commission upon certain natural gas systems, is clearly distinguished from the surcharge assessed by a natural gas distribution system operator upon its

customers. In §8.201(b), the Commission increases the pipeline safety and regulatory program fee from $0.75 to $1.00 annually for each service (service line) reported to be in service at the end of each calendar year, as required by the contingent appropriation in Senate Bill 1.

The Commission received three comments on the proposal. One individual commented that the increase in the fee is relatively insignificant and should be approved, but asked the Commission to increase the number of pipeline inspectors, and that the Commission publish the inspection reports.

The Commission notes that of the 20 additional FTEs, there will be 14 pipeline safety inspectors, four damage prevention technical specialists, and two administrative support staff. In addition, the Commission has calculated performance measures that take into account the additional inspections that will be expected by virtue of an increased number of inspectors. Finally, with respect to publishing the inspection reports, the Commission currently does not have the staffing resources to post all inspection reports online; however, all inspection reports are public information and can be furnished upon request.

The Texas Municipal League (TML) commented that the organization appreciates the hard work of Railroad Commission staff in relation to pipeline safety efforts. The comment is not on the substance of that work, but the way its fiscal implications were reported in the *Texas Register.* After quoting the fiscal note for local governments published in the proposal preamble, TML observed that it had seen a similar fiscal note from the Texas Commission on Environmental Quality (TCEQ) in 2009 (Rule Project Number 2009-007-021-PR). In that case, TCEQ reported that an increased fee on city water systems would generate millions in revenue for the state. The agency then reported that the fee increase would have no fiscal implications for cities because the fees can be passed on to the utility's customers. TML characterized these as "disturbing" fiscal notes that lead to a false conclusion, specifically that no government action will ever impose a negative fiscal impact on any other unit of government. As an example, TML postulated that when the federal government places an unfunded mandate on the Commission, there is no fiscal note because the Commission would simply increase fees, as it is now doing. If Congress places an unfunded mandate on the Texas Legislature, there would be no fiscal note because the legislature would simply raise taxes or fees paid by Texans. TML submitted that the purpose of a fiscal note is to quantify the amount of revenue that an affected unit of government would be forced to generate as a result of the proposed action.

To this comment, the Commission responds that in response to any unfunded mandate, the Commission may or may not have the authority to increase a fee. The Commission does have statutory authority to assess the pipeline safety fee, up to the statutory maximum of $1.00. Absent legislative action to change that amount, the Commission is not authorized to increase this fee, regardless of what mandates are imposed on the agency.

In addition, the Commission has no knowledge of how much revenue a local government (municipality) might be required to generate in order to remit the pipeline safety fee. Some cities might have budgeted for this cost; others might not have done so. The state of the budget for any particular municipality that operates a gas distribution system is not information readily available to the Commission. As set forth in Texas Government Code, §2001.024(a)(4), the fiscal note must show the additional estimated cost to the local government expected as a result of enforcing or administering the rule; the estimated reductions in costs to local governments as a result of enforcing or administering the rule; the estimated loss or increase in revenue to local governments as a result of enforcing or administering the rule; and if applicable, that enforcing or administering the rule does not have foreseeable implications relating to cost or revenues of the state or local governments. This statutory provision does not require the Commission to determine whether the local government would need to generate revenue or how it would do so. The Commission's fiscal note for this proposed rule amendment was based on the assumptions that because this fee rule has been in place since September 8, 2003, all municipally-operated gas distribution systems already would have implemented the administrative and clerical procedures, including computerized billing systems, necessary to calculate and remit the fee and, if the municipality elects to do so, to bill its customers for their share of that amount. From this perspective, changing the amount of the fee does not have a significant impact on the municipalities. Whether municipalities elect to absorb this increase on behalf of their citizens or pass it through is, of course, entirely up to each municipality; the statute does not require the fee to be passed through to the customers of the municipal utility. But because that is permitted under the statute, there is an opportunity for municipalities to generate sufficient revenue to avoid the impact, which was stated in the fiscal note.

Further, the Commission clearly stated in the proposal preamble published in the *Texas Register* that end use gas distribution customers would pay the increased pipeline safety fee. The proposed increase of the pipeline safety fee from $0.75 to $1.00 could be described as a 33% increase, which could be considered significant. However, in actual dollars, increasing this fee by $0.25 per year, or about two cents per month per service line, is, in fact, *de minimis.* Increasing the fee to $1.00 per service line per year will generate over a million dollars, but no single entity - whether a gas distribution system or an end-use customer - will bear the full responsibility for that amount. Cities that pass the increase through to their customers will experience the cost of changing the amount of the fee on the remittance documents, sending in the increased amount of money, and then charging that amount back to their customers, if they so choose. The procedures and staffing for accomplishing this are already in place.

Finally, the Commission disagrees that the purpose of a fiscal note is to quantify the amount of revenue that an affected unit of local government would be forced to generate. Under Texas Government Code, §2001.035, a rule is voidable unless the proposing agency substantially complied with the procedural requirements set forth in §§2001.0225 - 2001.034. "Substantial compliance" with statutory requirements has two parts: whether the acts tendered in satisfaction of the statutory requirements secure the legislative objectives that underlie the requirements, and whether the acts come fairly within the character and scope of each action or thing specifically required by the statute in terms that are concise, specific, and unambiguous. The Commission notes that at least one purpose of a fiscal note is to alert affected units of local government of the potential cost impact so that those entities can determine whether they need to participate in the rulemaking by filing comments. The Commission concludes that the fiscal note has exactly fulfilled this essential function, because the Texas Municipal League filed comments.

Finally, Texas Gas Service commented that it supports the proposed increase of the pipeline safety program fee from $0.75 per service line to $1.00 per service line; anticipates no additional internal costs to implement the change; and welcomes the ad-

ditions to Commission staff. The Commission appreciates this comment.

The Commission adopts the amendments pursuant to Texas Utilities Code, §121.211, which authorizes the Commission to adopt by rule a pipeline safety and regulatory fee not to exceed one dollar for each service line reported by a natural gas distribution system operator on the Gas Distribution Annual Report, Form PHMSA F7100.1-1, and Senate Bill 1, 83rd Legislature (Regular Session, 2013), which makes the appropriation of revenue to the natural gas regulatory program contingent upon the Commission increasing the pipeline safety and regulatory program fee.

Texas Utilities Code, §121.211, is affected by the adopted amendments.

Statutory authority: Texas Utilities Code, §121.211.

Cross-reference to statute: Texas Utilities Code, §121.211.

Issued in Austin, Texas, on October 22, 2013.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 22, 2013.

TRD-201304793
Cristina Martinez Self
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: November 11, 2013
Proposal publication date: August 23, 2013
For further information, please call: (512) 475-1295

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 74. ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 74, §§74.1, 74.20 - 74.24, 74.30, 74.40, 74.50, 74.55, 74.57, 74.60, 74.72, 74.74 - 74.78, 74.80, 74.100, 74.110 - 74.114 and 74.120 - 74.122, the repeal of existing §74.70, and new §§74.66, 74.67, 74.69 and 74.79 without changes to the proposed text as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5634). Amended §74.10 and new §74.68 are adopted with changes to the proposed text as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5634) and are republished.

The adoption is necessary to implement changes made by Senate Bill 540 and Senate Bill 673, 83rd Legislature, Regular Session (2013); to enhance notice to the public and property owners; and for general rule clean-up regarding the Elevators, Escalators and Related Equipment Program. A summary of each rule amendment was included in the notice of proposed rules published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5634).

As a result of public comment, technical changes were made to §74.10(17), the definition of "certifying organization," from what was proposed and published. Also, as a result of the Elevator Advisory Board's work group appointed to review the proposed changes to §74.68, changes were made to this section from what was proposed and published. Changes to these two sections are explained in this preamble.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5634). The deadline for public comments was September 30, 2013.

The Department received one public comment on the proposed rules during the 30-day public comment period from the Elevator Industry Work Preservation Fund (EIWPF) regarding proposed §74.10(17), the definition of "certifying organization." EIWPF offered technical corrections to the definition to clarify that certifying organizations "certify" not "accredit" elevator inspectors, and that the organization that is nationally recognized is "accredited" not "approved." The Department staff agreed with the clarifications offered by the public comment. As a result of that public comment, technical changes were made to §74.10(17), the definition of "certifying organization," from what was proposed and published.

At its August 14, 2013 meeting, the Elevator Advisory Board appointed a work group to review proposed new §74.68. The work group met by conference call on September 24, 2013, and September 27, 2013, to discuss §74.68. The work group made the following recommended changes to this section: (1) allow building owners to maintain the required documents, records, and programs in written or electronic format; (2) allow building owners to store the required documents, records, and programs in the equipment room, machine room, machine space, control room or control space or to have the required documents, records and programs accessible from a location within the building for the specific equipment; (3) remove the reference to "contracted" elevator personnel, since "elevator personnel" is a defined term in ASME Code A17.1; (4) require the owner to make available maintenance and repair manuals, but not parts manuals, to reflect the requirements in ASME Code A17.1; and (5) require that the documents, records and programs related to the equipment be available from September 1, 2003, and thereafter, to reflect the effective date of the ASME Code A17.1 in Texas. Except for the location of the required records, the requirements of this section are contained in existing code and restated in this section to make building owners aware of their responsibilities. The work group's recommendations gave greater flexibility to building owners and made the proposed rule less burdensome. As a result of the work group's recommendations, §74.68 has been revised from what was proposed and published.

The Elevator Advisory Board met on October 7, 2013, to discuss the proposed rules as published in the *Texas Register,* the public comment on proposed §74.10(17), and the Advisory Board work group report on proposed §74.68. The Elevator Advisory Board agreed with the changes offered by the work group and by the public comment to the proposed rules. The Elevator Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register,* with the additional changes to proposed §74.10(17) and §74.68. On October 16, 2013, the Commission adopted the proposed rules with the additional changes as recommended by the Elevator Advisory Board.

16 TAC §§74.1, 74.10, 74.20 - 74.24, 74.30, 74.40, 74.50, 74.55, 74.57, 74.60, 74.66 - 74.69, 74.72, 74.74 - 74.80, 74.100, 74.110 - 74.114, 74.120 - 74.122

The amendments and new rules are adopted under Texas Occupations Code, Chapter 51 and Texas Health and Safety Code, Chapter 754, 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 Health and Safety Code, Chapter 754. No other statutes, articles, or codes are affected by the adoption.

§74.10. Definitions.

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

(1) The Act--Texas Health and Safety Code, Chapter 754, Elevators, Escalators, and Related Equipment.

(2) Acceptance Inspection--An inspection performed at the completion of the initial installation or alteration of equipment and in accordance with the applicable ASME Code A17.1

(3) Accident--An event involving equipment that results in death or serious bodily injury to a person.

(4) Alteration--A change in existing equipment. The term does not include testing, maintenance, repair, replacement, or a cosmetic change that does not affect the operational safety of the equipment or diminish the safety of the equipment below the level required by the ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21, as applicable, at the time of alteration.

(5) Annual Inspection--An inspection of equipment performed in a 12-month period in accordance with the applicable ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21. The term includes an acceptance inspection performed within that period.

(6) ASCE--American Society of Civil Engineers.

(7) ASCE Code 21--The ASCE Code 21, "Automated People Mover Standards" as adopted in §74.100.

(8) ASME--American Society of Mechanical Engineers.

(9) ASME Code A17.1--The ASME Code A17.1/CSA B 44-07 - "Safety Code for Elevators and Escalators" as adopted in §74.100.

(10) ASME A17.2--The latest published edition of ASME A17.2, "The Guide for Inspection of Elevators, Escalators, and Moving Walks."

(11) ASME Code A17.3--The ASME Code A17.3-2002, "Safety Code for Existing Elevators and Escalators" as adopted in §74.100.

(12) ASME Code A18.1--The ASME Code 18.1, "Safety Standards for Platforms Lifts and Stairway Chairlifts" as adopted in §74.100.

(13) ASME QEI-1--The ASME QEI-1 "Standard for the Qualification of Elevator Inspectors."

(14) Automated People Mover (APM)--A guided transit mode operated by cables, with fully automated operation, featuring vehicles that operate on guideways with exclusive right of way.

(15) Board--The elevator advisory board.

(16) Certificate of Compliance--A certificate issued by the department indicating that the equipment has been inspected by a registered inspector and found to be in compliance with this chapter, except for any delays or waivers granted by the executive director and stated in the certificate.

(17) Certifying Organization--An independent organization that is competent and widely recognized to certify elevator inspectors and that has been accredited by an organization that is nationally recognized and is approved or recognized by the department as competent to certify elevator inspectors.

(18) Commission--The Texas Commission of Licensing and Regulation.

(19) Contractor--A person, partnership, company, corporation, or other entity engaging in the installation, alteration, repair, testing, or maintenance of equipment. The term does not include an employee of a contractor engaged in cleaning or any other work performed on equipment that does not affect the operational safety of the equipment or diminish the safety of the equipment below the level required by the ASME Code A17.1, ASME Code A18.1, or ASCE Code 21, as applicable.

(20) Delay--Postponement of compliance with a requirement of the applicable ASME Safety Codes or ASCE Standard as adopted in §74.100, for a specific period of time.

(21) Department--The Texas Department of Licensing and Regulation.

(22) Equipment--An elevator, escalator, chairlift, platform lift, automated people mover operated by cables, or moving sidewalk, or related equipment.

(23) Executive Director--The executive director of the department.

(24) Existing Equipment--Equipment installed or altered before September 1, 1993.

(25) Industrial Facility--A facility to which access is primarily limited to employees or contractors working in that facility.

(26) Inspection report--A department-approved form used by the inspector to report the inspection results of one unit of equipment.

(27) Inspector--A person engaged in the inspection and witnessing of the tests specified in the adopted standards of ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21, as applicable, to determine compliance with those standards. The term also includes references to registered inspector and registered elevator inspector.

(28) New Equipment--Equipment installed or altered on or after September 1, 1993.

(29) Owner--A person, company, corporation, authority, commission, board, governmental entity, institution, or any other entity that holds title to a building or facility in which equipment regulated by the Act is located. For purposes under this chapter and the Act, an owner may designate an agent. The term "owner" when used in the chapter shall be construed to include the owner's agent.

(30) Owner's Agent--The person, company, corporation, authority, commission, board, governmental entity, institution, or any other entity that has been authorized by the owner to act on the behalf of the owner as relates to a building or facility in which equipment regulated by the Act is located.

(31) Proof of Inspection--A document provided to the owner by the registered inspector after the completion of an acceptance inspection of new equipment to inform the public that the equipment has been inspected.

(32) Proof of Inspection Sticker--An adhesive label placed by the registered inspector on the Proof of Inspection or the certificate of compliance indicating the inspection has been performed.

(33) Publicly Visible Area of Building--A location within the building where regulated equipment is located that is visible to the public in an elevator car or a common area lobby or hallway and accessible to the public at all times when any regulated equipment is in operation, without the need for the viewer to obtain assistance or permission from building personnel.

(34) Qualified Historic Building or Facility--A building or facility that is:

(A) listed in or eligible for listing in the National Register of Historic Places; or

(B) designated as a Recorded Texas Historic Landmark or State Archeological Landmark.

(35) Related Equipment--The term means:

(A) automatic equipment that is used to move a person in a manner that is similar to that of an elevator, an escalator, a chairlift, a platform lift, an automated people mover, or a moving sidewalk; and

(B) hoistways, pits, and machine rooms for equipment.

(36) Reportable Condition--A condition which exists where a defect requires the equipment to be removed from operation to prevent a risk of injury to passengers, operators, or the general public.

(37) Responsible Party--The person or persons meeting the experience requirements of the Act and designated by the contractor to attend continuing education in compliance with this chapter.

(38) Serious Bodily Injury--A major impairment to bodily function or serious dysfunction of any bodily organ or part requiring medical attention.

(39) Unit of Equipment--One elevator, escalator, chairlift, platform lift, automated people mover operated by cables, or moving sidewalk, or related equipment.

(40) Variance, New Technology ("new technology variance")--Deferral of compliance with a requirement of the applicable ASME/ASCE Safety Codes to allow the installation of new technology if the new component, system, sub-system, function or device is found to be equivalent or superior to the standards adopted in §74.100. A new technology variance, once granted, may be applied to all like equipment installed in the state and a separate variance is not required for each installation. A variance applies to only one component, system, sub-system, function, or device. For example, one seeking a variance for a door system, a control system, and a suspension system would be required to file three separate variance applications.

(41) Waiver--Deferral of compliance with a requirement of the applicable ASME Safety Codes for an indefinite period of time.

§74.68. Responsibilities of the Owner--Other Documents.

(a) The owner must make available to the department and all elevator personnel all maintenance and inspection records, maintenance control programs, maintenance, and repair manuals, and product specific inspection, testing, and maintenance procedures for each make and model number of the equipment, from September 1, 2003, and thereafter, as required by the applicable standards and codes adopted in §74.100.

(b) The documents, records and programs required under subsection (a) must be in written or electronic format and be stored in the equipment room, machine room, machine space, control room, or control space or be accessible from a location within the building for that specific equipment.

(c) The owner must have copies of all current department-issued waivers, delays, and new technology variances posted in the equipment room, machine room, machine space, control room, or control space in a readily accessible and visible location available to elevator personnel.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 25, 2013.

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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: November 15, 2013
Proposal publication date: August 30, 2013
For further information, please call: (512) 463-7348

16 TAC §74.70

The repeal is adopted under Texas Occupations Code, Chapter 51 and Texas Health and Safety Code, Chapter 754, 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 adopted repeal are those set forth in Texas Occupations Code, Chapter 51 and Texas Health and Safety Code, Chapter 754. No other statutes, articles, or codes are affected by the repeal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER F. PRE-LICENSE EDUCATION AND EXAMINATION

22 TAC §535.62, §535.64

The Texas Real Estate Commission adopts amendments to §535.62, concerning Acceptable Courses of Study; and §535.64, concerning Obtaining Approval to Offer a Course, with changes to the proposed text as published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6163). The differences between the rules as adopted and as proposed is the correction of a typographical error in the form number in §535.62(d) and the removal of the proposed changes to §535.62(h)(2) consisting of the phrase "and eligible for academic credit." Corrections were also made to the form adopted by reference in §535.64 to fix typographical errors and correct the name of three subsections.

The amendments to §535.62 add Law of Agency as new subsection (d) which is a 30 hour core course with specific topics, subtopics, and units, with mandated time periods in which instructors must teach each topic or subtopic. The addition of subsection (d) requires the relettering of the remaining subsections in the rule.

The amendments to §535.64 remove the phrase "Core Real Estate Course Approval Form" from the titles of the TREC Form No. PRINS 1-0, Principles of Real Estate 1, and PRINS 2-0, Principles of Real Estate II, adopted by reference in this rule. The amendments also adopt by reference a form to be used for schools in requesting approval to offer the new Law of Agency course.

The amendments are recommended by the Education Standards Advisory Committee, a committee formed, in part, to review and recommend revisions to existing core course curricula and Commission rules addressing school, course and instructor approval.

The revision to the rules as adopted does not change the nature or scope so much that it could be deemed different rules. The rules as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules as adopted do not impose more onerous requirements than the proposed version and do not materially alter the issues raised in the proposed rules and forms.

The Education Standards Advisory Committee of the Commission received one comment on the rules as proposed from an education provider. The commenter thought that requiring correspondence courses to be approved for academic credit was not a good idea since a real estate license is not a degree program. The Committee declined to make any changes based on this comment since correspondence courses offered in association with an accredited college or university are not subject to any Commission approval process and there is a need to ensure the quality of those courses. That commenter and two additional education providers commented at the Commission meeting regarding their concern that this requirement might not be a practical or viable option and requested that more research be performed on this option as well as other ways to ensure quality correspondence courses before adopting this standard. The Commission agreed and adopted the rule without that additional proposed standard.

The reasoned justification for the amendments is to have an improved Law of Agency core course curriculum and better educated applicants resulting in improved protection for consumers of real estate services.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by these amendments is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

§535.62 Acceptable Courses of Study.

(a) Acceptable core real estate courses are those courses prescribed by §1101.003 of the Act and the following courses.

(1) Promulgated Contract Forms (or equivalent), which shall include but is not limited to unauthorized practice of law, broker-lawyer committee, current promulgated forms, commission rules governing use of forms and case studies involving use of forms.

(2) Residential Inspection for Real Estate Agents (or equivalent), which shall include but is not limited to repair-related contract forms and addenda, inspector and client agreements, inspection standards of practice and standard inspection report form, tools and procedures, electromechanical systems (plumbing, heating, air conditioning, appliances, energy-saving considerations) and structures (lot and landscape, roofs, chimney, gutters, paved areas, walls, windows and doors, insect damage and storage areas).

(b) Applicants must submit evidence of course completion, such as transcripts or course completion certificates, unless the provider has provided or will provide course completion documentation to the commission. The commission may require an applicant to furnish supporting materials such as course outlines, syllabi and course descriptions. The commission may require official transcripts to verify course work. Provided all the requirements of this section are satisfied, the commission shall accept core real estate courses or real estate related courses submitted by an applicant for a broker or salesperson license if the course was offered by any of the following providers:

(1) a school accredited by the commission or by the real estate regulatory agency of another state;

(2) a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools, or its equivalent, or by a recognized national or international accrediting body;

(3) a post-secondary educational institution established by any state;

(4) the United States Armed Forces Institute or other service-related school; or

(5) Texas professional trade association in the real estate industry.

(c) An applicant may obtain credit for completing an approved Principles of Real Estate core course described by this subsection consisting of 30 hours in Principles of Real Estate I or 30 hours in Principles of Real Estate II, or a combined 60 hour course consisting of both Principles of Real Estate I and II.

(1) Principles of Real Estate I shall contain the following subtopics, the units of which are outlined in the PRINS 1-0, Core Real Estate Course Approval Form, Principles of Real Estate I adopted by reference in §535.64(h) of this title (relating to Obtaining Approval to Offer a Course):

(A) Introduction to Modern Real Estate Practice - 200 minutes;

(B) Real Property - 60 minutes;

(C) Concepts and Responsibilities of Home Ownership - 95 minutes;

(D) Real Estate Brokerage and the Law of Agency - 180 minutes;

(E) Fair Housing Laws - 150 minutes;

(F) Ethics of Practice as a License Holder - 30 minutes;

(G) Texas Real Estate License Act - 180 minutes;

(H) Legal Descriptions - 100 minutes;

(I) Real Estate Contracts - 135 minutes;

(J) Interests in Real Estate - 180 minutes;

(K) How Home Ownership is Held - 70 minutes; and

(L) Listing Agreements - 120 minutes.

(2) Principles of Real Estate II shall contain the following subtopics, the units of which are outlined in the PRINS 2-0, Core Real Estate Course Approval Form, Principles of Real Estate II adopted by reference in §535.64(h) of this title:

(A) Real Estate Math - 200 minutes;

(B) Real Estate Appraisal - 200 minutes;

(C) Real Estate Financing Principles - 210 minutes;

(D) Control of Land Use - 115 minutes;

(E) Specializations - 50 minutes;

(F) Real Estate Investments - 110 minutes;

(G) Leases - 95 minutes;

(H) Property Management - 120 minutes;

(I) Estates, Transfers, and Titles - 200 minutes; and

(J) Closing Procedures/Closing the Real Estate Transaction - 200 minutes.

(d) An applicant may obtain credit for completing an approved 30 hour Law of Agency core course described by this subsection. Law of Agency shall contain the following subtopics, the units of which are outlined in the LOA-0, Core Real Estate Course Approval Form, Law of Agency adopted by reference in §535.64(h) of this title relating to Obtaining Approval to Offer a Course.

(1) Agency Concepts - 130 minutes;

(2) Basic Agency Relationships, Disclosure & Duties to Client - 125 minutes;

(3) Duties and Disclosures to Third Parties - 125 minutes;

(4) Seller Agency - 120 minutes;

(5) Buyer Agency - 150 minutes;

(6) Representing More than one Party in a Transaction: Intermediary Brokerage -165 minutes;

(7) Creation and Termination of Agency - 85 minutes;

(8) Clarifying Agency Relationships - 45 minutes;

(9) Employment Issues - 120 minutes;

(10) Agency, Ethics and the Law - 155 minutes;

(11) Deceptive Trade Practices & Consumer Protection Act - 140 minutes; and

(12) Implementation and Presentation - 140 minutes.

(e) The commission shall grant classroom credit for qualifying courses as follows.

(1) 15 hours of classroom credit will be granted for one semester hour.

(2) 10 hours of classroom credit will be granted for one quarter hour.

(3) 10 hours of classroom credit will be granted for one qualifying continuing education unit.

(f) A core real estate course must meet each of the following requirements to be accepted for core credit.

(1) The course contained the content required by §1101.003 of the Act or this section.

(2) The daily course presentation did not exceed ten hours.

(3) The course was of broader applicability than just techniques or procedures utilized by a particular brokerage or organization.

(4) The course was not awarded credit by an accredited college or university based on life experience or solely by examination.

(g) A classroom course must meet the following additional requirements to be accepted for core credit.

(1) The course was offered in a location conducive to instruction that is separate and apart from the work area, such as a classroom, training room, conference room, or assembly hall.

(2) The student was present in the classroom for the hours of credit granted by the course provider, or completed makeup in accordance with the requirements of the provider, or by applicable commission rule.

(3) Successful completion of a final examination or other form of final assessment of the student was a requirement for receiving credit from the provider.

(h) A correspondence course must meet the following additional requirements to be accepted for core credit.

(1) The course was offered by or in association with an accredited college or university, and students receiving credit for the course were required to pass either:

(A) a proctored final examination administered under controlled conditions to positively identified students and graded by the instructor or, if the examination was graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(B) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks course credit.

(2) If a correspondence course was offered by a school in association with an accredited college or university, the school has certified to the commission that the course was offered in accordance with the college or university's curriculum accreditation standards. Using the name of the school "in association with" the name of the college or university on the course completion certificate or electronic course submission constitutes certification to the commission that the course was offered in compliance with the college or university's curriculum accreditation standards.

(i) A course offered by an alternative delivery method must meet the following additional requirements to be accepted for core credit:

(1) The course was certified by a distance learning certification center that is acceptable to the commission;

(2) An approved instructor or the provider's coordinator/director graded the written course work; and

(3) The provider:

(A) ensured that a qualified person was available to answer students' questions or provide assistance as necessary;

(B) certified students as successfully completing the course only if the student:

(i) completed all instructional modules required to demonstrate mastery of the material;

(ii) attended any hours of live instruction and/or testing required for a given course; and

(iii) passed either:

(I) a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(II) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks credit.

(j) After twelve months, or fifteen months for alternative delivery courses, from the effective date of a commission action dividing a core course curriculum into subtopics, a core real estate course, including an advanced or tiered course, which was previously approved by the commission may not be accepted for core course credit unless the course has been revised to meet the new requirements.

(k) A previously approved core course that is not revised to meet the new curriculum requirements may nevertheless be accepted for elective core credit provided it does not violate §535.54(c) of this title (relating to General Provisions Regarding Education and Experience Requirements for a License).

§535.64. Obtaining Approval to Offer a Course.

(a) An applicant shall submit a Course Application form and pay the fee required by §535.101 of this title (relating to Fees) to obtain approval to offer a course. Prior approval is required for another school to offer the same course.

(b) A school shall submit an instructor's manual for each proposed course. The commission may require a copy of the course materials and instructor's manual to be submitted for each previously approved course a school intends to offer. Subsequent providers shall offer the course as originally approved or as revised with the approval of the commission and shall use all materials required in the original or revised course. Each manual must comply with Instructor Manual Guidelines approved by the commission.

(c) The commission is not required to approve a course sooner than 30 days after the filing of an application for course approval.

(d) For the purpose of approval of courses, a correspondence course offered by a school in association with an accredited college or university in accordance with §535.62(f) of this title (relating to Acceptable Courses of Study), is equivalent to a correspondence course offered by an accredited college or university.

(e) Schools may offer a course using an alternative delivery method such as computers if the course satisfies the requirements for such a course contained in §535.62(g) of this title.

(f) A course approval expires four years from the date of approval. A course that has been approved by the commission may be offered by the original applicant until the expiration date, except that courses approved prior to January 1, 2011 expire December 31, 2015. For a course approved after January 1, 2011 and subsequently revised and approved as required by this section, a school may no longer offer the prior version of the course for core or related credit. If any school other than the original applicant obtains approval from the commission to offer the same course, the expiration date remains unchanged.

(g) Course renewal. No more than six months prior to the expiration of a course approval, a school may obtain a course approval for another four year period. Approval or disapproval of a course shall be subject to the standards for initial course approval.

(h) The Texas Real Estate Commission adopts by reference the following forms.

(1) PRINS 1-0, Principles of Real Estate 1 and PRINS 2-0, Principles of Real Estate II approved by the Texas Real Estate Commission in 2013 for use in obtaining approval to offer a Principals of Real Estate I or II course. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

(2) LOA-0, Law of Agency approved by the Texas Real Estate Commission in 2013 for use in obtaining approval to offer a Law of Agency course. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

(i) Each core course must cover all topic areas associated with the course in the Act unless otherwise authorized or amended by this subchapter. Course topic areas required by the Act may be further divided into subtopics by this subchapter. Subtopics may contain subject matter from a single topic area or a combination of topic areas. Subtopics required to be addressed in each core course may be further divided into units. A subtopic may have a required time period ascribed to it by rule.

(j) A core course submitted to the commission for approval must comply with any rule or form adopted by reference which divides selected core course topics into subtopics and units, and must devote the assigned amount of time to each topic or subtopic.

(k) If a form has been adopted by the commission for that purpose, a school applying for approval or revision of a core course shall use the form to indicate the inclusive page numbers where the course materials address each topic or subtopic as required by this subchapter.

(l) If the commission adopts a form that divides topic areas into subtopics and units for a core course required by the Act, a school must revise and supplement a previously approved course no later than 12 months after the effective date of the form adoption. Alternative delivery courses that must be recertified by a distance learning certification center acceptable to the commission must be revised, supplemented, and recertified no later than 15 months after the effective date of the form adoption. A school must provide proof to the commission of the revisions to the course using the form adopted by the commission. A school may not offer a previously approved course for core credit more than 12 months, or 15 months for alternative delivery courses, after the

commission has divided topic areas into subtopics unless the commission has approved the revisions required by this subsection.

(m) A school seeking approval of revisions to a previously approved core course pursuant to subsection (l) of this section must pay the fee required by §535.101(b)(13) of this title. If the school paid a fee for the previous approval, it shall receive a prorated credit for the unexpired time remaining on the approval. The commission shall calculate the unexpired credit by dividing the fee paid by 48 months and multiplying the monthly prorated fee times the number of full months remaining between the date of approval and the expiration date of the prior version. A revised course approved under subsection (l) of this section expires four years from the date of approval.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kerri Lewis
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

SUBCHAPTER I. LICENSES

22 TAC §535.95

The Texas Real Estate Commission adopts amendments to §535.95, relating to Miscellaneous Provisions Concerning License or Registration Applications or Renewals, Including Fingerprinting Requirements, without changes to the proposed text as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5666).

The amendments are adopted to implement the relevant provisions of House Bill (HB) 2911, HB 2254, and Senate Bill (SB) 162, 83rd Texas Legislature, Regular Session (2013).

The amendments to §535.95(a) add a provision to reference Texas Occupations Code, Chapter 1102 as home inspectors renewal applicants will be subject to new fingerprinting requirements which are the same as the requirements for real estate salesperson and broker licensees. This same amendment was adopted on an emergency basis because of the September 1, 2013, effective date for HB 2911. In relevant part, HB 2911 amended Texas Occupations Code, Chapter 1102, requiring fingerprinting of home inspectors on renewal.

The amendments to §535.95(f) change the requirements for expedited licensing of military spouses as required by SB 162. SB 162 adds §55.005 and §55.006 to the Texas Occupations Code to require an expedited licensing and process for the issuance of a license to spouses of active duty military.

The amendments to §535.95(g) add requirements for crediting military related experience for license requirements as required by HB 2254. HB 2254 and Texas Occupations Code, §55.007 require a licensing agency to credit verifiable military service, training or education obtained by an applicant who is a military service member or veteran toward the requirements of a license.

The reasoned justification for the amendments is to implement the relevant provisions of HB 2911, HB 2254, and SB 162, 83rd Texas Legislature, Regular Session (2013).

No comments were received on the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by these amendments are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kerri Lewis
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

SUBCHAPTER J. FEES

22 TAC §535.101

The Texas Real Estate Commission adopts amendments to §535.101, concerning Fees, without changes to the proposed text as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5667).

The adopted amendments to §535.101 add a new fee of $40 for preparing a certificate of active licensure or sponsorship, effective January 1, 2014.

The reasoned justification for the added fee is to generate sufficient revenue to fund operations of the agency and to comply with requirements of Senate Bill 1000, 82nd Texas Legislature, Regular Session (2011).

No comments were received on the proposed amendments.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statute affected by the amendments is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kerri Lewis
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CHAPTER 539. RULES RELATING TO THE RESIDENTIAL SERVICE COMPANY ACT
SUBCHAPTER Q. ISSUES AFFECTING CONSUMERS

22 TAC §539.162

The Texas Real Estate Commission adopts new §539.162, concerning Contract Requirements, without changes to the proposed text as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5676). The rule will not be republished.

The new section is adopted to require companies to provide a disclosure in all contracts regarding how to file a complaint with the Texas Real Estate Commission.

The reasoned justification for the new section is enhanced consumer protection for purchasers of residential service contracts.

No comments were received on the proposed new section.

The new section is adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Texas Occupations Code, Chapter 1303.

The statute affected by the new section is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the new section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS
SUBCHAPTER E. SOLVENT-USING PROCESSES
DIVISION 5. CONTROL REQUIREMENTS FOR SURFACE COATING PROCESSES

30 TAC §115.453

The Texas Commission on Environmental Quality (commission or agency) adopts the amendment to §115.453 *with changes* to the proposed text as published in the June 7, 2013, issue of the *Texas Register* (38 TexReg 3499).

The amendment will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rule

The 1990 Federal Clean Air Act (FCAA) Amendments (42 United States Code (USC), §§7401 *et seq.)* require the EPA to establish primary National Ambient Air Quality Standards (NAAQS) that protect public health and to designate areas exceeding the NAAQS as nonattainment areas. For each designated nonattainment area, the state is required to submit a SIP revision to the EPA that provides for attainment and maintenance of the NAAQS.

FCAA, §172(c)(1), concerning Nonattainment Plan Provisions in General, requires that the SIP incorporate all reasonably available control measures, including reasonably available control technology (RACT), for sources of relevant pollutants. The EPA defines RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761, September 17, 1979). For nonattainment areas classified as moderate and above, FCAA, §182(b)(2), concerning Plan Submissions and Requirements, requires the state to submit a SIP revision that implements RACT for sources of volatile organic compounds (VOC) addressed in a control techniques guidelines (CTG) document issued between November 15, 1990 and the area's attainment date. Under the 1997 eight-hour ozone NAAQS, the Dallas-Fort Worth (DFW) area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) is classified as a serious nonattainment area and the Houston-Galveston-Brazoria (HGB) area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) is classified as a severe nonattainment area.

CTG documents provide information to assist states and local air pollution control authorities in determining RACT for specific emission sources. The CTG documents describe the EPA's evaluation of available information, including emission control options and associated costs, and provide the EPA's RACT recommendations for controlling emissions from these sources. The CTG documents do not impose any legally binding regulations or change any applicable regulations. The EPA's guidance on RACT indicates that states can choose to implement the CTG recommendations, implement an alternative approach, or demonstrate that additional control for the CTG emission source

category is not technologically or not economically feasible in the area.

FCAA, §183(e), concerning Federal Ozone Measures, directs the EPA to regulate VOC emissions from certain consumer and commercial product categories by issuing national regulations or by issuing CTG documents in lieu of regulations. In 2008, the EPA published CTG documents in lieu of national regulations for VOC emissions from Miscellaneous Metal and Plastic Parts Coatings (EPA-453/R-08-003).

In December 2011, the commission adopted rules (Rule Project No. 2010-016-115-EN) to implement the EPA's 2008 Miscellaneous Metal and Plastic Parts Coating CTG recommendations that the commission determined to be RACT in the DFW and HGB 1997 eight-hour ozone nonattainment areas. The preamble to the 2011 rulemaking specifically discusses any differences between the EPA's CTG recommendations and the RACT rules adopted by the commission. The 2011 rulemaking required affected owners and operators to use one of the approved application systems listed in §115.453(c)(1) - (6) or another application system capable of achieving a transfer efficiency equivalent to or better than the transfer efficiency of high-volume, low-pressure (HVLP) spray, which for the purpose of this rule is assumed to be 65%.

Although the EPA's 2008 CTG recommended airless spray and air-assisted airless spray application systems as RACT, the 2011 rulemaking omitted these two types of systems from the list of approved application systems under the consideration that companies using these systems could demonstrate equivalency to HVLP systems. However, demonstrating equivalency to HVLP systems may be more difficult for airless spray and air-assisted airless spray application systems than was anticipated during the 2011 rulemaking. The intent of the 2011 rulemaking was to implement RACT requirements consistent with the EPA's CTG recommendations except for the specific deviations explicitly discussed in the rule preamble. The rule preamble did not discuss the omission of airless and air-assisted airless spray application systems for the miscellaneous metal and plastic parts coating CTG category. For these reasons, the commission has determined that incorporating airless and air-assisted airless spray systems into §115.453(c) is consistent with the EPA's 2008 CTG recommendations and implements RACT as intended by the December 2011 rulemaking.

The adopted rulemaking will revise §115.453(c) to incorporate airless and air-assisted airless spray systems into the list of approved application systems. The adopted rulemaking will eliminate the need for affected owners and operators to perform testing under existing §115.453(c)(7) or purchase a new application system in order to demonstrate compliance with the application system rule requirement. The adopted rulemaking will also include non-substantive changes that are necessary to conform to Texas Register formatting requirements.

Section Discussion

The commission adopts the amendment to §115.453(c) to accommodate listing airless and air-assisted airless spray application systems. The commission adopts amended paragraph (7) to accommodate incorporating airless spray and air-assisted airless spray systems into the approved list of coating application systems for metal and plastic parts surface coating processes specified in §115.450(a)(3) and (4). Adopted paragraph (7) will allow the use of airless or air-assisted airless coating applications systems for the coating of miscellaneous metal parts and products, miscellaneous plastic parts and products, and automotive/transportation and business machine plastic parts and for the application of motor vehicle materials.

The commission also adopts renumbering existing paragraph (7) to adopted paragraph (8) without changes to the existing language. Furthermore, while not included in the proposed rulemaking, the commission adopts a non-substantive revision to subsection (a)(1) to conform to Texas Register formatting and style requirements.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the adopted rulemaking is to incorporate airless and air-assisted airless spray systems into the list of approved application systems in §115.453(c) and eliminate the need for affected owners and operators to perform testing under existing §115.453(c)(7) or purchase a new system in order to demonstrate compliance with the application system rule requirement. The adopted rulemaking is not anticipated to add any significant additional costs to affected individuals or businesses beyond what is already required to comply with current 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 adopted 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 rulemaking implements requirements of 42 USC, §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC, Chapter 85, Air Pollution Prevention and Control). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for

the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule.

Additionally, states have further obligations under FCAA, §172(c)(1) and §182(b)(2) to provide for RACT, for sources of relevant pollutants in nonattainment areas, such as DFW and HGB 1997 eight-hour ozone nonattainment areas. The EPA defines RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761, September 17, 1979). For nonattainment areas classified as moderate and above, FCAA, §182(b)(2) requires the state to submit a SIP revision that implements RACT for sources of VOC addressed in a CTG document issued between November 15, 1990 and the area's attainment date. FCAA, §183(e) directs the EPA to regulate VOC emissions from certain consumer and commercial product categories by issuing national regulations or by issuing CTG documents in lieu of regulations. The EPA published CTG documents in lieu of national regulations for VOC emissions in 2008 for Miscellaneous Metal and Plastic Parts Coatings (EPA-453/R-08-003).

In December 2011, the commission adopted rules (Rule Project No. 2010-016-115-EN) that implemented requirements based on recommendations in the EPA's 2008 Miscellaneous Metal and Plastic Parts Coating CTG that the commission had determined to be RACT in the DFW 1997 serious eight-hour ozone nonattainment area and in the HGB 1997 severe eight-hour ozone nonattainment area. The intent of the 2011 rulemaking was to implement requirements consistent with the EPA's RACT recommendations except where explicitly discussed in the rule preamble. Airless and air-assisted airless spray application systems were not discussed in the preamble for the miscellaneous metal and plastic parts coating CTG category. The purpose of this adopted rulemaking is to incorporate airless and air-assisted airless spray systems into the approved list in §115.453(c) consistent with the EPA's 2008 Miscellaneous Metal and Plastic Parts Coating CTG recommendations and implement RACT as intended by the December 2011 rulemaking. The adopted rulemaking will incorporate airless and air-assisted airless spray systems into the list of approved application systems in §115.453(c) and would eliminate the need for affected owners and operators to perform testing under existing §115.453(c)(7) or purchase a new system in order to demonstrate compliance with the application system rule requirement.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 concluding that "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules will have a broad impact, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue,* 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ). Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied);* and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978).

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." 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 specific intent of the adopted rulemaking is to incorporate airless and air-assisted airless spray systems into the list of approved application systems in §115.453(c) and eliminate the need for affected owners and operators to perform testing under

§115.453(c)(7) in order to demonstrate compliance with the application system rule requirement. The adopted rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this adopted rulemaking. Therefore, this adopted rulemaking 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.

Takings Impact Assessment

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

The commission completed a takings impact analysis for the adopted rulemaking under Texas Government Code, §2007.043. The specific purpose of the adopted rule is to incorporate airless and air-assisted airless spray systems into the list of approved application systems in §115.453(c) and eliminate the need for affected owners and operators to perform testing under existing §115.453(c)(7) or purchase another system in order to demonstrate compliance with the application system rule requirement. 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 or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the adopted rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the adoption 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 adopted rule in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to the adopted rulemaking 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 CMP policy applicable to the adopted rulemaking is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.32). The adopted rulemaking would not increase emissions of air pollutants and is therefore consistent with the CMP goal in 31 TAC §501.12(1) and the CMP policy in 31 TAC §501.32.

Promulgation and enforcement of the rule will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rule is consistent with these CMP goals and policies and because the rule does not create or have a direct or significant adverse effect on any coastal natural resource areas. 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 consistency with the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 115 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. Owners or operators that elect to comply with the control requirement in §115.453(c)(7) may need to revise their operating permit.

Public Comment

The commission held public hearings in Austin on June 25, 2013; in Fort Worth on June 27, 2013; and in Houston on July 2, 2013. The comment period closed on July 8, 2013. The commission received no oral comments during the public hearings and received one written comment from the EPA supporting the amendment made in this rulemaking.

The EPA commented that it concurs with the revision being made in this rulemaking to include airless spray and air-assisted airless spray to the list of approved coating application systems in §115.453(c).

Response to Comment

The commission appreciates the comment and support of the revision to §115.453(c).

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that 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 THSC, §382.002, concerning Policy and Purpose, that 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, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amendment is also adopted under THSC §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commis-

sion to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The amended section is also adopted under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The amendment implements THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021; and FCAA, 42 USC, §§7401 *et seq.*

§115.453. Control Requirements.

(a) The following control requirements apply to surface coating processes subject to this division. Except as specified in paragraph (3) of this subsection, these limitations are based on the daily weighted average of all coatings, as defined in §101.1 of this title (relating to Definitions), as delivered to the application system.

(1) The following limits must be met by applying low-volatile organic compound (VOC) coatings to meet the specified VOC content limits on a pound of VOC per gallon of coating basis (lb VOC/gal coating) (minus water and exempt solvent), or by applying coatings in combination with the operation of a vapor control system, as defined in §115.10 of this title (relating to Definitions), to meet the specified VOC emission limits on a pound of VOC per gallon of solids basis (lb VOC/gal solids). If a coating meets more than one coating type definition, then the coating with the least stringent VOC limit applies.

(A) Large appliances. If a coating does not meet a specific coating type definition, then it can be assumed to be a general-use coating and the VOC limit for general coating applies.
Figure: 30 TAC §115.453(a)(1)(A) (No change.)

(B) Metal furniture. If a coating does not meet a specific coating type definition, then it can be assumed to be a general-use coating and the VOC limit for general coating applies.
Figure: 30 TAC §115.453(a)(1)(B) (No change.)

(C) Miscellaneous metal parts and products. If a coating does not meet a specific coating type definition, then it can be assumed to be a general-use coating and the VOC limit for general coating applies.
Figure: 30 TAC §115.453(a)(1)(C) (No change.)

(D) Miscellaneous plastic parts and products. If a coating does not meet a specific coating category definition, then it can be assumed to be a general-use coating and the VOC limit for general coating applies.
Figure: 30 TAC §115.453(a)(1)(D) (No change.)

(E) Automotive/transportation and business machine plastic parts. For red, yellow, and black automotive/transportation coatings, except touch-up and repair coatings, the VOC limit is determined by multiplying the appropriate limit in Table 1 of this subparagraph by 1.15.
Figure: 30 TAC §115.453(a)(1)(E) (No change.)

(F) Pleasure craft. If a coating does not meet a specific coating category definition, then it can be assumed to be a general-use coating and the VOC limits for other coatings applies.
Figure: 30 TAC §115.453(a)(1)(F) (No change.)

(2) The coating VOC limits for motor vehicle materials applied to the metal and plastic parts in paragraph (1)(C) - (F) of this subsection, as delivered to the application system, must be met using low-VOC coatings (minus water and exempt solvent).
Figure: 30 TAC §115.453(a)(2) (No change.)

(3) The coating VOC limits for automobile and light-duty truck assembly surface coating processes must be met by applying low-VOC coatings.
Figure: 30 TAC §115.453(a)(3) (No change.)

(A) The owner or operator shall determine compliance with the VOC limits for electrodeposition primer operations on a monthly weighted average in accordance with §115.455(a)(2)(D) of this title (relating to Approved Test Methods and Testing Requirements).

(B) As an alternative to the VOC limit in Table 1 of this paragraph for final repair coatings, if an owner or operator does not compile records sufficient to enable determination of the daily weighted average, compliance may be demonstrated each day by meeting a standard of 4.8 lb VOC/gal coating (minus water and exempt solvent) on an occurrence weighted average basis. Compliance with the VOC limits on an occurrence weighted average basis must be determined in accordance with the procedure specified in §115.455(a)(2) of this title.

(C) The owner or operator shall determine compliance with the VOC limits in Table 2 of this paragraph in accordance with §115.455(a)(1) or (2)(C) of this title, as appropriate.

(4) The coating VOC limits for paper, film, and foil surface coating processes must be met by applying low-VOC coatings to meet the specified VOC content limits on a pound of VOC per pound of coating basis, as delivered to the application system, or by applying coatings in combination with the operation of a vapor control system to meet the specified VOC emission limits on a pound of VOC per pound of solids basis, as delivered to the application system.
Figure: 30 TAC §115.453(a)(4) (No change.)

(5) An owner or operator applying coatings in combination with the operation of a vapor control system to meet the VOC emission limits in paragraph (1) or (4) of this subsection shall use the following equation to determine the minimum overall control efficiency necessary to demonstrate equivalency. Control device and capture efficiency testing must be performed in accordance with the testing requirements in §115.455(a)(3) and (4) of this title.
Figure: 30 TAC §115.453(a)(5) (No change.)

(b) Except for the surface coating process in subsection (a)(2) of this section, the owner or operator of a surface coating process may operate a vapor control system capable of achieving a 90% overall control efficiency, as an alternative to subsection (a) of this section. Control device and capture efficiency testing must be performed in accordance with the testing requirements in §115.455(a)(3) and (4) of this title. If the owner or operator complies with the overall control efficiency option under this subsection, then the owner or operator is exempt from the application system requirements of subsection (c) of this section.

(c) The owner or operator of any surface coating process subject to this division shall not apply coatings unless one of the following coating application systems is used:

(1) electrostatic application;

(2) high-volume, low-pressure (HVLP) spray;

(3) flow coat;

(4) roller coat;

(5) dip coat;

(6) brush coat or hand-held paint rollers;

(7) for metal and plastic parts surface coating processes specified in §115.450(a)(3) and (4) of this title (relating to Applicability and Definitions), airless spray or air-assisted airless spray; or

(8) other coating application system capable of achieving a transfer efficiency equivalent to or better than that achieved by HVLP spray. For the purpose of this requirement, the transfer efficiency of HVLP spray is assumed to be 65%.

(d) The following work practices apply to the owner or operator of each surface coating process subject to this division.

(1) For all coating-related activities including, but not limited to, solvent storage, mixing operations, and handling operations for coatings and coating-related waste materials, the owner or operator shall:

(A) store all VOC-containing coatings and coating-related waste materials in closed containers;

(B) minimize spills of VOC-containing coatings;

(C) convey all coatings in closed containers or pipes;

(D) close mixing vessels and storage containers that contain VOC coatings and other materials except when specifically in use;

(E) clean up spills immediately; and

(F) for automobile and light-duty truck assembly coating processes, minimize VOC emissions from the cleaning of storage, mixing, and conveying equipment.

(2) For all cleaning-related activities including, but not limited to, waste storage, mixing, and handling operations for cleaning materials, the owner or operator shall:

(A) store all VOC-containing cleaning materials and used shop towels in closed containers;

(B) ensure that storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials;

(C) minimize spills of VOC-containing cleaning materials;

(D) convey VOC-containing cleaning materials from one location to another in closed containers or pipes;

(E) minimize VOC emissions from cleaning of storage, mixing, and conveying equipment;

(F) clean up spills immediately; and

(G) for metal and plastic parts surface coating processes specified in §115.450(a)(3) - (5) of this title, minimize VOC emission from the cleaning of application, storage, mixing, and conveying equipment by ensuring that equipment cleaning is performed without atomizing the cleaning solvent and all spent solvent is captured in closed containers.

(3) The owner or operator of automobile and light-duty truck assembly surface coating processes shall implement a work practice plan containing procedures to minimize VOC emissions from cleaning activities and purging of coating application equipment. Properties with a work practice plan already in place to comply with requirements specified in 40 Code of Federal Regulations (CFR) §63.3094(b) (as amended through April 20, 2006 (71 FR 20464)), may incorporate procedures for minimizing non-hazardous air pollutant VOC emissions to comply with the work practice plan required by this paragraph.

(e) A surface coating process that becomes subject to subsection (a) of this section by exceeding the exemption limits in §115.451 of this title (relating to Exemptions) is subject to the provisions in subsection (a) of this section even if throughput or emissions later fall below exemption limits unless emissions are maintained at or below the controlled emissions level achieved while complying with subsection (a) of this section and one of the following conditions is met.

(1) The project that caused throughput or emission rate to fall below the exemption limits in §115.451 of this title must be authorized by a permit, permit amendment, standard permit, or permit by rule required by Chapters 106 or 116 of this title (relating to Permits by Rule; and Control of Air Pollution by Permits for New Construction or Modification, respectively). If a permit by rule is available for the project, the owner or operator shall continue to comply with subsection (a) of this section for 30 days after the filing of documentation of compliance with that permit by rule.

(2) If authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner or operator shall provide the executive director 30 days notice of the project in writing.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2548

CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

SUBCHAPTER L. LICENSING OF SOURCE MATERIAL RECOVERY AND BY-PRODUCT MATERIAL DISPOSAL FACILITIES

30 TAC §336.1115

The Texas Commission on Environmental Quality (TCEQ, agency, commission) adopts an amendment to §336.1115.

Section 336.1115 is adopted *with changes* to the proposed text as published in the July 5, 2013, issue of the *Texas Register* (38 TexReg 4300), as corrected in the July 19, 2013, issue of the *Texas Register* (38 TexReg 4653), and will be republished.

Background and Summary of the Factual Basis for the Adopted Rule

In response to a petition for rulemaking, the commission adopts this rulemaking to amend the decommissioning standards applicable to radioactive source material (i.e., uranium mining) sites

and by-product disposal sites so that the standards will conform to federal requirements.

On February 12, 2013, Barrett & Associates, PLLC submitted a rulemaking petition on behalf of Uranium Energy Corp. (UEC), Radioactive Materials License Number R06064. In their petition, UEC requested that the commission amend §336.1115(e) related to the standards (other than radium) for release of outdoor areas for unrestricted use to reflect that the Radium Benchmark Dose approach is an alternative method to meeting the soil criteria specified in §336.1115(e). At the TCEQ's agenda on April 10, 2013, the commission approved the initiation of a rulemaking based on this petition (Project Number 2013-021-PET-NR).

As requested in the petition, the commission adopts the amendment to §336.1115(e) to remove paragraph (3) and amend paragraph (4) to reflect the Radium Benchmark Dose approach as the clean-up standard (in addition to the radium standard) for release of outdoor areas for unrestricted use. In considering the petition, agency staff reviewed the current language in §336.1115(e) and determined that inclusion of a specific soil standard for the concentration of uranium in soil is not consistent with the federal requirements of the United States Nuclear Regulatory Commission (NRC). The federal regulations set a standard for the concentration of radium in soil and require a risk-based dose assessment, but do not establish a specific concentration limit for uranium. A decommissioning standard for the concentration of uranium in soil is not necessary because the required risk-based radium benchmark dose assessment approach accounts for the radioactivity of the radionuclides in soil, including uranium.

The licensing program for uranium mining has transferred several times from the TCEQ and the Texas Department of State Health Services (DSHS). When the program was previously at TCEQ, the commission proposed rules and invited comments on including a standard for the concentration of uranium in soils in a 1997 rulemaking (Rule Log Number 1997-154-336-WS). In response to comments from the NRC, however, the commission did not adopt a standard for uranium (*See* May 27, 1997, issue of the *Texas Register* (22 TexReg 4593)). After the program was transferred to DSHS in 1997, it appears the standard for uranium was picked up as a requirement in DSHS rules without any specific explanation. The current TCEQ rule language was carried back over from the rules of DSHS when the licensing program was transferred by Senate Bill 1604 in 2007 (Rule Project Number 2007-060-336-PR). The dose-based approach was added in the rule in response to a comment from the NRC, but the limit for the uranium concentration was not removed from the rule. Accordingly, the commission now adopts the rule to remove the uranium concentration requirement to be consistent with the applicable federal requirements.

A correction of error was published in the July 19, 2013, issue of the *Texas Register* (38 TexReg 4653) to correct four typographical errors in the proposed rule where the superscript "2" appeared as a subscript.

Section Discussion

The commission adopts administrative changes throughout the adopted rule to reflect the agency's existing practices, conform with Texas Register and agency guidelines, and correct typographical and grammatical errors.

Section 336.1115(e) establishes the requirements for the release for unrestricted use of outdoor areas at source material recovery sites or by-product disposal sites. The commission adopts the amendment to §336.1115(e) by deleting the existing language in paragraph (3) that established a limit for the concentration of natural uranium in soil. The commission adopts the amendment to delete the language in paragraph (4) and renumber the existing requirement for the radium benchmark dose approach as paragraph (3). The commission adopts the amendment to reword the requirement of the radium benchmark approach to be consistent with the NRC's applicable language in 10 Code of Federal Regulations (CFR) Part 40, Appendix A, Criterion 6(6). As required under the existing rule, the potential peak annual total effective dose equivalent for members of the public or member of the critical group must be calculated by the methodology provided in NUREG-1620, Appendix H - "Guidance to the U.S. Nuclear Regulatory Commission Staff on Radium Dose Approach."

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of 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 act. "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 amendment to Chapter 336 is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the adopted rule establishes decommissioning standards for the release of outdoor areas at uranium mining sites or by-product disposal sites that are compatible with the requirements of the NRC. The commission adopts the rule to remove the standard for the concentration of uranium in soil. A decommissioning standard for the concentration of uranium in soil is not necessary because the required risk-based radium benchmark dose assessment approach accounts for the radioactivity of uranium.

Furthermore, the adopted rule does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Section 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 adopted rule 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, Texas Health and Safety Code (THSC), Chapter 401, authorizes the commission to regulate the recovery and processing of source material and the disposal of radioactive by-product material. Section 401.262 of the THSC authorizes the commission to assure that processing and disposal sites are closed and that by-product material is managed in compliance with applicable federal standards. In addition, the state of Texas is an "Agreement State," authorized by the NRC to administer a radiation control program under the Atomic En-

ergy Act. The adopted rule does not exceed a standard set by federal law. The adopted rule implements standards that are consistent with the NRC requirements for the decommissioning of source material recovery sites or by-product disposal sites under 10 CFR Part 40, Appendix A, Criterion 6(6).

The adopted rule does 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. Section 401.262 of the THSC specifically authorizes the commission to assure that processing and disposal sites are closed in compliance with applicable federal standards that are protective of human health and safety and the environment.

The commission has also determined that the adopted rule does 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 the adopted rule does not exceed the NRC's requirements nor exceed the requirements for retaining status as an "Agreement State."

The commission also determined that the rule is adopted under specific authority of the Texas Radiation Control Act, THSC, Chapter 401. Sections 401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation, the licensing of source material recovery and disposal of radioactive materials.

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

Takings Impact Assessment

The commission evaluated the adopted rule and performed a preliminary assessment of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007, does not apply to the adopted rule 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. The adopted rule will provide consistency with federal regulations.

Nevertheless, the commission further evaluated the adopted rule and made a preliminary assessment that implementation of the adopted rule would not constitute a taking of real property under Texas Government Code, Chapter 2007. The purpose of the adopted rule is to establish the standards for release of outdoor areas for unrestricted use after the completion of decommissioning activities at uranium mining or by-product disposal sites. The standards are adopted to be consistent with the NRC's standards provided in 10 CFR Part 40, Appendix A, Criterion 6(6). The adopted rule would substantially advance this purpose by amending the current rule to remove a specific standard for concentration of uranium in soil, which is not included in the federal standards for release of property for unrestricted use. No requirements are imposed by the commission in the adopted rule that would constitute a taking of real property.

Promulgation and enforcement of the adopted rule would be neither a statutory nor a constitutional taking of private real property. The adopted rule does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the rule. The adopted rule removes the standard for the concentration of uranium in soil and mirror language of the NRC for the release of outdoor areas after decommissioning.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program.

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

Public Comment

The comment period closed on August 5, 2013. The commission received two comments. One comment was received from the Uranium Committee of the Texas Mining & Reclamation Association (TMRA-UC). The TMRA-UC comment was in support of the adopted rule change. The second comment was received by the NRC. The NRC's comment letter did not address the proposed revision to §336.1115. The NRC's comment addressed an existing provision in the TCEQ rule in §336.1127 for determining the amount of financial assurance required for long-term care and maintenance obligations based on an assumed real annual interest rate of 2%.

Response to Comments

TMRA-UC is in support of the adopted rule and believes it would "adequately address the inconsistencies between the existing language of Section 336.1115(e) and 10 CFR Part 40 Appendix A, Criterion 6(6)." The commission appreciates the statement of support for this rulemaking.

The NRC's comment was unrelated to the proposed rulemaking. Because the commission's proposed rulemaking did not address financial assurance requirements or propose revisions to §336.1127, the NRC comment is not germane to this rulemaking and cannot be addressed by the commission at this time. No change to the proposed rule was made in response to this comment.

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; THSC, §401.051, which authorizes the commission to adopt rules and

guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC, §401.262, which authorizes the commission to assure that by-product disposal sites are closed and that by-product material is managed and disposed in compliance with applicable federal standards; and THSC, §401.412, which provides the commission authority to adopt rules for the recovery and processing of source material and the disposal of by-product material. 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 Texas Water Code and other laws of the state.

The amendment implements THSC, Chapter 401, relating to Radioactive Materials and Other Sources of Radiation, including THSC, §401.011, relating to Radiation Control Agency; THSC, §401.051, relating to Adoption of Rules and Guidelines; THSC, §401.103, relating to Rules and Guidelines for Licensing and Registration; THSC, §401.104, relating to Licensing and Registration Rules; and THSC, §401.262, relating to Management of Certain By-Product Material.

§336.1115. Expiration and Termination of Licenses; Decommissioning of Sites, Separate Buildings or Outdoor Areas.

(a) The term of the specific license is for a fixed term not to exceed ten years.

(b) Expiration of the specific license does not relieve the licensee of the requirements of this chapter.

(c) All license provisions continue in effect beyond the expiration date with respect to possession of radioactive material until the agency notifies the former licensee in writing that the provisions of the license are no longer binding. During this time, the former licensee must:

(1) be limited to actions involving radioactive material that are related to decommissioning; and

(2) continue to control entry to restricted areas until the location(s) is suitable for release for unrestricted use in accordance with the requirements of subsection (e) of this section.

(d) Within 60 days of the occurrence of any of the following, each licensee must provide notification to the agency in writing and either begin decommissioning its site, or any separate buildings or outdoor areas that contain residual radioactivity in accordance with the closure plan in §336.1111(1)(B) of this title (relating to Special Requirements for a License Application for Source Material Recovery and By-product Material Disposal Facilities), so that the buildings or outdoor areas are suitable for release in accordance with subsection (e) of this section if:

(1) the license has expired in accordance with subsection (a) of this section; or

(2) the licensee has decided to permanently cease principal activities, as defined in §336.1105(24) of this title (relating to Definitions), at the entire site or in any separate building or outdoor area; or

(3) no principal activities have been conducted for a period of 24 months in any building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with agency requirements.

(e) Outdoor areas are considered suitable for release for unrestricted use if the following limits are not exceeded.

(1) The concentration of radium-226 or radium-228 (in the case of thorium by-product material) in soil, averaged over any 100 square meters (m^2), may not exceed the background level by more than:

(A) 5 picocuries per gram (pCi/g) (0.185 becquerel per gram (Bq/g)), averaged over the first 15 centimeters (cm) of soil below the surface; and

(B) 15 pCi/g (0.555 Bq/g), averaged over 15 cm thick layers of soil more than 15 cm below the surface.

(2) The contamination of vegetation may not exceed 5 pCi/g (0.185 Bq/g), based on dry weight, for radium-226 or radium-228.

(3) By-product material containing concentrations of radionuclides other than radium in soil (e.g., natural uranium, natural thorium, lead-210), and surface activity on remaining structures, must not result in a total effective dose equivalent (TEDE) exceeding the dose from cleanup of radium contaminated soil to the standard in paragraph (1) of this subsection (radium benchmark dose), and must be at levels which are as low as reasonably achievable. If more than one residual radionuclide is present in the same 100 m^2 area, the sum of the ratios for each radionuclide of concentration present to the calculated radium benchmark dose equivalent concentration limits will not exceed "1" (unity). A calculation of the potential peak annual TEDE within 1,000 years to the average member of the critical group that would result from applying the radium standard (not including radon) must be submitted for approval, using the United States Nuclear Regulatory Commission (NRC) staff guidance on the Radium Benchmark Dose Approach.

(f) Coincident with the notification required by subsection (c) of this section, the licensee shall maintain in effect all decommissioning financial security established by the licensee in accordance with §336.1125 of this title (relating to Financial Assurance Requirements) in conjunction with a license issuance or renewal or as required by this section. The amount of the financial security must be increased, or may be decreased, as appropriate, with agency approval, to cover the detailed cost estimate for decommissioning established in accordance with subsection (l)(5) of this section.

(g) In addition to the provisions of subsection (h) of this section, each licensee must submit an updated closure plan to the agency within 12 months of the notification required by subsection (d) of this section. The updated closure plan must meet the requirements of §336.1111(1)(B) and §336.1125 of this title. The updated closure plan must describe the actual conditions of the facilities and site and the proposed closure activities and procedures.

(h) The agency may grant a request to delay or postpone initiation of the decommissioning process if the agency determines that such relief is not detrimental to the occupational and public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification in accordance with subsection (d) of this section. The schedule for decommissioning in subsection (d) of this section may not begin until the agency has made a determination on the request.

(i) A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the agency and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(1) procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(2) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(3) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(4) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(j) The agency may approve an alternate schedule for submittal of a decommissioning plan required in accordance with subsection (d) of this section if the agency determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the occupational and public health and safety and is otherwise in the public interest.

(k) The procedures listed in subsection (i) of this section may not be carried out prior to approval of the decommissioning plan.

(l) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(1) a description of the conditions of the site, separate buildings, or outdoor area sufficient to evaluate the acceptability of the plan;

(2) a description of planned decommissioning activities;

(3) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(4) a description of the planned final radiation survey;

(5) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate decommissioning; and

(6) for decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in subsection (p) of this section.

(m) The proposed decommissioning plan may be approved by the agency if the information in the plan demonstrates that the decommissioning will be completed as soon as practicable and that the occupational health and safety of workers and the public will be adequately protected.

(n) Except as provided subsection (p) of this section, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(o) Except as provided in subsection (p) of this section, when decommissioning involves the entire site, the licensee must request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(p) The agency may approve a request for an alternate schedule for completion of decommissioning of the site or separate buildings or outdoor areas and the license termination if appropriate, if the agency determines that the alternative is warranted by the consideration of the following:

(1) whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(2) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period; and

(3) other site-specific factors that the agency may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, groundwater treatment activities, monitored natural groundwater restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(q) As the final step in decommissioning, the licensee must:

(1) certify the disposition of all radioactive material, including accumulated by-product material;

(2) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in accordance with subsection (e) of this section. The licensee shall, as appropriate:

(A) report the following levels:

(i) gamma radiation in units of microroentgen per hour (μR/hr) (millisieverts per hour (mSv/hr)) at 1 meter (m) from surfaces;

(ii) radioactivity, including alpha and beta, in units of disintegrations per minute (dpm) or microcuries (μCi) (megabecquerels (MBq)) per 100cm^2 for surfaces;

(iii) μCi (MBq) per milliliter for water; and

(iv) picocuries (pCi) (becquerels (Bq)) per gram (g) for solids such as soils or concrete; and

(B) specify the manufacturer's name, and model and serial number of survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(r) The executive director will provide written notification to specific licensees, including former licensees with license provisions continued in effect beyond the expiration date in accordance with subsection (d) of this section, that the provisions of the license are no longer binding. The executive director will provide such notification when the executive director determines that:

(1) radioactive material has been properly disposed;

(2) reasonable effort has been made to eliminate residual radioactive contamination, if present;

(3) a radiation survey has been performed that demonstrates that the premises are suitable for release in accordance with agency requirements;

(4) other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the requirements of subsection (e) of this section;

(5) all records required by §336.343 of this title (relating to Records of Surveys) have been submitted to the agency;

(6) the licensee has paid any outstanding fees required by this chapter and has resolved any outstanding notice(s) of violation issued to the licensee;

(7) the licensee has met the applicable technical and other requirements for closure and reclamation of a by-product material disposal site; and

(8) the NRC has made a determination that all applicable standards and requirements have been met.

(s) Licenses for source material recovery or by-product material disposal are exempt from subsections (d)(3), (g), and (h) of this section with respect to reclamation of by-product material impoundments or disposal areas. Timely reclamation plans for by-product material disposal areas must be submitted and approved in accordance with §336.1129(p) - (aa) of this title (relating to Technical Requirements).

(t) A licensee may request that a subsite or a portion of a licensed site be released for unrestricted use before full license termination as long as release of the area of concern will not adversely impact the remaining unaffected areas and will not be recontaminated by ongoing authorized activities. When the licensee is confident that the area of concern will be acceptable to the agency for release for unrestricted use, a written request for release for unrestricted use and agency confirmation of closeout work performed shall be submitted to the agency. The request should include a comprehensive report, accompanied by survey and sample results that show contamination is less than the limits specified in subsection (e) of this section and an explanation of how ongoing authorized activities will not adversely affect the area proposed to be released. Upon confirmation by the agency that the area of concern is releasable for unrestricted use, the licensee may apply for a license amendment, if required.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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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 3. TAX ADMINISTRATION

SUBCHAPTER F. MOTOR VEHICLE SALES TAX

34 TAC §3.72

The Comptroller of Public Accounts adopts an amendment to §3.72, concerning farm machines, timber machines and trailers, with a new title of Trailers, Farm Machines, and Timber Machines, with changes to the proposed text as published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4157). This section is amended primarily to implement House Bill 268, 82nd Legislature, 2011, and House Bill 3182, 82nd Legislature, 2011. Other amendments to the section reflect reorganization of or changes to existing text for clarity and readability, to provide statements of agency policy, and to provide examples.

Subsection (a) concerns definitions and is reorganized to accommodate new and amended definitions and renumbering. Paragraph (1), concerning bunkhouses, is amended to add clarity and makes no substantive change to the existing definition. Paragraph (2) defines a farm or ranch and is amended for clarity and to provide a statement of agency policy regarding the exclusion of wildlife management and timber operations from the definition. Paragraph (3), concerning farm machines, is amended to improve readability and to provide examples, but makes no substantive change to the existing definition. Paragraph (4) concerning farm trailers is amended to provide a statement of agency policy of excluding trailers designed with living quarters from the definition. Paragraph (5) concerning house trailers is amended to be consistent with §3.481 of this title relating to manufactured homes. Paragraph (6) concerning installation is amended to add clarity and makes no substantive change to the existing definition. Paragraph (8) is added to define oilfield portable units due to House Bill 3182. New paragraph (9) concerning park models is added for consistency with §3.481 of this title concerning manufactured homes and for clarification of taxability. New paragraph (10) defining primary use is added to provide a statement of agency policy. Paragraph (11) concerning timber machines is amended for clarity and to provide examples but makes no substantive change to the existing definition. Paragraph (12) concerning timber operations is amended for clarity but makes no substantive change to the existing definition. Paragraph (13) concerning timber trailers is amended for readability and makes no substantive change to the existing definition. Paragraph (14) defining trailers is amended to provide examples as provided in Tax Code, §152.001, and to be consistent with §3.306 of this title relating to portable buildings and §3.88 of this title relating to moveable specialized equipment and makes no substantive change to the existing definition. Paragraph (15) concerning travel trailers is amended for clarity but makes no substantive change to the existing definition.

Subsection (b) concerning loss of identity of a motor vehicle is amended for clarity.

Subsection (c) concerning application of the tax is primarily amended for clarity and does not make substantive changes. Paragraph (2) is amended to provide a statement of agency policy that the use of a farm trailer for transportation to events such as competitions and shows is not an exempt use. New paragraph (5) establishes the taxability of an oil-field portable unit that is no longer used as an oil-field portable unit and its resulting taxability.

New subsection (d) concerns claiming agricultural and timber exemption as provided for in House Bill 268. Paragraph (1) explains that all eligible persons claiming exemption must apply to the comptroller for a Texas Agricultural and Timber Exemption Registration Number and provide that number when claiming the exemption. Paragraph (2) provides information on the documentation that a seller must obtain on the sale or rental of an exempt unit. Paragraph (3) concerns record retention requirements.

One comment was received from Mr. Alan Sherman, Dallas, Texas, concerning our exclusion in subsection (a)(14) of the units described in §3.88 of this title relating to Moveable Specialized Equipment and Off-Road Vehicles. Because that exclusion is not a result of a change in the Tax Code or the comptroller's interpretation, and is only for information purposes, the suggestion was not accepted. To eliminate any inconsistency, we referenced the definition of mobile office in subsection (a)(7) and oilfield portable unit in subsection (a)(8) to those definitions found in §3.306 of this title. The definitions that were in this section as proposed for amendment have been deleted.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 and Tax Code, §152.003, which provides the comptroller with the authority to prescribe and adopt rules relating to the administration of Tax Code, Chapter 152.

The amendment implements Tax Code, §152.001(4)(G) (excluding oilfield portable units from the definition of a motor vehicle), §152.001(20) (defining an oilfield portable unit) and §152.091(b-1) (claiming the agricultural/timber exemption).

§3.72. Trailers, Farm Machines, and Timber Machines.

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

(1) Bunkhouse--A house trailer designed to be used as sleeping accommodations for multiple persons, such as a work crew, but not as a single-family residence.

(2) Farm or ranch--One or more tracts of land used, either wholly or in part, in the production of crops, livestock, and/or other agricultural products held for sale in the regular course of business. The term includes feed lots, dairy farms, poultry farms, commercial orchards, commercial nurseries, and similar commercial agricultural operations that are original producers of agricultural products. The term does not include, among other operations, home gardens, wildlife management, and timber operations.

(3) Farm machine--A self-propelled motor vehicle specially adapted for, and whose primary use is in, the production of crops or rearing of livestock, including poultry or use in feedlots. The term includes a self-propelled motor vehicle specially adapted for distributing and applying plant-food materials, agricultural chemicals, or feed for livestock. The term does not include pickup trucks or any self-propelled motor vehicle specifically designed, or specially adapted, to transport property other than the property being applied or for the sole purpose of transporting or setting in place agricultural products, plant-food materials, agricultural chemicals, or feed for livestock. Examples of farm machines include, but are not limited to, a truck cab chassis with a tank and equipment designed to apply liquid fertilizer, a truck cab chassis with a hopper and auger designed to distribute feed in a feedlot, and a truck modified with a flat bed, feed distributor, and hay bale roll-out distribution device. A flat bed truck modified solely with a hay spear/spike, hay bale roll-out distribution device, or cube feeder of a size allowing the truck bed to be used for general purposes is an example of a vehicle that does not qualify as a farm machine.

(4) Farm trailer--A trailer or semitrailer designed and whose primary use is as a farm or ranch vehicle. The term does not include a motor vehicle designed for human habitation, including, but not limited to, any vehicle designed for sleeping, dressing, lounging, restroom use, or meal preparation, even though the vehicle may also be used to transport livestock or agricultural products.

(5) House trailer--This term has the meaning given in §3.481 of this title (relating to Imposition and Collection of Manufactured Housing Tax) referring to Subchapter T of this chapter (relating to Manufactured Housing Sales and Use Tax).

(6) Installation or set-up--Activities associated with the sale of a trailer, as defined in this section, including, but not limited to, spotting the trailer; preparing the foundation; placing, leveling, blocking, and anchoring the trailer; connecting sewer, water, electricity, and other utilities; and installing under skirting, awnings, and steps.

(7) Mobile office--This term has the meaning given in §3.306 of this title (relating to Sales of Mobile Offices, Oilfield Portable Units, Portable Buildings, Prefabricated Buildings, and Ready-Built Homes).

(8) Oilfield portable unit--This term has the meaning given in §3.306 of this title.

(9) Park model--This term has the meaning given in §3.481 of this title.

(10) Primary use--Use of at least 80% of a motor vehicle's operating time.

(11) Timber machine--A self-propelled motor vehicle specially adapted to perform a specialized function for use primarily in timber operations, such as land preparation, planting, maintenance, and harvesting of trees. The term does not include any self-propelled motor vehicle specifically designed or adapted for the primary use of transporting timber or timber products, including a self-propelled motor vehicle designed to transport cargo and adapted with a cargo-loading device. The term also does not include field service vehicles, such as those used to fuel or maintain other vehicles or crew vehicles.

(12) Timber operations--The production of timber, meaning the activities to prepare the production site or to plant, cultivate, or harvest commercial timber that will be sold in the regular course of business.

(13) Timber trailer--A trailer designed for and used primarily in a timber operation.

(14) Trailer--A vehicle without automotive power that is designed for human habitation or for carrying property upon a permanent chassis with wheels, axles, and a towing device, and that is designed to be drawn by a self-propelled motor vehicle. The term includes, but is not limited to, semitrailers, vans, flatbeds, tanks, dumpsters, trailers sold unassembled in a kit, dollies, jeeps, stingers, auxiliary axles, converter gears, bunkhouses, travel trailers, park models, and house trailers. The term does not include a unit designed to be towed by a self-propelled vehicle that meets the definition of moveable specialized equipment in §3.88 of this title (relating to Moveable Specialized Equipment and Off-Road Vehicles); mobile offices, as defined in this section; manufactured homes, as defined by Tax Code, §158.002; oilfield portable units, as defined in this section; or portable buildings, prefabricated buildings, and ready-built homes, as defined in §3.306 of this title.

(15) Travel trailer or recreational trailer--A trailer designed for human habitation as temporary living quarters in connection with recreational, camping, travel, or seasonal use that:

(A) is not designed to be used as a permanent dwelling;

(B) is less than eight body feet in width and 40 body feet in length in the traveling mode and contains plumbing, heating, and electrical systems that may be operated without connection to outside utilities; and

(C) is not a utility trailer, enclosed trailer, or other trailer that is not designed for human habitation as its primary function.

(b) Loss of identity as a motor vehicle.

(1) A trailer is presumed to be permanently affixed to realty, and therefore an improvement to real property that loses its identity as a motor vehicle, if:

(A) it is attached so that it cannot be reasonably reconstructed and made operational for highway use; or

(B) it is attached or installed in a manner that meets all governmental standards (if any) for the installation, including zoning regulations, building codes, federal regulations, and other requirements applicable to the land on which it is located; and it is either:

(i) installed on land owned by the purchaser, if the purchaser intends to incorporate the trailer as a permanent fixture to the land; or

(ii) installed on land leased to the purchaser, if the lease contract provides that improvements to the land become the property of the lessor.

(2) A trailer is presumed to be temporarily affixed to the real property, and remains a motor vehicle, if:

(A) the owner of the trailer only has permission to use the land but no contractual right to do so; or

(B) the owner of the trailer has a contractual right to use the land and also has the right to remove the trailer at any time or upon the termination of the contract.

(c) Application of motor vehicle sales and gross rental receipts tax.

(1) A retail sale of a trailer is a taxable sale of a motor vehicle. Motor vehicle sales or use tax is due on the total sales price including charges for all accessories attached at the time of sale and for transportation prior to the sale. The rental of a trailer is also a taxable transaction. Gross rental receipts tax is due on the gross receipts charged on the rental of a motor vehicle, including a trailer. Charges for transportation after the sale (transportation from the place of sale to the delivery or set-up site) and charges for installation or set-up after the sale are not subject to tax.

(2) A retail sale, use, or rental of a farm machine or a farm trailer is not subject to the motor vehicle sales and use tax or gross rental receipts tax if the primary use of the machine or trailer is for an exempt purpose. For the purposes of this subsection, use for an exempt purpose means use on a farm or ranch in the production of food for human consumption, grass, feed for any form of animal life or other livestock, or agricultural products to be sold in the regular course of business. The use of a farm machine or farm trailer to transport persons or property to or from competitions, shows, or rodeos, or for any other similar use, is not use for an exempt purpose.

(3) Farm trailers are also exempt from motor vehicle sales and use tax and gross rental receipts tax if the primary use of the trailer is by the original producers in processing, packing, or marketing their own livestock or agricultural products. Use in processing, packing, or marketing agricultural products by an agricultural cooperative or gin is not exempt, unless the cooperative or gin can prove the cooperative or gin itself is the original producer of all agricultural products being processed, packed, or marketed, and that those functions are performed at a location operated by the cooperative or gin.

(4) A retail sale, use, or rental of a timber machine or a timber trailer is not subject to motor vehicle sales and use tax or gross rental receipts tax if the primary use of the timber machine or timber trailer is in timber operations.

(5) A retail sale, use, or rental of an oilfield portable unit, as defined in this section, is not subject to motor vehicle sales and use tax or gross rental receipts tax. An oilfield portable unit that would otherwise be subject to motor vehicle sales and use tax, such as a trailer, becomes a taxable motor vehicle any time the unit ceases to be used exclusively as an oilfield portable unit. The tax is the obligation of the owner of the oilfield portable unit based on the owner's current book value of the unit multiplied by the current tax rate cited in Tax Code, §152.021(b). The tax should be remitted directly to the comptroller using Form 14-112, Texas Motor Vehicle Sales/Use Tax Payment. Tax due on diverted units that are held for motor vehicle rental should be submitted on Form 14-117, Texas Motor Vehicle Rental Tax Return. For more information regarding the taxation of oilfield portable units, refer to §3.306 of this title.

(d) Claiming exemption.

(1) Farmers, ranchers, agricultural producers, and timber operators must register with the comptroller and obtain a Texas Agriculture and Timber Exemption Registration Number. This registration number must be stated on the exemption certificate described in this subsection and on the Application for Texas Certificate of Title/Tax Statement (Form 130-U) filed with the County Tax Assessor-Collector at the time of titling and/or registration. In addition, a person claiming the exemption for a farm or timber machine has the burden to show, at the time the vehicle is titled and/or registered, that the vehicle has been properly adapted or modified to qualify for the exemption.

(2) All persons engaged in the business of selling or renting agricultural and timber items that are exempt from the motor vehicle sales and use tax or gross rental receipts tax as described in this section must obtain from all purchasers:

(A) A completed Texas Motor Vehicle Tax Exemption Certificate for Agricultural/Timber (Form 14-319) or a completed Motor Vehicle Rental Exemption Certificate (Form 14-305 Back) for qualifying motor vehicle rentals;

(B) a copy of the Ag/Timber Registration Number Confirmation letter issued by the comptroller (Form 01-926); or

(C) a blanket exemption certificate or the Ag/Timber Registration Number Confirmation letter (Form 01-926) covering all motor vehicle purchases or rentals, provided that the motor vehicles being sold or rented are only of a type or quantity that would not generally be used except on a farm or ranch or in timber operations. When a person sells or rents both taxable motor vehicles and motor vehicles that may qualify for exemption under this section, the seller may either obtain an exemption certificate for each motor vehicle that qualifies for exemption or obtain a blanket certificate at the time the purchaser makes an initial exempt purchase or rental and keep that certificate on file. When subsequent exempt purchases or rentals are made, the invoice must be stamped with the words "exempt agricultural purposes," and the purchaser must sign the invoice.

(3) All persons engaged in the business of selling, renting, or leasing agricultural and timber items must retain a copy of the documents described in paragraph (2) of this subsection at their principal place of business for at least four years from the date of the transaction.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.306

The Comptroller of Public Accounts adopts an amendment to §3.306, concerning sales of mobile offices, portable buildings, prefabricated buildings, and ready-built homes, with changes to the proposed text as published in the June 14, 2013, issue of the *Texas Register* (38 TexReg 3757). The section is being amended to reflect policy clarification and amendments to the Texas Tax Code.

The title is being amended to reflect the addition of oilfield portable units due to statutory changes to Tax Code, §151.308 and §152.001 by House Bill 3182, 82nd Legislature, 2011.

Subsection (a) is amended to add definitions for "bunkhouse," "contract for the improvement to realty," "house trailer," "installation or set up," "manufactured home," "park model," and "travel trailer or recreational vehicle;" to revise the definition of "mobile office" to conform more closely to the definition in §3.72 of this title (relating to Farm Machines, Timber Machines, and Trailers) and to add self-contained portable bathrooms, portable on-site dressing rooms, and food and beverage concession trailers as examples of other work places or sales outlets; to add a definition for an oilfield portable unit in order to implement statutory changes to Tax Code, §151.308 and §152.001 by House Bill 3182, 82nd Legislature, 2011; to reflect statutory changes to the definition of "department" in Texas Revised Civil Statute Article 5221f (Texas Occupations Code Chapter 1201) by House Bill 785, 74th Legislature, 1995; and to reflect current policy as to the definition of "sales price" pursuant to Tax Code, §151.007.

Subsection (b) is amended to reflect long-standing policy as to what is included in the sales price pursuant to Tax Code, §151.007; to add new topic headings for the various paragraphs; to add a new paragraph (2) to state that oilfield portable units are subject to sales and use tax in order to implement statutory changes to Tax Code, §151.308 and §152.001 by House Bill 3182, 82nd Legislature, 2011; and to combine original paragraph (3) with paragraph (4) relating to prefabricated buildings and ready-built homes under a single topic for reasons of readability.

Subsection (c) is amended to reflect long-standing policy as to the taxability of certain taxable services performed on manufactured homes as improvements to residential real property and tangible personal property.

Non-substantive changes have been made for conformity and consistency throughout the section.

A comment was received from Mr. Alan Sherman, Dallas, Texas, concerning the definitions of the terms "mobile office" and "oilfield portable units." It was determined that language used to define mobile office and oilfield portable units in subsection (a)(6) and (7) does not materially differ from the definitions suggested by Mr. Sherman. Consequently, no change is being made due to Mr. Sherman's comments.

A comment was also received from Mr. Robert Ryan, deputy general counsel for Stallion Oilfield Holdings, Inc., suggesting we revise subsection (a)(6) expressly to include wheeled change houses in the subsection to make clear that such items are subject to tax under Tax Code, Chapter 151 (concerning Limited Sales, Excise, and Use Tax), rather than Tax Code, Chapter 152 (concerning Taxes on Motor Vehicles). Based on that comment, the definition for "mobile office" in subsection (a)(6) is revised to add self-contained portable bathrooms and portable on-site dressing rooms as examples of "other work places."

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§151.051, 151.007, 151.308, and 152.001.

§3.306. Sales of Mobile Offices, Oilfield Portable Units, Portable Buildings, Prefabricated Buildings, and Ready-Built Homes.

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

(1) Bunkhouse--This term has the meaning given in §3.72 of this title (relating to Trailers, Farm Machines, and Timber Machines).

(2) Contract for the improvement to realty--A contract, as described in §3.347(a) of this title (relating to Improvements to Realty). Such a contract includes installation or set-up performed to permanently affix a structure defined in this section to real property.

(3) House trailer--This term has the meaning given in §3.72 of this title.

(4) Installation or set-up--Activities associated with either a contract for the improvement to real property or the temporary placement of a structure defined in this section, including, but not limited to, spotting the structure; preparing the foundation; connecting separate sections of the structure, if any; placing, blocking, leveling, and anchoring the structure; connecting sewer, water, electricity, and other utilities; and installing skirting, awnings, and steps.

(5) Manufactured home--This term has the meaning given in §3.481 of this title (relating to Imposition and Collection of Manufactured Housing Tax).

(6) Mobile office--A self-contained transportable structure built on a permanent chassis, with or without wheels, axles, and a towing device, that is designed to be used as an office, sales outlet, or other work place, such as a self-contained portable bathroom or a portable on-site dressing room. A food and beverage concession trailer is an example of a towable structure designed to be used as a sales outlet or other work place.

(7) Oilfield portable unit.

(A) A self-contained transportable structure built on a permanent chassis, with or without wheels, axles, and a towing device, designed to be used for temporary lodging or temporary office space that:

(i) does not require attachment to a foundation or real property to be functional;

(ii) is located exclusively upon, or immediately adjacent to, the lease premises or assigned acreage of an oil, gas, water disposal, or injection well located within an oil or gas lease, field, pooled unit, or unitized tract;

(iii) is used exclusively to provide sleeping accommodations, temporary office space, or any other temporary work space for employees, contractors, or other workers at an oil, gas, water disposal, or injection well; and

(iv) is not a travel trailer, camper trailer, or recreational vehicle.

(B) Examples of items that qualify as an oilfield portable unit when located and used exclusively as provided in this paragraph include, but are not limited to, a bunkhouse, trailer, semi-trailer, park model, house trailer, and manufactured home. For more information regarding the taxation of travel trailers, camper trailers, and recreational vehicles, refer to §3.72 of this title.

(8) Park model--This term has the meaning given in §3.481 of this title.

(9) Portable building--A self-contained transportable structure that does not require attachment to a foundation or to realty in order to be functional. An example of a portable building is a tool shed.

(10) Prefabricated building--A structure, not designed to be a residential dwelling, built at a location other than its permanent site, and that is later transported in one or more sections and affixed to real property.

(11) Ready-built home--A structure that does not bear a label or decal issued by the Texas Department of Licensing and Regulation, the Texas Department of Housing and Community Affairs, or the U.S. Department of Housing and Urban Development, but that is designed to be a residential dwelling which is constructed, precut, partially assembled, or fabricated in whole or in part at a location other than the home site and subsequently transported, in one or more sections, to the home site, where it is assembled on a permanent foundation.

(12) Travel trailer or recreational vehicle--This term has the meaning given in §3.72 of this title.

(13) The terms mobile home, ready-built home, prefabricated building, and portable building do not include a house trailer, as defined in and subject to the provisions of Tax Code, Chapter 152, or a manufactured home, as defined in and subject to the provisions of Tax Code, Chapter 158. See §3.72 and §3.481 of this title.

(b) Application of the sales and use tax to mobile offices, oilfield portable units, portable buildings, prefabricated buildings, ready-built homes, and tangible personal property.

(1) Mobile offices. A sale, lease, or rental of a mobile office is a taxable sale of tangible personal property. Sales tax is due on the total sales price charged by the seller, including charges for delivery and installation or set-up, even if separately stated on the invoice issued to the purchaser. See §3.303 of this title (relating to Transportation and Delivery Charges) and §3.294 of this title (relating to Rental and Lease of Tangible Personal Property).

(2) Oilfield portable units. A sale, lease, or rental of an oilfield portable unit is subject to sales tax. Sales tax is due on the total sales price charged by the seller, including charges for delivery and installation or set-up, even if separately stated on the invoice issued to the purchaser. See §3.303 and §3.294 of this title.

(A) An oilfield portable unit that ceases to be used exclusively as an oilfield portable unit, as required by this section, and that meets the definition of a motor vehicle, pursuant to Tax Code, §152.001(3), is subject to tax imposed by Tax Code, Chapter 152. Examples include bunkhouses, trailers, semitrailers, park models, or house trailers. For more information regarding the application of the Motor Vehicle Sales Tax to oilfield portable units, refer to §3.72(c) of this title.

(B) The lease or rental of a manufactured home as defined in §3.481 of this title that ceases to be used exclusively as an oilfield portable unit as required by this section is subject to hotel occupancy tax as provided under Tax Code, Chapter 156.

(3) Portable buildings. A sale, lease, or rental of a portable building is a taxable sale of tangible personal property. Sales tax is due on the total sales price charged by the seller, including charges for delivery and installation or set-up, even if separately stated on the invoice issued to the purchaser. See §3.303 and §3.294 of this title.

(4) Prefabricated buildings and ready-built homes.

(A) A contract to sell a prefabricated building or a ready-built home is considered a contract for an improvement to real property when the seller is required to build, transport, and affix the structure to a permanent site. See §3.347 of this title. If the contract requires the seller to perform installation or set-up services, the seller's sales tax responsibilities are determined by whether the contract is a lump-sum contract or a contract that separately states charges for materials and labor. See §3.291 of this title (relating to Contractors).

(B) The sale of a ready-built home or a prefabricated building that is not at the time of sale affixed to its permanent site is a taxable sale of tangible personal property if sold to a person responsible for affixing the structure to real property.

(5) Structures deemed to be tangible personal property. A sale of a structure that is affixed to real property is nonetheless a taxable sale of tangible personal property if the purchaser is obligated to remove the structure from its site.

(6) Tangible personal property affixed to real property. An "in-place" sale of items such as fixtures, machinery, and equipment is considered a sale of tangible personal property if the seller:

(A) is a lessee of the real property or structure to which the items are affixed; and

(B) has the present right to remove the items either as trade fixtures or under the express terms of the lease. Sales tax is due on that portion of the total consideration allocable to the in-place items without regard to the fact of their physical attachment to real property.

(c) Application of limited sales and use tax to manufactured homes.

(1) Limited sales or use tax is due on parts or accessories installed in a manufactured home by the retailer of the manufactured home, whether the home is sold alone or as part of a contract for the improvement to realty. See §3.291 of this title.

(A) If the retailer sells the home for a lump sum amount that includes both the home and parts, the retailer should not collect limited sales or use tax on the lump sum charge. The retailer must pay limited sales or use tax on the parts at the time of purchase.

(B) If the retailer separates the charge to the customer into one charge for the home and a separate charge for the additional parts, the retailer must collect limited sales or use tax on the amount charged for the parts. The retailer may issue a resale certificate in lieu of tax when purchasing the parts.

(C) If a third party sells and installs the items, the installer's sales tax responsibilities are determined by whether the contract separates charges for materials from charges for labor. If the installer charges a lump-sum amount for materials and labor, the installer should not collect tax on the lump-sum charge, and the installer must pay limited sales or use tax on the parts at the time of purchase. If the installer separately states the charges for materials and labor, the installer must collect limited sales tax on the amount charged for the parts, and the installer may issue a resale certificate in lieu of tax when purchasing the parts.

(2) A manufactured home affixed to real property, including placement on a foundation and/or supporting, blocking, leveling,

securing, anchoring, and connecting multiple sections, is presumed to be an improvement to real property for sales and use tax purposes.

(3) Repair, remodeling, restoration and maintenance.

(A) Sales or use tax is not due on labor for the repair, remodeling, restoration, and maintenance of a manufactured home affixed to real property and used for residential purposes pursuant to §3.291 of this title. Residential use of a manufactured home occurs when the building is occupied as a home or residence by the owner or by a tenant who occupies the building under a contract for an express initial term of more than 29 consecutive days. Absent a contract, only the period exceeding 29 consecutive days will be considered residential use, when supported by valid documentation, such as receipts or canceled checks.

(B) Sales or use tax is due on the repair, remodeling, and restoration of a manufactured home affixed to real property and used for nonresidential purposes pursuant to §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance).

(C) Sales or use tax is due on the repair, remodeling, restoration, and maintenance of a manufactured home temporarily affixed to real property pursuant to §3.292 of this title (relating to the Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property). A manufactured home temporarily affixed to real property is deemed to be tangible personal property if the owner of the home is a lessee of the real property to which the home is affixed and is obligated to remove the home from the real property under the express terms of the lease without regard to the home's attachment to the real property. For example, a manufactured home used exclusively to provide sleeping accommodations for employees, contractors, or other workers at a construction site is temporarily affixed to the real property.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ashley Harden
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SUBCHAPTER T. MANUFACTURED HOUSING SALES AND USE TAX

34 TAC §3.481

The Comptroller of Public Accounts adopts amendments to §3.481, concerning imposition and collection of manufactured housing tax, without changes to the proposed text as published in the June 14, 2013, issue of the *Texas Register* (38 TexReg 3759). The section is being amended to reflect policy clarification and amendments to the Tax Code, Texas Occupation Code, the Texas Local Government Code and the Texas Health and Safety Code.

The section title is being amended to more clearly identify the purpose of the section. In addition, the section has changes in form, style, wording, and organization to improve clarity and readability.

Subsection (a) is amended to implement a statutory change to Tax Code, §158.002, by House Bill 271, 69th Legislature, 1985, which added to the definition of "manufactured home" the term "industrialized housing," as defined by Article 5221f-1 Vernon's Revised Civil Statutes 1985, and which added that a decal or label issued by the U.S. Department of Housing and Urban Development, the Texas Department of Housing and Community Affairs, or the Texas Department of Licensing and Regulations is required to be permanently affixed to each section or module; to reflect the statutory change in Article 5221f, Manufactured Housing Standards Act, that the transfer and installation of HUD-code manufactured homes are administered by the Texas Department of Housing and Community Affairs; to add a definition of the term "house trailer" to clarify the distinction between manufactured housing and certain trailers defined as motor vehicles and taxed under Tax Code, Chapter 152; to amend the definition of the term "park model" for clarity; to delete the term "modular home" because the term is replaced by the term "industrialized housing;" to reflect the statutory change to the definition of "retailer" in Occupations Code, Chapter 1201, relating to Manufactured Housing, by House Bill 2813, 77th Legislature, 2001; to add examples to the definition of "recreational vehicle;" and to substitute the word "section" for the word "provision" throughout the subsection for uniformity and consistency.

Subsection (b) is amended to add the word "consigned" to conform to the section and Tax Code §158; to delete the dates "March 1, 1982," and "September 1, 1983," as no longer being relevant due to the passage of time; and to substitute the phrase "this state" for the word "Texas" throughout the subsection for uniformity and consistency. Paragraph (2) is amended to reflect existing sales and use tax policy under Tax Code, Chapter 151 concerning manufactured homes and to delete wording no longer relevant due to the passage of time. New paragraph (3) is added to reflect existing sales and use tax policy under Tax Code, Chapter 151 concerning the repair, remodeling, restoration and maintenance of manufactured homes.

Subsection (c) is amended to delete the dates "September 1, 1983," and "March 1, 1982," as no longer being relevant due to the passage of time, and to substitute the phrase "this state" for the word "Texas" throughout the subsection for uniformity and consistency.

Subsection (d) is amended to substitute the phrase "this state" for the word "Texas" throughout the subsection for uniformity and consistency.

Subsection (e) is amended in recognition of the fact that federal land bank associations and farm credit banks are treated the same as federal credit unions in the United States Code; to reflect a statutory change to Local Government Code, Chapter 501, relating to Development Corporations and Health and Safety Code, Chapter 221, relating to the Health Facilities Development Act; and to substitute for the paragraph concerning adopting a certificate by reference and obtaining copies of the certificate a new paragraph with the comptroller's Internet address for ordering forms.

No comments were received regarding adoption of the amendment.

The amendments are adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt,

and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement Tax Code, §§158.002, 158.101 and 158.154(c).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 5. CRIMINAL LAW ENFORCEMENT

SUBCHAPTER D. MULTICOUNTY DRUG TASK FORCES

37 TAC §§5.51 - 5.71

The Texas Department of Public Safety (the department) adopts the repeal of §§5.51 - 5.71, concerning Multicounty Drug Task Forces. This repeal is adopted without changes to the proposal as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5692) and will not be republished.

Pursuant to Texas Government Code, §2001.039, the department reviewed this subchapter and determined the reason for initially adopting these rules no longer exists. This subchapter is obsolete because the Multicounty Drug Task Forces no longer exist.

No comments were received regarding the adoption of this repeal.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under that section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 9. PUBLIC SAFETY COMMUNICATIONS

SUBCHAPTER A. DISASTER COMMUNICATIONS

37 TAC §§9.1 - 9.3

The Texas Department of Public Safety (the department) adopts amendments to §§9.1 - 9.3, concerning Disaster Communications. These amendments are adopted without changes to the proposed text as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5692) and will not be republished.

Pursuant to Texas Government Code, §2001.039, the department reviewed this subchapter and determined an update to these rules was necessary to reflect current department titles. Additional nonsubstantive changes were made for conformity and consistency through the subchapter.

No comments were received regarding the adoption of these amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under that section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 35. PRIVATE SECURITY

SUBCHAPTER L. GENERAL REGISTRATION REQUIREMENTS

37 TAC §35.185

The Texas Department of Public Safety (the department) adopts the repeal of §35.185, concerning Registration Deadline. This repeal is adopted without changes to the proposal as published

in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5694) and will not be republished.

This rule relates to the manner in which application for private security registrations are submitted, but it is in conflict with the governing statute, Chapter 1702 of the Texas Occupations Code (the "Private Security Act") and is therefore being repealed.

The department accepted comment on the proposed repeal of this rule through September 30, 2013. Written comments were received from 29 individuals in response to the department's proposal. Comments were largely repetitive and are summarized below. Each comment is followed by the department's response.

COMMENT: Statutory procedure reflected in Texas Occupations Code, §1702.0611 is not being followed. Under this provision the Private Security Board must approve all private security rules. The Public Safety Commission has exceeded its authority in proposing the repeal of the board's rule.

RESPONSE: Section 1702.0611 of the Texas Occupations Code provides an exclusive mechanism by which the board may propose rules, but the use of this mechanism, or the proposal of a rule by the board, is not a requirement for the commission's adoption or repeal of a rule under the Act. This provision limits the board's rulemaking authority, not that of the commission.

In many cases it may be appropriate for rules relating to the administration of Texas Occupations Code, Chapter 1702 to be proposed through the Private Security Board as §1702.0611 of the Texas Occupations Code contemplates. However, the rule at issue is in direct conflict with the statute and is incompatible with the department's administration of the statute as legislatively mandated. It is also inconsistent with public safety and the public policy underlying regulation of the private security industry.

COMMENT: Required negotiated rulemaking procedure not followed.

RESPONSE: Texas Government Code, §2008.051 provides that an agency *may* engage in negotiated rulemaking to assist it in drafting a proposed rule. Section 1702.0612 of the Texas Occupations Code, provides only that the board will adopt a policy *encouraging* negotiated rulemaking. The department has adopted a rule in this regard as well, which provides for public participation in the rulemaking process when appropriate (37 TAC §1.282). However, under neither statute nor rule is either entity *required* to engage in negotiated rulemaking. The department has determined that under the circumstances it is neither appropriate nor helpful to engage in such a procedure.

COMMENT: Adverse economic impact on individuals and small businesses.

(a) The repeal of §35.185 will impact small businesses that hire a person, register the person online and make an appointment for electronic fingerprints, only to have the employee not report for work. The company will incur the costs of the application and related fees.

RESPONSE: The scenario assumes that under the rule currently in effect an employer would not be subject to this cost. The argument is based on a misunderstanding of current statute and rule. Under current rule the employee could begin employment in a regulated capacity prior to submission of the application, fees, or fingerprints, so long as these materials are submitted by the fifth day. The comment assumes the employer could withhold the fees if the individual did not return to work. However, current rule does not exempt the employer from submitting a substantially complete application on an employee who performed regulated service. If the employee works in the five days prior to the submission of the application, the application, fingerprints, and fees must still be submitted.

(b) The repeal of §35.185 will deny individuals the right to earn a living while waiting for a fingerprinting appointment, and will deny the employer the ability to meet immediate demands for security services.

RESPONSE: The statute does not provide a right to work in a regulated capacity prior to submission of a substantially complete application.

(c) The repeal of §35.185 will result in applicants having to wait several weeks before being able to work, while waiting for their pocket card (license).

RESPONSE: This comment is based on a misunderstanding of current statute and rule. The authority to work in a regulated capacity while one's application is being processed is provided in statute. The repeal of §35.185 will not alter this.

COMMENT: The rule preamble materially misstates the department's authority to adopt rules: the statute refers to the authority of the board, not that of the department.

RESPONSE: The referenced statement is not a direct quotation of the statute; it merely refers to Chapter 1702's statutory provision for rulemaking authority. The board's rules are ultimately departmental rules, requiring approval by the Public Safety Commission. Therefore the department's authority under Texas Occupations Code, Chapter 1702 arises from §1702.061(b) of the Texas Occupations Code. The statement is accurate.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer Texas Occupations Code, Chapter 1702.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 23, 2013.

TRD-201304805
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: November 12, 2013
Proposal publication date: August 30, 2013
For further information, please call: (512) 424-5848

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 355. NON-SECURE CORRECTIONAL FACILITIES

The Texas Juvenile Justice Department (TJJD) adopts new §§355.100, 355.200, 355.202, 355.204, 355.206, 355.210, 355.220, 355.226, 355.230, 355.232, 355.234, 355.236,

355.300, 355.304, 355.306, 355.310, 355.312, 355.314, 355.316, 355.318, 355.320, 355.324, 355.326, 355.330, 355.334, 355.336, 355.340, 355.342, 355.344, 355.346, 355.350, 355.360, 355.400, 355.404, 355.406, 355.410, 355.414, 355.416, 355.420, 355.422, 355.424, 355.426, 355.428, 355.430, 355.434, 355.440, 355.442, 355.444, 355.446, 355.448, 355.450, 355.452, 355.454, 355.458, 355.460, 355.462, 355.464, 355.470, 355.476, 355.480, 355.500, 355.502, 355.504, 355.506, 355.510, 355.512, 355.514, 355.516, 355.518, 355.520, 355.522, 355.524, 355.530, 355.532, 355.534, 355.536, 355.538, 355.540, 355.600, 355.602, 355.604, 355.610, 355.612, 355.614, 355.616, 355.618, 355.620, 355.624, 355.626, 355.630, 355.632, 355.634, 355.636, 355.638, 355.640, 355.644, 355.648, 355.650, 355.654, 355.658, 355.660, 355.662, 355.664, 355.668, 355.670, 355.672, 355.674, 355.678, 355.680, 355.684, 355.700, 355.702, 355.704, 355.706, 355.708, 355.710, 355.712, 355.800, 355.802, 355.804, 355.806, 355.808, 355.810, and 355.818, concerning non-secure correctional facilities. Sections 355.206, 355.504, and 355.512 are adopted with changes, and all other sections are adopted without changes, to the proposed text as published in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5230). Changes to the proposed text are described in the following section.

CHANGES TO PROPOSED TEXT

In §355.206, clarification has been added to reflect that it is the facility, not the juvenile board, that accepts residents into the facility.

In §355.504, the term "higher-credentialed health care professional" has been replaced with "nurse practitioner, physician assistant, or physician."

In §355.504, the list of persons authorized to conduct a health screening, train others to conduct a health screening, and conduct a health assessment has been expanded to include a qualified and properly trained person who is acting under delegation from a physician in accordance with Texas Occupations Code §157.001, including but not limited to a medical assistant, emergency medical technician, or paramedic.

In §355.512, the list of items that must be included in the facility's health service plan has been expanded to include procedures for conducting health screenings and health assessments.

PURPOSE OF RULES

The new chapter establishes minimum standards for non-secure correctional facilities that are operated by a juvenile board or under contract with a juvenile board. The rules establish standards relating to physical plant, fire safety, facility management and operations, resident health and safety, resident rights, programming, physical training programs, and restraints.

JUSTIFICATION FOR RULES

The justification for the new rules is the provision of state-wide standards designed to protect health and safety, provide adequate programming and education, and protect due process rights for residents in non-secure correctional facilities.

PUBLIC COMMENTS

TJJD did not receive any public comments regarding the proposed new rules.

SUBCHAPTER A. DEFINITIONS

37 TAC §355.100

STATUTORY AUTHORITY

The new rule is adopted under Texas Human Resources Code §221.002, which authorizes the Texas Juvenile Justice Department to establish reasonable rules that provide minimum standards for non-secure correctional facilities operated by or under contract with a governmental unit.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 23, 2013.

TRD-201304810
Brett Bray
General Counsel
Texas Juvenile Justice Department
Effective date: November 15, 2013
Proposal publication date: August 16, 2013
For further information, please call: (512) 490-7014

SUBCHAPTER B. APPLICABILITY AND GENERAL PROVISIONS

37 TAC §§355.200, 355.202, 355.204, 355.206, 355.210, 355.220, 355.226, 355.230, 355.232, 355.234, 355.236

The new rules are adopted under Texas Human Resources Code §221.002, which authorizes the Texas Juvenile Justice Department to establish reasonable rules that provide minimum standards for non-secure correctional facilities operated by or under contract with a governmental unit.

§355.206. Certification and Registration of Facility.

Before the facility admits residents, the juvenile board in the county or district where a non-secure correctional facility is located shall ensure:

(1) the facility is certified in compliance with §51.126 of the Texas Family Code;

(2) the number of beds is designated in the facility certification;

(3) the facility is registered with TJJD in compliance with §51.126 of the Texas Family Code; and

(4) the current facility certification and TJJD's facility registration are posted within a public area of the facility.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201304811

Brett Bray
General Counsel
Texas Juvenile Justice Department
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For further information, please call: (512) 490-7014

SUBCHAPTER C. PHYSICAL PLANT AND FIRE SAFETY

37 TAC §§355.300, 355.304, 355.306, 355.310, 355.312, 355.314, 355.316, 355.318, 355.320, 355.324, 355.326, 355.330, 355.334, 355.336, 355.340, 355.342, 355.344, 355.346, 355.350, 355.360

The new rules are adopted under Texas Human Resources Code §221.002, which authorizes the Texas Juvenile Justice Department to establish reasonable rules that provide minimum standards for non-secure correctional facilities operated by or under contract with a governmental unit.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 23, 2013.

TRD-201304813
Brett Bray
General Counsel
Texas Juvenile Justice Department
Effective date: November 15, 2013
Proposal publication date: August 16, 2013
For further information, please call: (512) 490-7014

SUBCHAPTER D. FACILITY MANAGEMENT AND OPERATIONS

37 TAC §§355.400, 355.404, 355.406, 355.410, 355.414, 355.416, 355.420, 355.422, 355.424, 355.426, 355.428, 355.430, 355.434, 355.440, 355.442, 355.444, 355.446, 355.448, 355.450, 355.452, 355.454, 355.458, 355.460, 355.462, 355.464, 355.470, 355.476, 355.480

The new rules are adopted under Texas Human Resources Code §221.002, which authorizes the Texas Juvenile Justice Department to establish reasonable rules that provide minimum standards for non-secure correctional facilities operated by or under contract with a governmental unit.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 23, 2013.

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Brett Bray
General Counsel
Texas Juvenile Justice Department
Effective date: November 15, 2013
Proposal publication date: August 16, 2013
For further information, please call: (512) 490-7014

SUBCHAPTER E. RESIDENT HEALTH AND SAFETY

37 TAC §§355.500, 355.502, 355.504, 355.506, 355.510, 355.512, 355.514, 355.516, 355.518, 355.520, 355.522, 355.524, 355.530, 355.532, 355.534, 355.536, 355.538, 355.540

The new rules are adopted under Texas Human Resources Code §221.002, which authorizes the Texas Juvenile Justice Department to establish reasonable rules that provide minimum standards for non-secure correctional facilities operated by or under contract with a governmental unit.

§355.504. Health Screening and Assessment.

(a) Timing of Health Screening. A health screening shall be conducted on each resident within two hours after admission.

(b) Persons Qualified to Conduct Health Screening. The health screening shall be conducted by:

(1) an appropriately supervised licensed vocational nurse (LVN), a registered nurse (RN), a nurse practitioner, a physician assistant, or a physician;

(2) a qualified and properly trained person who is operating under delegation from a physician in accordance with Texas Occupations Code §157.001, including, but not limited to, a medical assistant, emergency medical technician, or paramedic; or

(3) an individual who has been trained on administering the facility's health screening by a person listed in paragraph (1) or (2) of this subsection.

(c) Training Requirements for Health Screening. The training must include, at a minimum, instruction on:

(1) how to take medical history;

(2) how to make the required observations;

(3) how to determine the appropriate disposition of a resident based on observations and responses to questions; and

(4) how to document the findings on the screening instrument.

(d) Health Screening Instrument. The health screening instrument shall be approved by an RN, nurse practitioner, physician assistant, or physician and shall include, at a minimum:

(1) mental health conditions and treatment, including any hospitalizations;

(2) suicide risk assessment in accordance with the facility's suicide prevention plan;

(3) observation of the following, at a minimum:

(A) general appearance, such as sweating, tremors, anxious, disheveled, or appropriate;

(B) behavior, such as disorderly, erratic, or appropriate;

(C) state of consciousness, such as alert, responsive, or lethargic;

(D) ease of movement, such as ability to walk and move limbs, gait, and bodily deformities;

(E) breathing, such as persistent cough, hyperventilation, or normal; and

(F) skin condition, such as lesions, swelling, yellowing, rashes, scars, tattoos, bruises, and/or needle marks;

(4) history of or current serious infectious disease including, at a minimum, tuberculosis;

(5) recent communicable illness symptoms, such as chronic cough, coughing up blood, lethargy, weakness, weight loss, loss of appetite, fever, and/or night sweats;

(6) history of or current sexually transmitted infections;

(7) history of or current illnesses or chronic health conditions including, at a minimum:

(A) allergies;

(B) asthma or other respiratory problems;

(C) dermatological conditions;

(D) seizure disorder;

(E) eye conditions; and

(F) other acute or chronic conditions as determined by the health service authority;

(8) history of or current gynecological problems;

(9) current or recent pregnancy;

(10) current use of medication(s) including, at a minimum, name, dosage, frequency, time of last dose taken, and name of prescribing physician;

(11) dental problems;

(12) use of alcohol or illegal drugs, including, at a minimum, type, amount, time of last use, and past treatment;

(13) drug withdrawal symptoms;

(14) special health requirements, such as dietary needs, physical disabilities, or prosthetics;

(15) evidence of physical trauma;

(16) recent injuries;

(17) weight and height; and

(18) any other health concerns reported by the resident.

(e) Screening Methodology. The health screening shall be administered through directly questioning the resident, observing the resident's behavior and physical condition, and review of any available records. If any of the information is unknown at the time of the health screening, the screener shall indicate this by entering "unknown," "not applicable," or a line in the space or electronic field provided for this information on the health screening form.

(f) Disposition and Medical Referral.

(1) The individual who completes the screening shall:

(A) document the disposition of the youth, such as referral to emergency services or placement in the general population with later referral for medical follow up; and

(B) sign the screening instrument and document his/her title and the date and time of the screening.

(2) For residents who are identified by the screening instrument as requiring follow-up consultation with a health care professional, facility staff shall:

(A) contact the health care professional designated by the screening instrument as soon as possible but no later than 24 hours after completion of the screening, unless the screening instrument provides otherwise; and

(B) ensure the resident receives follow-up medical care as directed by the health care professional.

(3) The facility shall maintain and implement written policies and procedures to ensure that residents identified with potential medical problems (e.g., asthma, diabetes) are appropriately supervised until medical follow-up is received.

(4) For residents who report taking prescription medication, facility staff shall document whether the resident's parent, guardian, or custodian has provided the facility with the medication and a written request to administer the medication. If the medication or written request has not been provided, facility staff shall contact a health care professional within 24 hours after completion of the screening to receive instruction.

(g) Mandatory Health Assessment. Each resident shall receive a health assessment within 30 days after admission into the facility. The health assessment shall be conducted by:

(1) an appropriately supervised licensed vocational nurse, a registered nurse, a nurse practitioner, a physician assistant, or a physician; or

(2) a qualified and properly trained person who is operating under delegation from a physician in accordance with Texas Occupations Code §157.001, including, but not limited to, a medical assistant, emergency medical technician, or paramedic.

(h) Results of Screening and Assessment. The results of the health screening and health assessment shall be communicated to appropriate staff.

(i) Contagious or Infectious Disease. Any finding of the health screening that indicates a significant potential health risk to the staff or residents from a contagious or infectious disease shall be immediately reported to the facility administrator, and the affected resident shall be placed in medical separation until proper medical clearance is obtained.

(j) Intra-Jurisdictional Custodial Transfer. A health screening is not required for intra-jurisdictional custodial transfer of residents if the non-secure facility receiving the resident is located within the same premises as the sending facility. If the two facilities are not located within the same premises, the only items required for the health screening are items enumerated in subsection (d)(2) and (15) of this section.

§355.512. Health Service Plan.

(a) Health Service Plan. The facility shall have and implement a written health service plan developed in consultation with the designated health service authority. The health service plan shall establish the facility's health care delivery system and detail the protocols for the delivery of medical, mental health, and dental services for all residents. The plan(s) shall include, at a minimum:

(1) procedures for conducting health screenings and health assessments;

(2) procedures for the referral of residents in need of medical attention, either self-reported or identified by staff, for medical, mental, and dental services;

(3) procedures for emergency health care services;

(4) procedures to ensure continuity of care in accordance with the instructions of the medical provider including, but not limited to, the delivery of treatment, medication, referrals, follow up, and medically modified diets;

(5) procedures relating to informed consent for medical, dental, psychological, and surgical treatment, as well as consent relating to immunizations and counseling services;

(6) procedures relating to procurement, distribution, dispensing, disposal, and accounting of prescription and over-the-counter medication;

(7) procedures for performing all examinations, treatments, and other procedures in a confidential setting consistent with facility operations and security;

(8) procedures for patient transportation and evacuation;

(9) procedures for identification and control of communicable diseases;

(10) procedures for staff education and training relating to the facility's health care delivery system;

(11) procedures relating to first aid kit contents, location, and periodic inspections; and

(12) procedures for pregnant residents to receive timely and appropriate prenatal care, specialized obstetrical services when indicated, and postpartum care. These procedures shall also include procedures for the safe and appropriate restraint (both physical and mechanical) of pregnant residents.

(b) Review of Health Service Plan. The health service plan shall be reviewed at least once every 24 months in consultation with the health service authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 23, 2013.

TRD-201304815
Brett Bray
General Counsel
Texas Juvenile Justice Department
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For further information, please call: (512) 490-7014

SUBCHAPTER F. RESIDENT RIGHTS AND PROGRAMMING

37 TAC §§355.600, 355.602, 355.604, 355.610, 355.612, 355.614, 355.616, 355.618, 355.620, 355.624, 355.626, 355.630, 355.632, 355.634, 355.636, 355.638, 355.640, 355.644, 355.648, 355.650, 355.654, 355.658, 355.660, 355.662, 355.664, 355.668, 355.670, 355.672, 355.674, 355.678, 355.680, 355.684

The new rules are adopted under Texas Human Resources Code §221.002, which authorizes the Texas Juvenile Justice Department to establish reasonable rules that provide minimum standards for non-secure correctional facilities operated by or under contract with a governmental unit.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201304816
Brett Bray
General Counsel
Texas Juvenile Justice Department
Effective date: November 15, 2013
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For further information, please call: (512) 490-7014

SUBCHAPTER G. PHYSICAL TRAINING PROGRAMS

37 TAC §§355.700, 355.702, 355.704, 355.706, 355.708, 355.710, 355.712

The new rules are adopted under Texas Human Resources Code §221.002, which authorizes the Texas Juvenile Justice Department to establish reasonable rules that provide minimum standards for non-secure correctional facilities operated by or under contract with a governmental unit.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brett Bray
General Counsel
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For further information, please call: (512) 490-7014

SUBCHAPTER H. RESTRAINTS

37 TAC §§355.800, 355.802, 355.804, 355.806, 355.808, 355.810, 355.818

The new rules are adopted under Texas Human Resources Code §221.002, which authorizes the Texas Juvenile Justice Department to establish reasonable rules that provide minimum standards for non-secure correctional facilities operated by or under contract with a governmental unit.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 23, 2013.

TRD-201304818
Brett Bray
General Counsel
Texas Juvenile Justice Department
Effective date: November 15, 2013
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For further information, please call: (512) 490-7014

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES
SUBCHAPTER B. TREATMENT
DIVISION 2. SPECIAL NEEDS OFFENDER PROGRAMS

37 TAC §380.8761

The Texas Juvenile Justice Department (TJJD) adopts the repeal of §380.8761, concerning Substance Abuse Services, without changes to the proposal as published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4174).

TJJD has determined that the rule is no longer needed. The basic provisions of this rule are contained in other TJJD rules such as 37 TAC §380.8505 (relating to Initial Assessment), 37 TAC §380.8701 (relating to Case Planning), and 37 TAC §380.8751 (relating to Special Needs Offenders).

The justification for the repeal is the deletion of an obsolete rule.

TJJD did not receive any public comments regarding the proposed repeal.

The repeal is adopted under Texas Human Resources Code §242.003, which authorizes TJJD to make rules appropriate to the proper accomplishment of its functions.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 23, 2013.

TRD-201304819
Brett Bray
General Counsel
Texas Juvenile Justice Department
Effective date: November 15, 2013
Proposal publication date: June 28, 2013
For further information, please call: (512) 490-7014

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.5

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 421, Standards for Certification, §421.5, concerning Definitions. The amendments are adopted without changes to the proposed text as published in the August 23, 2013, issue of the *Texas Register* (38 TexReg 5419) and will not be republished.

The amendments are adopted to define various Instructor titles and define other groups or associations referred to in commission rules.

The adopted amendments will provide clear and concise definitions regarding Instructors and it will serve as a guide for anyone interested in the duties and responsibilities of the various titles.

No comments were received from the public regarding the adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 22, 2013.

TRD-201304781
Tim Rutland
Interim Executive Director
Texas Commission on Fire Protection
Effective date: November 11, 2013
Proposal publication date: August 23, 2013
For further information, please call: (512) 936-3813

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

37 TAC §423.3

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 423, Fire Suppression, Subchapter A, Minimum Standards for Structure Fire Protection Personnel Certification, §423.3, concerning Minimum Standards for Basic Structure Fire Protection Personnel Certification. The amendments are adopted without changes to the proposed text as published in the August 23, 2013, issue of the *Texas Register* (38 TexReg 5422) and will not be republished.

The amendments are adopted to correct an incorrect reference to another section of this chapter and minor grammatical changes.

The adopted amendments will provide clear and concise rules regarding the minimum requirements for basic structure fire protection personnel certification.

No comments were received from the public regarding the proposed amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 22, 2013.

TRD-201304782
Tim Rutland
Interim Executive Director
Texas Commission on Fire Protection
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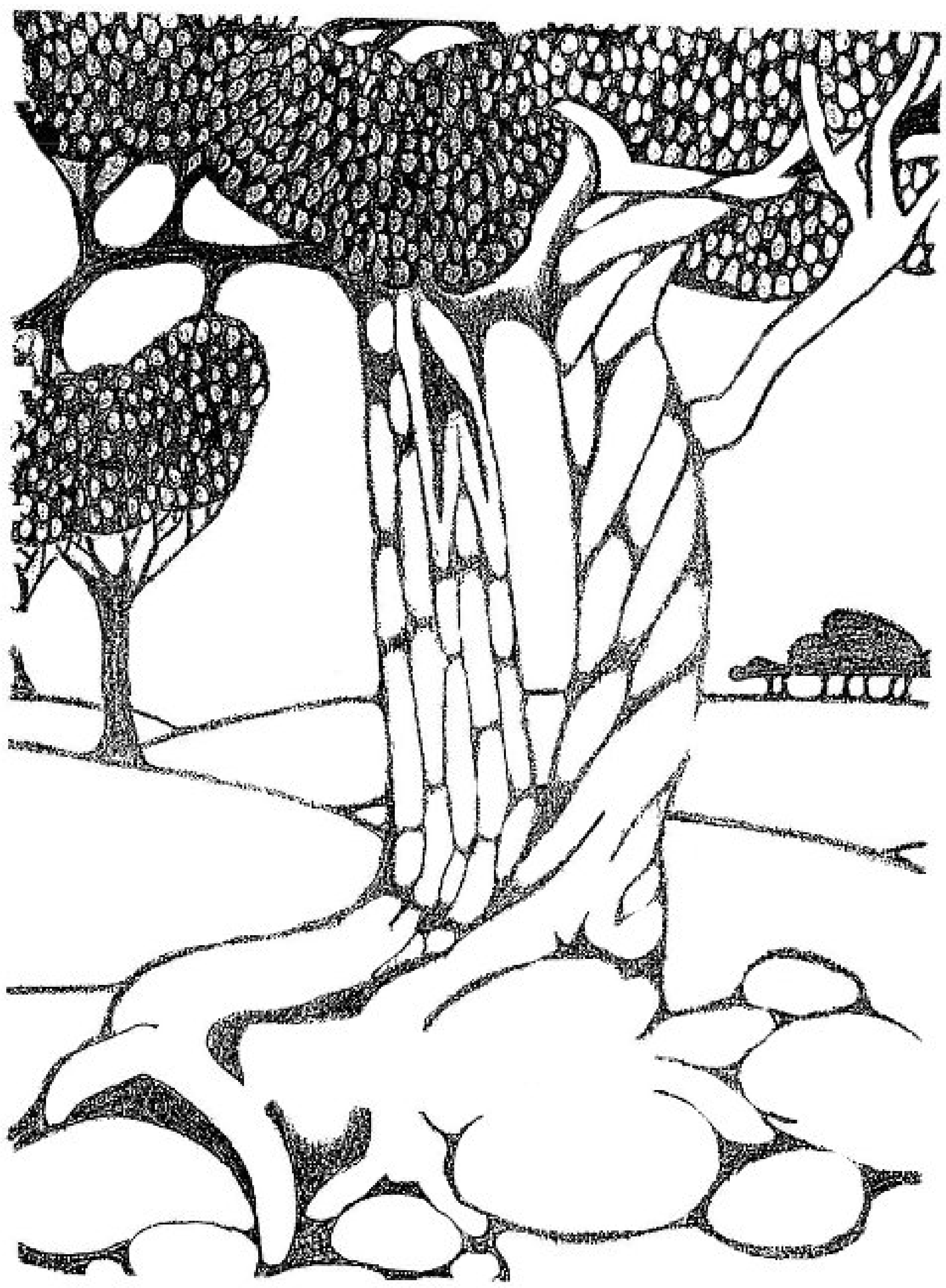
Proposal publication date: August 23, 2013
For further information, please call: (512) 936-3813



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

Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) publishes this notice of intention to review Chapter 25, concerning Substantive Rules Applicable to Electric Service Providers, pursuant to Texas Government Code §2001.039, Agency Review of Existing Rules. The text of the rule sections will not be published. The text of the rules may be found in 16 TAC Part 2, or through the commission's website at www.puc.texas.gov. Project Number 41937 is assigned to this proceeding.

Texas Government Code §2001.039 requires that each state agency review and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to the Texas Government Code, Chapter 2001, Subchapter B, Rulemaking. As required by §2001.039, this review is to assess whether the reason for adopting or readopting the rules continues to exist. The commission requests specific comments from interested persons on whether the reasons for adopting each rule section in Chapter 25 continue to exist. If it is determined during this review that any section of Chapter 25 needs to be repealed or amended, the repeal or amendment will be initiated under a separate proceeding. This notice of intention to review Chapter 25 has no effect on the sections as they currently exist.

Pam Whittington, Director of Competitive Markets, has determined that for each year of the first five-year period the sections are in effect there will be no new fiscal implications for state or local government as a result of enforcing or administering these sections that are not already in effect as a result of the previous adoption of these sections.

Ms. Whittington has determined that for each year of the first five years these sections are in effect the public benefit anticipated as a result of enforcing these sections will be: protection of the public interest inherent in the rates and services of public utilities; monitoring of the established regulatory system to assure rates, operations, and services that are just and reasonable to the consumers and utilities; assurance of high-quality service to customers; protection of the public interest inherent in the service quality of electric service providers; and maintaining a healthy marketplace for competition among electric service providers. There will be no new effect on small businesses or micro-businesses as a result of enforcing these sections that is not already in effect as a result of the previous adoption of these sections. There are no new anticipated economic costs to persons who are required to comply with these sections as noticed for review that are not already in effect as a result of the previous adoption of these sections.

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

Comments on the review of Chapter 25 (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 within 31 days after publication. Reply comments may be submitted within 45 days after publication. When filing comments interested persons are requested to comment on the sections in the same order they are found in the chapter and to clearly designate which section is being commented upon. All comments should refer to Project Number 41937.

The rules subject to this review are proposed for publication under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supplement 2013) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and Texas Government Code §2001.039 which requires each state agency to review its rules every four years.

Cross Reference to Statutes: Texas Government Code §2001.039; Texas Utilities Code Annotated, Title II, Public Utility Regulatory Act; and Title IV, Chapters 161, 163, 181, 182, 183, 184, and 185.

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER A. GENERAL PROVISIONS

§25.1. Purpose and Scope of Rules.

§25.2. Cross-Reference Transition Provision.

§25.3. Severability Clause.

§25.4. Statement of Nondiscrimination.

§25.5. Definitions.

§25.6. Cost of Copies of Public Information.

§25.8. Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

§25.21. General Provisions of Customer Service and Protection Rules.

§25.22. Request for Service.

§25.23. Refusal of Service.

§25.24. Credit Requirements and Deposits.

§25.25. Issuance and Format of Bills.

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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.

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FORM COB TX

COORDINATION OF THIS CONTRACT'S BENEFITS WITH OTHER BENEFITS

The Coordination of Benefits (COB) provision applies when a person has health care coverage under more than one plan. Plan is defined below.

The order of benefit determination rules govern the order in which each plan will pay a claim for benefits. The plan that pays first is called the primary plan. The primary plan must pay benefits in accord with its policy terms without regard to the possibility that another plan may cover some expenses. The plan that pays after the primary plan is the secondary plan. The secondary plan may reduce the benefits it pays so that payments from all plans equal 100 percent of the total allowable expense.

DEFINITIONS

(a) A "plan" is any of the following that provides benefits or services for medical or dental care or treatment. If separate contracts are used to provide coordinated coverage for members of a group, the separate contracts are considered parts of the same plan and there is no COB among those separate contracts.

(1) Plan includes: group, blanket, or franchise accident and health insurance policies; individual and group health maintenance organization evidences of coverage; individual accident and health insurance policies; individual and group preferred provider benefit plans and exclusive provider benefit plans; group insurance contracts, individual insurance contracts and subscriber contracts that pay or reimburse for the cost of dental care; medical care components of individual and group long-term care contracts, such as skilled nursing care; limited benefit coverage that is not issued to supplement individual or group in-force policies; uninsured arrangements of group or group-type coverage; the medical benefits coverage in automobile insurance contracts; and Medicare or other governmental benefits, as permitted by law.

(2) Plan does not include: the Texas Health Insurance Pool; workers' compensation insurance coverage; hospital confinement indemnity coverage or other fixed indemnity coverage; specified disease coverage; supplemental benefit coverage; accident only coverage; specified accident coverage; school accident-type coverages that cover students for accidents only, including athletic injuries, either on a "24-hour" or a "to and from school" basis; benefits provided in long-term care insurance contracts for non-medical services, for example, personal care, adult day care, homemaker services, assistance with activities of daily living, respite care, and custodial care or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services; Medicare supplement policies; a state plan under Medicaid; a governmental plan that, by law, provides benefits that are in excess of those of any private insurance plan; or other nongovernmental plan; or an individual accident and health insurance policy that is designed to fully integrate with other policies through a variable deductible.

Each contract for coverage under (a)(1) or (a)(2) is a separate plan. If a plan has two parts and COB rules apply only to one of the two, each of the parts is treated as a separate plan.

(b) "This plan" means, in a COB provision, the part of the contract providing the health care benefits to which the COB provision applies and which may be reduced because of the benefits of other plans. Any other part of the contract providing health care benefits is separate from this plan. A contract may apply one COB provision to certain benefits, such as dental benefits, coordinating only with like benefits, and may apply other separate COB provisions to coordinate other benefits.

The order of benefit determination rules determine whether this plan is a primary plan or secondary plan when the person has health care coverage under more than one plan. When this plan is primary, it determines payment for its benefits first before those of any other plan without considering any other plan's benefits. When this plan is secondary, it determines its benefits after those of another plan and may reduce the benefits it pays so that all plan benefits equal 100 percent of the total allowable expense.

(c) "Allowable expense" is a health care expense, including deductibles, coinsurance, and copayments, that is covered at least in part by any plan covering the person. When a plan provides benefits in the form of services, the reasonable cash value of each service will be considered an allowable expense and a benefit paid. An expense that is not covered by any plan covering the person is not an allowable expense. In addition, any expense that a health care provider or physician by law or in accord with a contractual agreement is prohibited from charging a covered person is not an allowable expense.

The following are examples of expenses that are not allowable expenses:

(1) The difference between the cost of a semi-private hospital room and a private hospital room is not an allowable expense, unless one of the plans provides coverage for private hospital room expenses.

(2) If a person is covered by two or more plans that do not have negotiated fees and compute their benefit payments based on the usual and customary fees, allowed amounts, or relative value schedule reimbursement methodology, or other similar reimbursement methodology, any amount in excess of the highest reimbursement amount for a specific benefit is not an allowable expense.

(3) If a person is covered by two or more plans that provide benefits or services on the basis of negotiated fees, an amount in excess of the highest of the negotiated fees is not an allowable expense.

(4) If a person is covered by one plan that does not have negotiated fees and that calculates its benefits or services based on usual and customary fees, allowed amounts, relative value schedule reimbursement methodology, or other similar reimbursement methodology, and another plan that provides its benefits or services based on negotiated fees, the primary plan's payment arrangement must be the allowable expense for all plans. However, if the health care provider or physician has contracted with the secondary plan to provide the benefit or service for a specific negotiated fee or payment amount that is different than the primary plan's payment arrangement and if the health care provider's or physician's contract permits, the negotiated fee or payment must be the allowable expense used by the secondary plan to determine its benefits.

(5) The amount of any benefit reduction by the primary plan because a covered person has failed to comply with the plan provisions is not an allowable expense. Examples of these types of plan provisions include second surgical opinions, prior authorization of admissions, and preferred health care provider and physician arrangements.

(d) "Allowed amount" is the amount of a billed charge that a carrier determines to be covered for services provided by a nonpreferred health care provider or physician. The allowed amount includes both the carrier's payment and any applicable deductible, copayment, or coinsurance amounts for which the insured is responsible.

(e) "Closed panel plan" is a plan that provides health care benefits to covered persons primarily in the form of services through a panel of health care providers and physicians that have contracted with or are employed by the plan, and that excludes coverage for services provided by other health care providers and physicians, except in cases of emergency or referral by a panel member.

(f) "Custodial parent" is the parent with the right to designate the primary residence of a child by a court order under the Texas Family Code or other applicable law, or in the absence of a court order, is the parent with whom the child resides more than one-half of the calendar year, excluding any temporary visitation.

ORDER OF BENEFIT DETERMINATION RULES

When a person is covered by two or more plans, the rules for determining the order of benefit payments are as follows:

(a) The primary plan pays or provides its benefits according to its terms of coverage and without regard to the benefits under any other plan.

(b) Except as provided in (c), a plan that does not contain a COB provision that is consistent with this policy is always primary unless the provisions of both plans state that the complying plan is primary.

(c) Coverage that is obtained by virtue of membership in a group that is designed to supplement a part of a basic package of benefits and provides that this supplementary coverage must be excess to any other parts of the plan provided by the contract holder. Examples of these types of situations are major medical coverages that are superimposed over base plan hospital and surgical benefits, and insurance type coverages that are written in connection with a closed panel plan to provide out-of-network benefits.

(d) A plan may consider the benefits paid or provided by another plan in calculating payment of its benefits only when it is secondary to that other plan.

(e) If the primary plan is a closed panel plan and the secondary plan is not, the secondary plan must pay or provide benefits as if it were the primary plan when a covered person uses a noncontracted health care provider or physician, except for emergency services or authorized referrals that are paid or provided by the primary plan.

(f) When multiple contracts providing coordinated coverage are treated as a single plan under this subchapter, this section applies only to the plan as a whole, and coordination among the component contracts is governed by the terms of the contracts. If more than one carrier pays or provides benefits under the plan, the carrier designated as primary within the plan must be responsible for the plan's compliance with this subchapter.

(g) If a person is covered by more than one secondary plan, the order of benefit determination rules of this subchapter decide the order in which secondary plans' benefits are determined in relation to each other. Each secondary plan must take into consideration the benefits of the primary plan or plans and the benefits of any other plan that, under the rules of this contract, has its benefits determined before those of that secondary plan.

(h) Each plan determines its order of benefits using the first of the following rules that apply.

(1) Nondependent or Dependent. The plan that covers the person other than as a dependent, for example as an employee, member, policyholder, subscriber, or retiree, is the primary plan, and the plan that covers the person as a dependent is the secondary plan. However, if the person is a Medicare beneficiary and, as a result of federal law, Medicare is secondary to the plan covering the person as a dependent and primary to the plan covering the person as other than a dependent, then the order of benefits between the two plans is reversed so that the plan covering the person as an employee, member, policyholder, subscriber, or retiree is the secondary plan and the other plan is the primary plan. An example includes a retired employee.

(2) Dependent Child Covered Under More Than One Plan. Unless there is a court order stating otherwise, plans covering a dependent child must determine the order of benefits using the following rules that apply.

(A) For a dependent child whose parents are married or are living together, whether or not they have ever been married:

(i) The plan of the parent whose birthday falls earlier in the calendar year is the primary plan; or

(ii) If both parents have the same birthday, the plan that has covered the parent the longest is the primary plan.

(B) For a dependent child whose parents are divorced, separated, or not living together, whether or not they have ever been married:

(i) if a court order states that one of the parents is responsible for the dependent child's health care expenses or health care coverage and the plan of that parent has actual knowledge of those terms, that plan is primary. This rule applies to plan years commencing after the plan is given notice of the court decree.

(ii) if a court order states that both parents are responsible for the dependent child's health care expenses or health care coverage, the provisions of (h)(2)(A) must determine the order of benefits.

(iii) if a court order states that the parents have joint custody without specifying that one parent has responsibility for the health care expenses or health care coverage of the dependent child, the provisions of (h)(2)(A) must determine the order of benefits.

(iv) if there is no court order allocating responsibility for the dependent child's health care expenses or health care coverage, the order of benefits for the child are as follows:

(I) the plan covering the custodial parent;

(II) the plan covering the spouse of the custodial parent;

(III) the plan covering the noncustodial parent; and then

(IV) the plan covering the spouse of the noncustodial parent.

(C) For a dependent child covered under more than one plan of individuals who are not the parents of the child, the provisions of (h)(2)(A) or (h)(2)(B) must determine the order of benefits as if those individuals were the parents of the child.

(D) For a dependent child who has coverage under either or both parents' plans and has his or her own coverage as a dependent under a spouse's plan, (h)(5) applies.

(E) In the event the dependent child's coverage under the spouse's plan began on the same date as the dependent child's coverage under either or both parents' plans, the order of benefits must be determined by applying the birthday rule in (h)(2)(A) to the dependent child's parent(s) and the dependent's spouse.

(3) Active, Retired, or Laid-off Employee. The plan that covers a person as an active employee, that is, an employee who is neither laid off nor retired, is the primary plan. The plan that covers that same person as a retired or laid-off employee is the secondary plan. The same would hold true if a person is a dependent of an active employee and that same person is a dependent of a retired or laid-off employee. If the plan that covers the same person as a retired or laid-off employee or as a dependent of a retired or laid-off employee does not have this rule, and as a result, the plans do not agree on the order of benefits, this rule does not apply. This rule does not apply if (h)(1) can determine the order of benefits.

(4) COBRA or State Continuation Coverage. If a person whose coverage is provided under COBRA or under a right of continuation provided by state or other federal law is covered under another plan, the plan covering the person as an employee, member, subscriber, or retiree or covering the person as a dependent of an employee, member, subscriber, or retiree is the primary plan, and the COBRA, state, or other federal continuation coverage is the secondary plan. If the other plan does not have this rule, and as a result, the plans do not agree on the order of benefits, this rule does not apply. This rule does not apply if (h)(1) can determine the order of benefits.

(5) Longer or Shorter Length of Coverage. The plan that has covered the person as an employee, member, policyholder, subscriber, or retiree longer is the primary plan, and the plan that has covered the person the shorter period is the secondary plan.

(6) If the preceding rules do not determine the order of benefits, the allowable expenses must be shared equally between the plans meeting the definition of

plan. In addition, this plan will not pay more than it would have paid had it been the primary plan.

EFFECT ON THE BENEFITS OF THIS PLAN

(a) When this plan is secondary, it may reduce its benefits so that the total benefits paid or provided by all plans are not more than the total allowable expenses. In determining the amount to be paid for any claim, the secondary plan will calculate the benefits it would have paid in the absence of other health care coverage and apply that calculated amount to any allowable expense under its plan that is unpaid by the primary plan. The secondary plan may then reduce its payment by the amount so that, when combined with the amount paid by the primary plan, the total benefits paid or provided by all plans for the claim equal 100 percent of the total allowable expense for that claim. In addition, the secondary plan must credit to its plan deductible any amounts it would have credited to its deductible in the absence of other health care coverage.

(b) If a covered person is enrolled in two or more closed panel plans and if, for any reason, including the provision of service by a nonpanel provider, benefits are not payable by one closed panel plan, COB must not apply between that plan and other closed panel plans.

COMPLIANCE WITH FEDERAL AND STATE LAWS CONCERNING CONFIDENTIAL INFORMATION

Certain facts about health care coverage and services are needed to apply these COB rules and to determine benefits payable under this plan and other plans. [Organization responsible for COB administration] will comply with federal and state law concerning confidential information for the purpose of applying these rules and determining benefits payable under this plan and other plans covering the person claiming benefits. Each person claiming benefits under this plan must give [Organization responsible for COB administration] any facts it needs to apply those rules and determine benefits.

FACILITY OF PAYMENT

A payment made under another plan may include an amount that should have been paid under this plan. If it does, [Organization responsible for COB administration] may pay that amount to the organization that made that payment. That amount will then be treated as though it were a benefit paid under this plan. [Organization responsible for COB administration] will not have to pay that amount again. The term "payment made" includes providing benefits in the form of services, in which case "payment made" means the reasonable cash value of the benefits provided in the form of services.

RIGHT OF RECOVERY

If the amount of the payments made by [Organization responsible for COB administration] is more than it should have paid under this COB provision, it may recover the excess from one or more of the persons it has paid or for whom it has paid or any other person or organization that may be responsible for the benefits or services provided for the covered person. The "amount of the payments made" includes the reasonable cash value of any benefits provided in the form of services.

Figure: 28 TAC §3.3510(e)

FORM COB NOTICE TX

CONSUMER EXPLANATORY BOOKLET
COORDINATION OF BENEFITS (COB)

IMPORTANT NOTICE

This is a summary of only a few of the provisions of your health plan to help you understand COB, which can be very complicated. This is not a complete description of all of the coordination rules and procedures, and does not change or replace the language contained in your insurance contract, which determines your benefits.

Double Coverage

It is common for family members to be covered by more than one health care plan. This happens, for example, when a husband and wife both work and choose to have family coverage through both employers.

When you are covered by more than one health plan, state law permits your insurers to follow a procedure called "coordination of benefits" to determine how much each should pay when you have a claim. The goal is to make sure that the combined payments of all plans do not add up to more than your covered health care expenses.

COB is complicated and covers a wide variety of circumstances. This is only an outline of some of the most common ones. If your situation is not described, read your evidence of coverage or contact the Texas Department of Insurance.

Primary or Secondary?

You will be asked to identify all the plans that cover members of your family. We need this information to determine whether we are the "primary" or "secondary" benefit payer. The primary plan always pays first when you have a claim. Any plan that does not contain Texas' COB rules will always be primary unless the provisions of both plans state that the complying plan is primary.

When This Plan is Primary

If you or a family member is covered under another plan in addition to this one, we will be primary when:

Your Own Expenses

- the claim is for your own health care expenses, unless you are covered by Medicare and both you and your spouse are retired.

Your Spouse's Expenses

- the claim is for your spouse, who is covered by Medicare, and you are not both retired.

Your Child's Expenses

- the claim is for the health care expenses of your child who is covered by this plan and

  - you are married and your birthday is earlier in the year than your spouse's, or you are living with another individual, regardless of whether or not you have ever been married to that individual, and your birthday is earlier than that other individual's birthday. This is known as the "birthday rule"; or
  - you are separated or divorced and you have informed us of a court order that makes you responsible for the child's health care expenses; or
  - there is no court order, but you have custody of the child.

Other Situations

We will be primary when any other provisions of state or federal law require us to be.

How We Pay Claims When We Are Primary

When we are the primary plan, we will pay the benefits in accord with the terms of your contract, just as if you had no other health care coverage under any other plan.

When This Plan is Secondary

We will be secondary whenever the rules do not require us to be primary.

How We Pay Claims When We Are Secondary

When we are the secondary plan, we do not pay until after the primary plan has paid its benefits. We will then pay part or all of the allowable expenses left unpaid, as explained below. An "allowable expense" is a health care expense, including coinsurance or copayments and without reduction for any applicable deductible, that is covered in full or in part by any of the plans covering the person.

If there is a difference between the amount the plans allow, we will usually base our payment on the higher amount. However, if one plan has a contract with the health care provider or physician and the other does not, our combined payments will not be more than the contracted amount. Health maintenance organizations and preferred provider organizations usually have contracts with their providers.

We may reduce our payment by any amount so that, when combined with the amount paid by the primary plan, the total benefits paid equal 100 percent of the total allowable expense for your claim. We will credit any amount we would have paid in the absence of your other health care coverage toward our own plan deductible.

We will not pay an amount the primary plan did not cover because you did not follow its rules and procedures. For example, if your plan has reduced its benefit because you did not obtain prior authorization as required by that plan, we will not pay the amount of the reduction, because it is not an allowable expense.

Questions About COB?
Contact the Texas Department of Insurance
1-800-252-3439
In Austin Call 512-463-6515

Figure: 30 TAC §116.12(20)(A)

TABLE I
MAJOR SOURCE/MAJOR MODIFICATION EMISSION THRESHOLDS

POLLUTANT designation[1]	MAJOR SOURCE tons/year	SIGNIFICANT LEVEL[2] tons/year	OFFSET RATIO minimum
OZONE (VOC, NO_X)[3]			
I marginal	100	40	1.10 to 1
II moderate	100	40	1.15 to 1
III serious	50	25	1.20 to 1
IV severe	25	25	1.30 to 1
CO			
I moderate	100	100	1.00 to 1[4]
II serious	50	50	1.00 to 1[4]
SO_2	100	40	1.00 to 1[4]
PM_{10}			
I moderate	100	15	1.00 to 1[4]
II serious	70	15	1.00 to 1[4]
NO_x[5]	100	40	1.00 to 1[4]
Lead	100	0.6	1.00 to 1[4]

[1] Texas nonattainment area designations as defined in §101.1[~~(70)~~] of this title (relating to Definitions).

[2] The significant level is applicable only to existing major sources and shall be evaluated after netting, unless the applicant chooses to apply nonattainment new source review (NNSR) directly to the project. The appropriate netting triggers for existing major sources of NO_X and VOC are specified in §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas) and for other pollutants are equal to the significant level listed in this table.

[3] VOC and NO_X are precursors to ozone formation and should be quantified individually to determine whether a source is subject to NNSR under §116.150 of this title.

[4] The offset ratio is specified to be greater than 1.00 to 1.
VOC = volatile organic compounds
NO_X = oxides of nitrogen
NO_2 = nitrogen dioxide
CO = carbon monoxide
SO_2 = sulfur dioxide
PM_{10} = particulate matter with an aerodynamic diameter less than or equal to ten microns

[5] Applies to the National Ambient Air Quality Standard [~~NAAQS~~] for [~~nitrogen dioxide (~~]NO_2[~~)~~].

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Automobile Burglary and Theft Prevention Authority

Request for Applications under the Automobile Burglary and Theft Prevention Authority Fund

Notice of Invitation for Applications:

The Automobile Burglary and Theft Prevention Authority is soliciting applications for grants to be awarded for projects under the Automobile Burglary and Theft Prevention Authority (ABTPA) Fund. This grant cycle will be one year in duration, and will begin on September 1, 2014. One or more of the following types of projects may be awarded, depending on the availability of funds:

Law Enforcement/Detection/Apprehension Projects, to establish motor vehicle burglary and theft enforcement teams and other detection/apprehension programs. Priority funding may be provided to state, county, precinct commissioner, general or home rule cities for enforcement programs in particular areas of the state where the problem is assessed as significant. Enforcement efforts covering multiple jurisdictional boundaries may receive priority for funding.

Prosecution/Adjudication/Conviction Projects, to provide for prosecutorial and judicial programs designed to assist with the prosecution of persons charged with motor vehicle burglary and theft offenses.

Prevention, Anti-Theft Devices and Automobile Registration Projects, to test experimental equipment which is considered to be designed for auto theft deterrence and registration of vehicles in the Texas Help End Auto Theft (H.E.A.T.) Program.

Reduction of the Sale of Stolen Vehicles or Parts Projects, to provide vehicle identification number labeling, including component part labeling and etching methods designed to deter the sale of stolen vehicles or parts.

Public Awareness and Crime Prevention/Education/Information Projects, to provide education and specialized training to law enforcement officers in auto burglary and theft prevention procedures, provide information linkages between state law enforcement agencies on auto theft crimes, and develop a public information and education program on theft prevention measures.

Eligible Applicants:

State agencies, local general-purpose units of government, independent school districts, nonprofit, and for profit organizations are eligible to apply for grants for automobile burglary and theft prevention assistance projects. Nonprofit and profit organizations shall be required to provide with their grant applications sufficient documentation to evaluate the credibility and the community support of the organization and the viability of the organization's existing activities in the context of providing automobile burglary and theft prevention assistance.

Contact Person:

Detailed specifications, including selection process and schedule for workshops for applicants will be made available through ABTPA. Copies of the Administrative Guide and the application can be found at www.txwatchyourcar.com.

Contact Charles Caldwell, ABTPA Director, Texas Automobile Burglary and Theft Prevention Authority, (512) 465-4011.

Application Workshops:

A **mandatory** workshop for all applicants that wish to apply for the Texas Automobile Burglary and Theft Prevention Grant funds with at least **one (1)** representative has been selected to be held:

Monday-Wednesday, January 27-29, 2014, Austin, Texas, 1:30 p.m. - 5:00 p.m., Doubletree Hotel Austin, 6505 IH-35 North, Austin, Texas, 78752, 1-800-347-0330, Group Code: Texas Department of Motor Vehicles ABTPA Grant Workshop.

Attendees are responsible for making individual hotel reservations. Registration for the workshops must be done on the ABTPA Website at www.txwatchyourcar.com.

Application Deadline and Submission Requirements:

Submission of the Application will be via the ABTPA website at www.txwatchyour.com Grant System. In addition, one hardcopy of the original application must be submitted. The Authority must receive applications by 5:00 p.m., Friday, May 2, 2014 or postmarked by May 2, 2014. Each Application must:

1. Include all signed certifications and signature pages.

2. If submitting hardcopy, application can be mailed or delivered to: **Texas Automobile Burglary and Theft Prevention Authority, 4000 Jackson Avenue Austin, Texas 78731.**

3. Submit the **original copy** of the proposal.

4. Facsimile transmissions will not be accepted. If mailed, applications must be marked "Personal and Confidential" and addressed to the contact person listed above. If delivered, please leave application with the contact person (or designee) at the address listed.

Selection Process:

Applications will be selected according to rules §§57.2, 57.4, 57.7, and 57.14, as published in the Texas Administrative Code, Title 43, Chapter 57. Grant award decisions by ABTPA are final and not subject to judicial review. Grants will be awarded on or before September 1, 2014.

TRD-201304840
Charles Caldwell
Director
Automobile Burglary and Theft Prevention Authority
Filed: October 24, 2013

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Comptroller of Public Accounts

Notice to Persons Interested in Updates to the Texas Building Energy Performance Standards 2013

This notice is provided to interested persons that the State Energy Conservation Office (SECO) is holding a stakeholder meeting on possible updates to the Texas Building Energy Performance Standards. To achieve energy conservation in single-family residential construction, Texas Health and Safety Code (THSC), §388.003(a), adopted the en-

ergy efficiency chapter of International Residential Code (IRC) as it existed on May 1, 2001, as the energy code for use in this state for all single-family residential construction. Section 388.003(b-1), THSC, authorizes SECO to adopt the energy efficiency chapter of the new or latest published edition of the IRC if it will result in residential energy efficiency and air quality that is equivalent to or better than the energy efficiency chapter of the 2001 IRC. In 2009, the Energy Systems Laboratory at the Texas Engineering Experiment Station of The Texas A&M University System (Laboratory) recommended that the energy efficiency chapter of the 2009 IRC would result in equivalent or better residential energy efficiency and greater air quality benefits than the energy efficiency chapter of the 2001 IRC. Effective January 1, 2012, SECO adopted the energy efficiency chapter of the IRC as it existed on May 1, 2009, as the energy code for single-family residential construction. In August 2012, SECO received final recommendation from the Laboratory on the efficacy of the energy efficiency chapter of the 2012 IRC compared to the energy efficiency chapter of the 2009 IRC.

To achieve energy conservation in all commercial and industrial construction and in residential construction other than single-family residential construction, THSC, §388.003(b), adopted the International Energy Conservation Code (IECC) as it existed on May 1, 2001, as the energy code for use in this state for all such construction. THSC, §388.003(b-1), authorizes SECO to adopt the new or latest published edition of the IECC if it will result in residential or commercial energy efficiency and air quality that is equivalent to or better than the 2001 IECC. In 2009, the Laboratory recommended that the 2009 IECC would result in equivalent or better residential and commercial energy efficiency and air quality than the 2001 IECC. Effective April 1, 2011, SECO adopted the IECC as it existed on May 1, 2009, as the energy code for all commercial and industrial construction and in residential construction other than single-family residential construction. In August, 2012, SECO received final recommendation from the Laboratory on the efficacy of the 2012 IECC compared to the version of 2009 IECC.

The International Code Council recently concluded public comment hearings on Group B codes, including the IRC and IECC, and on October 18, 2013, posted a Summary of Final Action Group B Code Changes. Publication of the resulting updated 2015 IRC and IECC is expected in the spring of 2014.

A stakeholder meeting on possible updates to the Texas Building Energy Performance Standards will be held for any persons interested in building energy codes for residential, commercial, and industrial construction, including without limitation: commercial and residential builders; architects and engineers; municipal, county, and other local government authorities; and environmental groups. The meeting will be held at 10:00 a.m. CST on Friday, November 15 in room 1-111 of the Travis Building located at 1701 N. Congress Ave.

Copies of the 2009 IECC and IRC as well as the 2012 IECC and IRC are available for purchase through International Code Council website http://www.iccsafe.org/Store/Pages/Product.aspx?category=0&cat=ICCSafe&id=3800X12. Also, copies of these codes are available for viewing during regular business hours at the SECO office located at the Lyndon Baines Johnson (LBJ) State Office Building, 111 E. 17th Street, Suite 1114, Austin, Texas 78774.

TRD-201304875
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: October 25, 2013

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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/04/13 - 11/10/13 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 11/04/13 - 11/10/13 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-201304899
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 28, 2013

Texas Education Agency

Request for Applications Concerning 2014-2015 Texas Mathematics and Science Partnership (TxMSP) Professional Development Network, Cycle 2

The Texas Education Agency (TEA) published Request for Applications (RFA) #701-13-108 concerning the 2014-2015 Texas Mathematics and Science Partnership (TxMSP) Professional Development Network, Cycle 2, grant in the July 26, 2013, issue of the *Texas Register* (38 TexReg 4776). The following notice supersedes the previous version.

Eligible Applicants. The TEA is requesting applications under RFA #701-13-108 from Texas public institutions of higher education (IHEs) for the 2014-2015 Texas Mathematics and Science Partnership (TxMSP) Professional Development Network, Cycle 2, grant. Eligible applicants must have in place a statewide professional development network or demonstrate the ability to establish a statewide network within the transition timeframe. The network will be focused on providing sustained professional development in mathematics and science to teachers across the state. Applicants must also demonstrate the existence of a partnership between the applicant IHE and the science, technology, engineering, and mathematics (STEM) department of a public IHE (whether the STEM department belongs to an IHE that is the same as or different from the applicant IHE) and one or more high-need local educational agencies (LEAs). ("High need" signifies an LEA in which at least 40 percent of students qualify for free or reduced-price lunch.) The applicant must describe in the application the roles and activities of its partners. Additional eligibility requirements apply, as described in the RFA.

Description. TEA is seeking applications from IHEs as fiscal agents of eligible partnerships that demonstrate the ability to establish a statewide educator network that provides high-quality professional development to mathematics and science teachers in Texas prekindergarten-Grade 12 schools in order to improve students' academic performance in mathematics and science by encouraging state educational agencies, IHEs, LEAs, elementary schools, and secondary schools to participate in programs that do the following: (1) improve and upgrade the status and stature of mathematics and science teaching by encouraging IHEs to assume greater responsibility for improving mathematics and science teacher education through the establishment

of a comprehensive, integrated system of recruiting, training, and advising mathematics and science teachers; (2) focus on the education of mathematics and science teachers as a career-long process that continuously stimulates teachers' intellectual growth and upgrades teachers' knowledge and skills; (3) bring mathematics and science teachers in elementary schools and secondary schools together with scientists, mathematicians, and engineers to increase the subject matter knowledge of mathematics and science teachers and improve such teachers' teaching skills through the use of sophisticated laboratory equipment and work space, computing facilities, libraries, and other resources that IHEs are better able to provide than the elementary schools and secondary schools; (4) develop more rigorous mathematics and science curricula that are aligned with challenging state and local academic content standards and with the standards expected for postsecondary study in engineering, mathematics, and science; and (5) improve and expand training of mathematics and science teachers, including training such teachers in the effective integration of technology into curricula and instruction. Additionally, the statewide professional development network will provide additional capacity and assist with the implementation of statewide initiatives designed to support mathematics and science educators in their pursuit of instructional growth.

The 2014-2015 Texas Mathematics and Science Partnership (TxMSP) Professional Development Network, Cycle 2, grant program is intended to improve teachers' content knowledge through scientifically researched, sustained, and high-intensity professional development and mentoring. All professional development activities must align to the Texas Essential Knowledge and Skills, priorities established by the Texas Legislature and TEA, and the requirements of Public Law 107-110, Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, Title II, Part B.

Dates of Project. The 2014-2015 Texas Mathematics and Science Partnership (TxMSP) Professional Development Network, Cycle 2, grant will be implemented in the spring of 2014 and the 2014-2015 school year. Applicants should plan for a start date of no earlier than February 14, 2014, and an end date of no later than August 31, 2015.

Project Amount. Funding will be provided for one statewide project. The project will receive a maximum of $10 million for the February 14, 2014, to August 31, 2015, project period. This project is funded 100 percent from federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. Special consideration will be given to applicants that meet the following criteria: (1) have the capacity to deliver professional development statewide, and (2) have current data systems for collection and analysis of teacher and student performance data. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicants' Conference. An applicants' conference will be held by webinar on Thursday, November 14, 2013, from 10:00 a.m. to 12:00 p.m. To reserve a webinar seat, go to https://www2.gotomeeting.com/register/821056554. The system requirements for PC-based attendees are Windows 2000, XP Home, XP Pro, 2003 Server, or Vista. The requirements for Macintosh-based attendees are Mac OS X 10.4 (Tiger) or later. Each person attending will be required to sign a register setting out the representative's name and the name, address, and telephone number of the applicant organization.

Questions relevant to the RFA may be emailed to Sara Grunberger at sara.grunberger@tea.state.tx.us or faxed to (512) 463-9560 prior to Tuesday, November 12, 2013. These questions, along with other information, will be addressed in the webinar. The webinar will be open to all potential applicants and will provide general and clarifying information about the program and RFA.

Requesting the Application. The announcement letter and complete RFA will be posted on the TEA website at http://burleson.tea.state.tx.us/GrantOpportunities/forms for viewing and downloading. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Christina Grady, Division of Grants Administration, Texas Education Agency, by email at christina.grady@tea.state.tx.us or by telephone at (512) 463-8525. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in the Program Guidelines of the RFA. All questions and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://burleson.tea.state.tx.us/GrantOpportunities/forms. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, December 19, 2013, to be eligible to be considered for funding.

TRD-201304913
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: October 30, 2013

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency 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 **December 9, 2013.** 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 com-

mission'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 December 9, 2013.** 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: AC VIP Marina, LLC; DOCKET NUMBER: 2013-1445-PST-E; IDENTIFIER: RN102091774; LOCATION: Leander, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(2) COMPANY: Advanced Micro Devices, Incorporated; DOCKET NUMBER: 2013-1426-EAQ-E; IDENTIFIER: RN104883327; LOCATION: Austin, Travis County; TYPE OF FACILITY: business operations facilities; RULE VIOLATED: 30 TAC §213.23(a)(1) and Edwards Aquifer Protection Program ID Number 11-06020801, Standard Conditions Numbers 3 and 4, by failing to obtain approval of a Contributing Zone Plan modification prior to conducting regulated activities over the Edwards Aquifer contributing zone; PENALTY: $1,219; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(3) COMPANY: Broadway Motors, Incorporated dba Bill Williams Tire Center; DOCKET NUMBER: 2013-1524-PST-E; IDENTIFIER: RN105006431; LOCATION: Midland, Midland County; TYPE OF FACILITY: retail tire facility with one underground storage tank (UST); RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; PENALTY: $3,423; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(4) COMPANY: Chong Bai Xia dba Twin Lakes Water Company; DOCKET NUMBER: 2013-0891-PWS-E; IDENTIFIER: RN101453512; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(e) and §290.113(e), by failing to report the results of triennial minerals and Stage 1 disinfectant byproducts sampling to the executive director for the monitoring period from January 1, 2010 - December 31, 2012; 30 TAC §290.106(e), by failing to provide the results of annual nitrate sampling to the executive director for the 2012 monitoring period; 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; and 30 TAC §290.271(b) and §290.274(a) and (c), by failing to timely mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and failed to timely submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; PENALTY: $570; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Azle; DOCKET NUMBER: 2013-1333-MWD-E; IDENTIFIER: RN101609873; LOCATION: Azle, Tarrant County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011183003, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $14,000; Supplemental Environmental Project offset amount of $14,000 applied to Municipal Solid Waste Collection Event; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: City of Broaddus; DOCKET NUMBER: 2012-2022-MWD-E; IDENTIFIER: RN101720928; LOCATION: Broaddus, San Augustine County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011772001, Operational Requirements Number 1, and 30 TAC §305.125(1) and (5), by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; TPDES Permit Number WQ0011772001, Effluent Limitations and Monitoring Requirements Numbers 2 and 6 and Permit Conditions Number 2.d., 30 TAC §305.125(1), and TWC, §26.121(a), by failing to prevent the discharge of sludge from the facility into or adjacent to water in the state and failed to meet permitted effluent limits; TPDES Permit Number WQ0011772001, Monitoring and Reporting Requirements Number 1 and 30 TAC §305.125(1) and §319.4, by failing to submit accurate monitoring results at the intervals specified in the permit; TPDES Permit Number WQ0011772001, Effluent Limitations and Monitoring Requirements Number 1 and 30 TAC §305.125(1) and §319.4, by failing to collect effluent samples at the frequency specified in the permit; TPDES Permit Number WQ0011772001, Operational Requirements Number 1 and 30 TAC §305.125(1) and (5), by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; TPDES Permit Number WQ0011772001, Operational Requirements Number 1 and 30 TAC §305.125(1) and (5), by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; and TPDES Permit Number WQ0011772001, Sludge Provisions and 30 TAC §305.125(17), by failing to submit the annual sludge report by September 30th of each year; PENALTY: $19,925; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: City of Hamlin; DOCKET NUMBER: 2013-1423-MWD-E; IDENTIFIER: RN101917938; LOCATION: Hamlin, Jones County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010491002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $1,437; ENFORCEMENT COORDINATOR: Christo-

pher Bost, (512) 239-4575; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: City of Jourdanton; DOCKET NUMBER: 2013-0795-MWD-E; IDENTIFIER: RN101919900; LOCATION: Jourdanton, Atascosa County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010418001, Interim I and Interim II Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $11,812; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: City of Waelder; DOCKET NUMBER: 2013-0496-MWD-E; IDENTIFIER: RN102916046; LOCATION: Waelder, Gonzales County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014252001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; 30 TAC §305.125(1) and (17), and §319.7(d), and TPDES Permit Number WQ0014252001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at the intervals specified in the permit; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0014252001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2012, by September 1, 2012; PENALTY: $7,125; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(10) COMPANY: COUNTRY TERRACE WATER COMPANY, INCORPORATED; DOCKET NUMBER: 2013-1241-MWD-E; IDENTIFIER: RN101918035; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011955001, Interim II Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $4,125; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: County Line Special Utility District; DOCKET NUMBER: 2013-1470-PWS-E; IDENTIFIER: RN101199370; LOCATION: Uhland, Hays County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to operate the disinfection equipment to maintain a disinfectant residual of at least 0.5 milligrams per liter of total chlorine throughout the distribution system at all times; PENALTY: $160; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(12) COMPANY: Denison Independent School District; DOCKET NUMBER: 2013-1227-PST-E; IDENTIFIER: RN105498463; LOCATION: Denison, Grayson County; TYPE OF FACILITY: fleet refueling facility; 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; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a) by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Harborlight Marina and Resort, LLC; DOCKET NUMBER: 2013-1260-MWD-E; IDENTIFIER: RN101521821; LOCATION: Hemphill, Sabine County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC, §26.121 and 30 TAC §305.65 and §305.125(2), by failing to obtain authorization to discharge treated wastewater into or adjacent to water in the state; PENALTY: $4,275; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: HILS Usa Incorporated dba Bogata Foodmart; DOCKET NUMBER: 2013-1327-PST-E; IDENTIFIER: RN104449558; LOCATION: Bogata, Red River 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; PENALTY: $2,813; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(15) COMPANY: Izaguirre Generation Skipping Trust dba Sunset View Estates; DOCKET NUMBER: 2013-1114-PWS-E; IDENTIFIER: RN102678422; LOCATION: Amarillo, Randall County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.107(e) and §290.113(e), by failing to report the results of the triennial sampling for synthetic organic chemical contaminants and Stage 1 disinfection by-products to the executive director; 30 TAC §290.107(e), by failing to provide the results of sexennial volatile organic chemical contaminants sampling to the executive director; and 30 TAC §290.106(e), by failing to report the results of annual fluoride, arsenic and nitrate sampling to the executive director; PENALTY: $450; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(16) COMPANY: K & RABBANI CORPORATION dba Minit Market; DOCKET NUMBER: 2013-1578-PST-E; IDENTIFIER: RN102259231; LOCATION: Bedford, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $2,438; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Karen Reeves (Pleasant Ridge - Facility 1 and Timber Creek - Facility 2 Additions); DOCKET NUMBER: 2013-1232-PWS-E; IDENTIFIER: RN101175552 Facility 1 and RN101272433 Facility 2; LOCATION: Cooke County; TYPE OF FACILITY: public water supply; RULE VIOLATED: Facility 1: 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum well capacity of 0.6 gallons per minute (gpm) per connection; Facility 1: 30 TAC §290.46(n)(3), by failing to keep on file and make available for review copies of well completion data; and Facility 2: 30 TAC §290.45(b)(1)(C)(i) and THSC, §341.0315(c), by failing to provide a minimum well capacity of 0.6 gpm per connection; PENALTY: $300; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Lupe Gonzales; DOCKET NUMBER: 2012-2479-MLM-E; IDENTIFIER: RN105135644; LOCATION: Pleasanton, Atascosa County; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code, §382.085(b), by failing to comply with the general prohibition on outdoor burning; 30 TAC §330.7(a) and §328.59(b)(1), by failing to obtain a scrap tire storage site registration prior to storing more than 500 used or scrap tires on the ground; PENALTY: $9,904; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(19) COMPANY: McMinn Ranches Ltd - Field Citation; DOCKET NUMBER: 2013-1928-WR-E; IDENTIFIER: RN103928404; LOCATION: Gustine, Comanche County; TYPE OF FACILITY: land development; RULE VIOLATED: by failing to impound, divert, or use state water without a required permit; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 78062-7833, (325) 655-9479.

(20) COMPANY: NADOSH LLC dba Wally's Grocery & Deli; DOCKET NUMBER: 2013-1308-PST-E; IDENTIFIER: RN106304413; LOCATION: Tyler, Smith 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 (UST) records and make them immediately available for inspection upon request by agency personnel; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $4,255; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(21) COMPANY: Nazma, L.L.C. dba Mi Rancho Meat Market; DOCKET NUMBER: 2013-1480-PST-E; IDENTIFIER: RN105738074; LOCATION: Kyle, Hays County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $7,254; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(22) COMPANY: Oxy Vinyls, LP; DOCKET NUMBER: 2013-1206-AIR-E; IDENTIFIER: RN100706803; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: vinyl chloride monomer production plant; RULE VIOLATED: 30 TAC §116.115(c), Texas Health and Safety Code, §382.085(b), and New Source Review Permit Number 4943B, Special Conditions Number 1, by failing to prevent unauthorized emissions during an event that occurred on February 26, 2013 at the Hydrogen Chloride Stripping Column; PENALTY: $3,863; Supplemental Environmental Project offset amount of $1,545 applied to Houston Regional Monitoring Corporation; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: Patna Enterprises, Incorporated dba Papa Keith's Food Mart #3; DOCKET NUMBER: 2013-1273-PST-E; IDENTIFIER: RN106106529; LOCATION: Magnolia, Montgomery 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; PENALTY: $5,625; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: RAYWOOD FINANCIAL, INCORPORATED dba Super 90; DOCKET NUMBER: 2013-1179-PST-E; IDENTIFIER: RN101889467; LOCATION: Raywood, Liberty 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 for releases at a frequency of at least once every month; 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1) 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; 30 TAC §334.72, by failing to report a suspected release to the agency within 72 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of regulated substances within 30 days of discovery; PENALTY: $29,787; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Rupinderjit Singh dba Family Mart; DOCKET NUMBER: 2013-1288-PST-E; IDENTIFIER: RN101744613; LOCATION: Sulphur Springs, Hopkins County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,931; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2916 Teague Drive Tyler, Texas 75701-3734, (903) 535-5100.

(26) COMPANY: Russell Andrepont dba Russell's Service Center; DOCKET NUMBER: 2013-1178-PST-E; IDENTIFIER: RN102957503; LOCATION: Beaumont, Jefferson 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; PENALTY: $3,563; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(27) COMPANY: S Sagani Incorporated dba Shell Corner Store; DOCKET NUMBER: 2013-1295-PST-E; IDENTIFIER: RN102778925; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $5,755; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(28) COMPANY: Samkwang USA, Incorporated dba Lockwood Texaco Mart; DOCKET NUMBER: 2013-1246-PST-E; IDENTIFIER: RN102480167; 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 (USTs) for releases at a frequency of at least once every month; 30 TAC §334.50(b)(2) and TWC, §26.3475(a) by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,879; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: Stroeher & Son, Incorporated dba 290 Gasmart; DOCKET NUMBER: 2013-1296-PST-E; IDENTIFIER: RN101890705; LOCATION: Fredericksburg, Gillespie County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1) by failing to conduct reconciliation of detailed inventory control records at least once each month, 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; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; PENALTY: $9,788; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(30) COMPANY: Trinity Industries, Incorporated; DOCKET NUMBER: 2013-0874-AIR-E; IDENTIFIER: RN100225804; LOCATION: Saginaw, Tarrant County; TYPE OF FACILITY: railcar manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4), Federal Operating Permit (FOP) Number O1658, Special Terms and Conditions Number 3.B. and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct visible emissions observations for stationary vents at least once during each calendar quarter; 30 TAC §106.8(c)(1) and (3) and THSC, §382.085(b), by failing to maintain a copy of all permits by rule claimed at the plant; 30 TAC §106.433(7)(A) and THSC, §382.085(b), by failing to comply with the 500 pounds per week emissions limit for volatile organic compounds for surface coating operations; 30 TAC §122.145(2)(B), FOP Number O1658, General Terms and Conditions, and THSC, §382.085(b), by failing to submit a deviation report for at least each six-month period after permit issuance; and 30 TAC §122.121 and THSC, §382.054 and §382.085(b), by failing to authorize units under the FOP; PENALTY: $25,614; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(31) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2012-2667-AIR-E; IDENTIFIER: RN100219310; LOCATION: Houston, Harris County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.115(c), Texas Health and Safety Code, §382.085(b), and New Source Review Permit Number 2501A, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(32) COMPANY: Western Refining Company, L.P.; DOCKET NUMBER: 2008-0439-AIR-E; IDENTIFIER: RN100213016; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: Federal Operating Permit (FOP) Number O1264, Special Terms and Conditions (STC) Number 21, New Source Review Permit (NSRP) Number 18897, Special Conditions (SC) Number 1, 30 TAC §116.115(c) and §122.143(4), and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; FOP Number O1264, STC Number 21, NSRP Number 18897, SC Number 1, 30 TAC §§111.111(a)(4)(A), 116.115(c) and 122.143(4), and THSC, §382.085(b), by failing to prevent unauthorized emissions and limit opacity to 30% averaged over a six-minute period; and 30 TAC §111.111(a)(1)(A) and THSC, §382.085(b), by failing to limit opacity to 30% averaged over a six-minute period; PENALTY: $40,234; Supplemental Environmental Project offset amount of $20,117 applied to Texas Association of Resources Conservation and Development Areas, Incorporated; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(33) COMPANY: Western Refining Company, L.P.; DOCKET NUMBER: 2008-0890-AIR-E; IDENTIFIER: RN100213016; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: Federal Operating Permit (FOP) Number O1264, Special Terms and Conditions (STC) Number 21, New Source Review Permit (NSRP) Number 18897, Special Conditions (SC) Number 1, 30 TAC §116.115(c) and §122.143(4), and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(b)(1)(D) and (F), and (f) and THSC, §382.085(b), by failing to properly report Incident Number 101331; FOP O1264, STC Number 21, NSRP Number 18897, SC Numbers 37.D. and 39.C., 30 TAC §116.715(a), and THSC, §382.085(b), by failing to conduct a stack test on the South Sulfur Recovery Unit (SRU) Incinerator by April 4, 2006; 30 TAC §101.201(f) and THSC, §382.085(b), by failing to submit additional information to evaluate Incident Number 105990 within the time established in the April 25, 2008 additional information request; 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain proper authorization for the South Amine Acid Gas (AAG) Flare; FOP Number O1264, STC Number 21, NSRP Number 18897, SC Number 10, 40 Code of Federal Regulations (CFR) §60.104(a), 30 TAC §116.115(c) and §122.143(4), and THSC, §382.085(b), by failing to maintain the sulfur content of refinery fuel gas routed to the Plant Emergency Flare below the permitted 0.1 grain of hydrogen sulfide (H2S) per day prior to flaring; FOP Number O1264, STC Number 21, NSRP Number 18897, SC Number 10, 40 CFR §60.105(a), 30 TAC §116.115(c) and §122.143(4), and THSC, §382.085(b), by failing to install a Continuous Emissions Monitoring System to monitor sulfur dioxide and H2S levels from the South AAG Flare and the Vacuum Unit Heater; Voluntary Emissions Reductions Permit (VERP) Number 49075, SC Number 7, 30 TAC §116.814(a), and THSC, §382.085(b), by failing to limit annual throughput of carbon black feed through the South Loading Rack to 5,195,000 gallons per year; VERP Number 49075, SC Number 4.B., 30 TAC §116.814(a), and THSC, §382.085(b), by failing to maintain monthly emissions records; FOP Number O1264, STC Number 21, NSRP Number 18897, SC Number 29, 30 TAC §116.115(c) and §122.143(4), and THSC, §382.085(b), by failing to prevent visible emissions from the SRU Tail Gas Incinerator; and FOP Number O1264, STC Number 21, NSRP Number 18897, SC Number 29, 30 TAC §116.115(c) and §122.143(4), and THSC, §382.085(b), by failing to prevent excess opacity; PENALTY: $211,038; Supplemental Environmental Project offset amount of $84,416 applied to Texas Association of Resource Conservation and Development Area, Incorporated; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(34) COMPANY: Wiley Lease Company, Limited; DOCKET NUMBER: 2013-1465-AIR-E; IDENTIFIER: RN104311501; LOCATION: Charlotte, Atascosa County; TYPE OF FACILITY: saltwater disposal site; RULE VIOLATED: 30 TAC §116.615(2), Standard Permit Registration Number 73797, and Texas Health and Safety Code, §382.085(b), by failing to comply with representations in a standard permit registration; PENALTY: $6,250; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201304904

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 29, 2013

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

The Texas Commission on Environmental Quality (TCEQ, agency, 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 **December 9, 2013.** 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 December 9, 2013.** 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: Chikita Investment Group LLC d/b/a Chikita Express Store; DOCKET NUMBER: 2013-0052-PST-E; TCEQ ID NUMBER: RN101684306; LOCATION: 100 North Bicentennial Boulevard, McAllen, Hidalgo County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $5,000; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: KESAV SAI LLC d/b/a Seagoville Food Mart; DOCKET NUMBER: 2012-2190-PST-E; TCEQ ID NUMBER: RN106060957; LOCATION: 2817 North Highway 175, Seagoville, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.244(1) and (3) and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct daily and month inspections of the Stage II vapor recovery system; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee received in-house Stage II vapor recovery training regarding the purpose and correct operation of the vapor recovery system; 30 TAC §115.246(1) and (5) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for inspection upon request by agency personnel; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; 30 TAC §334.50(b)(1)(A), (2) and (A)(i)(III), and TWC, §26.3475(a) and (c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide release detection for the piping associated with the UST system by failing to conduct the annual piping tightness test and failing to test the link leak detectors at least once per year for performance and operational reliability; 30 TAC §334.72(i), by failing to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days and keep a log to assure that the sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris; and 30 TAC §334.602(a), by failing to designate train, and certify at least one named individual for each class of operator, Class A, Class B, and Class C; PENALTY: $9,811; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: LIVE OAKS AT BERRY CREEK RV PARK, INC. d/b/a Live Oaks at Berry Creek RV Park; DOCKET NUMBER: 2013-0950-PWS-E; TCEQ ID NUMBER: RN102314812; LOCATION: 2800 North Interstate 35, Georgetown, Williamson County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notice for failing to conduct repeat coliform monitoring for the month of November 2011, and by failing to provide public notice for failing to conduct increased coliform monitoring for the month of December 2011; 30 TAC §290.109(c)(4)(B) and (e) and §290.122(c)(2)(A) and (f), by failing to collect one raw groundwater source *Escherichia coli* sample from all active sources within 24 hours of being notified of a distribution total coliform-positive result on a routine sample during the month of November 2011, and by failing to provide public notice regarding the failure to collect the raw groundwater source sample; Texas Health and Safety Code, §341.033(d) and 30 TAC §290.109(c)(2)(A)(i), (f)(5) and (7), by failing to collect and/or submit a routine distribution water sample for coliform analysis for the month of February 2013; and 30 TAC §290.106(c)(6) and (e), by failing to provide the results of annual nitrate sampling to the executive director for the 2011 and 2012 monitoring periods; PENALTY: $689; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Austin Regional Office, Post Office Box 13087, MC R-11, Austin, Texas 78711, (512) 339-2929.

(4) COMPANY: Marble Star, Inc. d/b/a Big D Food Mart; DOCKET NUMBER: 2013-0935-PST-E; TCEQ ID NUMBER: RN102006202; LOCATION: 1606 Farm-to-Market Road 1431, Marble Falls, Burnet County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,563; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Austin Regional Office, Post Office Box 13087, MC R-11, Austin, Texas 78711, (512) 339-2929.

(5) COMPANY: Ona Van Dorn; DOCKET NUMBER: 2013-0282-PST-E; TCEQ ID NUMBER: RN101783389; LOCATION: at the intersection of North United State Highway 281 and Interstate Highway 37, Three Rivers, Live Oak County; TYPE OF FACILITY: inactive underground storage tanks (USTs); RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $6,000; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(6) COMPANY: SHERGILL FUEL ENTERPRISES INC d/b/a Friendlys 3 and d/b/a Friendlys 4; DOCKET NUMBER: 2013-0929-PST-E; TCEQ ID NUMBER: RN101793230 and RN101795607; LOCATION: 1421 East Tyler Street (Facility 1) and 600 North Palestine Street (Facility 2), Athens, Henderson County; TYPE OF FACILITY: underground storage tank (UST) systems and convenience stores with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST systems, at Facility 1 and 2; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), at Facility 1 and 2; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel, at Facility 1 and 2; PENALTY: $15,750; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Tank Works, Inc. d/b/a Brazos Bend Home and Ranch; DOCKET NUMBER: 2013-0211-PST-E; TCEQ ID NUMBER: RN101176592; LOCATION: 22930 Farm-to-Market Road 1462, Needville, Fort Bend County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $4,029; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Two Sisters Dairy, LLC; DOCKET NUMBER: 2012-1349-AGR-E; TCEQ ID NUMBER: RN104994611; LOCATION: the west side of County Road 209, approximately four miles south of the intersection of County Road 209 and United States Highway 67, seven miles east of Stephenville, Erath County; TYPE OF FACILITY: concentrated animal feeding operation (CAFO); RULES VIOLATED: 30 TAC §305.125(1), §321.42(i), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0004866000 Section IX.D., by failing to dispose of manure by an approved method; TWC, §26.121(a)(1) and 30 TAC §305.125(1) and §321.31(a), and TPDES Permit Number WQ0004866000 Section VI.A., by failing to prevent the unauthorized discharge of wastewater from a CAFO into or adjacent to water in the state; TWC, §26.121(a)(1) and 30 TAC §305.125(1), §321.38(f), and TPDES Permit Number WQ0004866000 Section VII.A.3.e., by failing to maintain operational equipment capable of dewatering the retention control structure (RCS) whenever the equipment is needed to restore the operational capacity required by the RCS management plan; and TWC, §26.121(a)(1) and 30 TAC §§321.36(c), 321.39(b)(1), and 321.42(c)(1) and (d), and TPDES Permit Number WQ0004866000 Section VII.A.5.3., by failing to prevent an unauthorized discharge of wastewater from a CAFO and not maintaining the margin of safety in the RCS to contain the volume of runoff and direct precipitation from a 25-year/10-day rainfall event; PENALTY: $9,663; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201304905
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 29, 2013

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

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 9, 2013.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 9, 2013.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: ASDH Group, Inc. d/b/a Swift Mart; DOCKET NUMBER: 2013-0055-PST-E; TCEQ ID NUMBER: RN101892891; LOCATION: 1100 Wilson Road, Humble, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by

failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $5,380; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Charles Watts d/b/a Island View Landing; DOCKET NUMBER: 2013-0486-PWS-E; TCEQ ID NUMBER: RN101239606; LOCATION: 1099 Lindsey Road, Jefferson, Marion County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.44(d) and §290.46(r), by failing to operate the facility to maintain a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operation conditions, and a minimum pressure of 20 psi during emergencies such as fire fighting; 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notice to the affected customers within 24 hours of a low pressure event or water outage using the prescribed format in 30 TAC §290.47(e); PENALTY: $507; STAFF ATTORNEY: Rebecca M. Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: Danny K. Gove d/b/a Pro Landscape Service; DOCKET NUMBER: 2013-0752-AIR-E; TCEQ ID NUMBER: RN106472426; LOCATION: 3798 Mancuso Road, Bryan, Brazos County; TYPE OF FACILITY: residential and commercial yard and tree service; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §111.201, by failing to comply with the general prohibition on outdoor burning; PENALTY: $3,145; STAFF ATTORNEY: Rebecca M. Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: DON AYALAS MEXICAN RESTAURANT AND CLUB, INC. d/b/a Don Ayalas Mexican Restaurant; DOCKET NUMBER: 2013-0780-PWS-E; TCEQ ID NUMBER: RN102683273; LOCATION: 6104 Rollins Road, Granbury, Hood County; TYPE OF FACILITY: public water system; RULES VIOLATED: 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 during the month of September 2010; 30 TAC §290.106(e), by failing to provide the results of annual nitrate sampling to the executive director for the 2011 and 2012 monitoring periods; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay outstanding public health service fees for fiscal years 2012 and 2013, including any associated late fees and penalties, for TCEQ Financial Account Number 91110099; PENALTY: $575; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Robert M. Smith d/b/a Oak Terrace Estates Water System; DOCKET NUMBER: 2012-1478-PWS-E; TCEQ ID NUMBER: RN102679302; LOCATION: 108 South Washington Avenue, Livingston, Polk County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code (THSC), §341.0315(c) and 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), by failing to operate the disinfection equipment to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.46(q)(1), by failing to issue a boil water notification within 24 hours using the prescribed notification format as specified in 30 TAC §290.47(e); 30 TAC §290.46(m)(4), by failing to maintain all treatment units, storage and pressure maintenance facilities, distribution system lines and related appurtenances in a watertight condition; 30 TAC §290.44(a)(4), by failing to locate the water line a minimum of 24 inches below the ground surface; and THSC, §341.033(a) and 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a water works operator who holds a minimum of a Class "D" license; PENALTY: $1,124; STAFF ATTORNEY: Rebecca M. Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: Wilmar Monroy d/b/a Wilmar Painting and Remodeling; DOCKET NUMBER: 2012-1659-LII-E; TCEQ ID NUMBER: RN106444862; LOCATION: 3930 Todwick Lane, Houston, Harris County; TYPE OF FACILITY: painting and remodeling business; RULES VIOLATED: TWC, §37.003, Texas Occupational Code, §1903.251 and 30 TAC §30.5(a), by failing to hold an irrigator license prior to selling, designing, consulting, installing, altering, repairing, or servicing an irrigation system; and 30 TAC §344.50(a), by failing to connect an irrigation system on a public water supply through an approved backflow prevention device; PENALTY: $1,697 STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201304906
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 29, 2013

Notice of Public Hearing on Proposed Revisions to 30 TAC Chapters 39, 55, 101, 106, 116, and 122 and to the State Implementation Plan

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 39, Public Notice; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 101, General Air Quality Rules; Chapter 106, Permits by Rule; Chapter 116, Control of Air Pollution by Permits for New Construction or Modification; and Chapter 122, Federal Operating Permits Program, and corresponding revisions to the state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) concerning SIPs.

The proposed rulemaking implements House Bill (HB) 788, 83rd Legislature, 2013, which requires that the commission adopt rules for the authorization of emissions of greenhouse gases (GHGs), to the extent required under federal law. The proposed rules revise the applicability of Chapters 116 and 122 so that major sources of GHGs will be subject to federal New Source Review and Federal Operating Permit requirements. The proposed rulemaking also specifies that GHG permit applications are not subject to a contested case hearing. In addition, the proposed rules establish that accounts with GHG emissions which meet or exceed Prevention of Significant Deterioration major source levels are subject to emissions inventory requirements. The proposed rules establish that emissions of GHGs have no reportable quantity (RQ). The proposed rules also address a rulemaking petition from 3M Company to establish an RQ of 5,000 pounds for C6 Fluoroketone, a fire protection fluid.

The commission will hold a public hearing on this proposal in Austin on December 5, 2013, at 2:00 p.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 Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-040-116-AI. The comment period closes December 9, 2013. 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 Tasha Burns, Air Permits Division, (512) 239-5868.

TRD-201304862
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 23, 2013

Notice of Public Hearings and Opportunity for Comment on the Edwards Aquifer Protection Program

The Texas Commission on Environmental Quality (TCEQ or commission) will conduct hearings to receive comments from the public on actions the commission should take to protect the Edwards Aquifer from pollution, as required under Texas Water Code, §26.046. This requirement assists the commission in its shared responsibility with local governments such as cities and groundwater conservation districts to protect the water quality of the aquifer.

Annual hearings are held on the Edwards Aquifer Protection Program and the TCEQ rules, 30 TAC Chapter 213, which regulate development over the delineated contributing, recharge, and transition zones of the Edwards Aquifer.

The hearings will be held at the following times and locations: Tuesday, December 3, 2013 at 6:30 p.m. at the TCEQ Park 35 Office Complex, 12100 Park 35 Circle, Building E, Room 201S, Austin; and Wednesday, December 4, 2013 at 9:30 a.m. at the Tesoro Building, Alamo Area Council of Governments, Al J. Notzon III Board Room, 8700 Tesoro Drive, Suite 100, San Antonio.

These hearings will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon. There will be no open discussion during the hearings; however, agency staff members will be available to answer questions 30 minutes prior to and 30 minutes after the conclusion of the hearing. Registration will begin 30 minutes prior to the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the Austin hearing should contact the Office of Administrative Services Facilities Liaison at (512) 239-0080. Persons requesting accommodations for the San Antonio hearing should contact Beth Banks at (512) 239-3241. Requests should be made as far in advance as possible.

Written comments should reference the Edwards Aquifer Protection Program and may be sent to Beth Banks, Texas Commission on Environmental Quality, Field Operation Support Division, MC 174, P.O. Box 13087, Austin, Texas 78711-3087, faxed to (512) 239-2249, or e-mailed to beth.banks@tceq.texas.gov. Comments must be received by 5:00 p.m., January 10, 2014. For further information or questions concerning these hearings, please contact Ms. Banks at (512) 239-3241, or visit *http://www.tceq.state.tx.us/compliance/field_ops/eapp/history.html.*

TRD-201304903
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 29, 2013

Notice of Water Quality Applications

The following notices were issued on October 2, 2013, through October 25, 2013.

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

GEO SPECIALTY CHEMICALS INC which operates an organic chemicals manufacturing plant, has applied for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002558000 to remove any reference of the former NP (Nitroparaffins) site from the Outfall 002 description; remove limitations and testing requirements for total aluminum, total copper, total zinc, ammonia, and phosphorus from Outfall 002; increase effluent limitations for total organic carbon and oil & grease at Outfall 002; remove whole effluent toxicity limitations and monitoring requirements at Outfall 001; and remove effluent limitations and monitoring requirements for ammonia, phosphorus, cyanide, acenaphthene, acenaphthylene, acrylonitrile, anthracene, benzene, benzo(a)anthracene, benzo(a)pyrene, 3,4-benzofluoranthene, benzo(k)fluoranthene, bis(2-ethylhexyl) phthalate, carbon tetrachloride, chlorobenzene, chloroethane, chloroform, 2-chlorophenol, chrysene, 1,2-dichlorobenzene, 1,3-dichlorobenzene, 1,4-dichlorobenzene, 1,1-dichloroethane, 1,2-dichloroethane, 1,1-dichloroethylene, 1,2-trans-dichloroethylene, 2,4-dichlorophenol, 1,2-dichloropropane, 1,3-dichloropropylene, diethyl phthalate, 2,4-dimethylphenol, dimethyl phthalate, di-n-butyl phthalate, 2,4-dinitrophenol, 4,6-dinitrophenol, 2,6-dinitrotoluene, ethylbenzene, fluoranthene, fluorene, hexachlorobenzene, hexachlorobutadiene, hexachloroethane, methyl chloride, methylene chloride, naphthalene, nitrobenzene, 2-nitrophenol, 4-nitrophenol, phenanthrene, phenol, pyrene, tetrachloroethylene, toluene, 1,2,4-trichlorobenzene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, trichloroethylene, and vinyl chloride at Outfall 001. The current permit authorizes the discharge of treated process wastewater, domestic wastewater, cooling tower blowdown, boiler blowdown, and water softener regeneration at a daily average flow not to exceed 50,000 gallons per day; and stormwater runoff and utility waters from the nitroparaffins operation (cooling tower blowdown, boiler blowdown, and spraydown of the cooling tower) on an intermittent and flow variable basis via Outfall 002. The draft permit authorizes the discharge of domestic wastewater, cooling tower blowdown, boiler blowdown, and water softener regeneration at a daily average flow not to exceed

50,000 gallons per day; and stormwater runoff on an intermittent and flow variable basis via Outfall 002. The facility is located at 739 Independence Parkway South, on the west side of Independence Parkway South, approximately one mile north of the intersection of Independence Parkway South and State Highway 225 (Pasadena Highway) in the City of Deer Park, Harris County, Texas 77536.

SEA LION TECHNOLOGY INC which operates an organic chemical manufacturing facility, has applied for a renewal of TPDES Permit No. WQ0003479000, which authorizes the discharge of previously monitored effluents on an intermittent and flow variable basis via Outfall 001 (treated non-process area stormwater runoff, utility wastewater, and previously monitored effluent from Outfall 201, on an intermittent and flow variable basis via Outfall 101, and treated utility wastewater at a daily average flow not to exceed 20,000 gallons per day via Outfall 201). The facility is located at 5700 Century Boulevard in the City of Texas City, Galveston County, Texas 77590.

KMTEX LLC which operates KMTEX Port Arthur, has applied for a renewal of TPDES Permit No. WQ0003544000, which authorizes the discharge of treated process wastewater, process area stormwater, utility wastewater (non-contact cooling water, boiler blowdown, and firewater test waters), and stormwater (including stormwater from diked tank farm areas) at a daily average dry weather flow not to exceed 100,000 gallons per day via Outfall 001. The facility is located at 2450 South Gulfway Drive, approximately five miles southwest of the Port Arthur City Hall, Jefferson County, Texas 77640. The 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 General Land Office, and has determined that the action is consistent with the applicable CMP goals and policies.

CITY OF JUNCTION has applied for a renewal of TPDES Permit No. WQ0010199001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 280,000 gallons per day. The facility is located north of and adjacent to Farm-to-Market Road 2169, approximately 0.4 mile northeast of the intersection of Farm-to-Market Road 2169 and Interstate Highway 10 in Kimble County, Texas 76849.

CITY OF GREENVILLE has applied for a renewal of TPDES Permit No. WQ0010485002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,000,000 gallons per day. The facility is located at 100 Division Street, approximately 1.3 miles east of the intersection of Interstate Highway 30 and U.S. Highway 69 in Hunt County, Texas 75402. The applicant has also applied to the TCEQ for approval of a substantial modification to its pretreatment program under the TPDES program.

CITY OF RHOME has applied for a renewal of TPDES Permit No. WQ0010701002 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located approximately 150 feet east of the intersection of County Road 4651 and Oates Branch in Wise County, Texas 76078.

CITY OF ROSEBUD has applied for a renewal of TPDES Permit No. WQ0010731001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located approximately 0.9 mile west of the intersection of U.S. Highway 77 and Farm-to-Market Road 1963 approximately 1000 feet south of Farm-to-Market Road 53 in Falls County, Texas 76570.

WESTWOOD SHORES MUD has applied for a renewal of TPDES Permit No. WQ0011300001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 257,000 gallons per day. The facility is located on Westwood East approximately 0.6 mile east of the intersection between Cottonwood and Westwood East, approximately one mile north of Farm-to-Market Road 356 and three miles east of the City of Trinity in Trinity County, Texas 75862.

WALTON TEXAS, LP has applied for a new permit, proposed TPDES Permit No. WQ0015143001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 796,000 gallons per day. The facility will be located approximately 4,800 feet southwest of the intersection of McBee Road and Farmington Road, approximately 1.7 miles from the City of Howe in Grayson County, Texas 75459.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN (10) DAYS OF THE ISSUED DATE OF THE NOTICE.

MUNSON PARK MANAGEMENT LLC has applied for a minor amendment to the TCEQ permit WQ0014651001 to authorize the reduction of the flow at a daily average flow not to exceed 40,000 gallons per day. The existing permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 49,000 gallons per day via public access subsurface drip irrigation system, with a minimum area of 490,000 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located immediately south of the southern terminus of Loop Court, 2,800 feet northwest of the intersection of State Highway 360 and State Highway 2244 in Travis County, Texas 78746. The wastewater treatment facility and disposal site will be located in the drainage basin of Lake Austin in Segment No. 1403 of the Colorado River Basin.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

THE PICTSWEET COMPANY which operates The Pictsweet Company Facility, has applied for a minor amendment to TCEQ Permit No. WQ0002803000 to authorize the modification of piping at the holding ponds to provide more operational flexibility and to improve the currently permitted method of disposal of wastewater for land application. The existing permit authorizes the disposal of vegetable wash water, vegetable cooling water, equipment cleaning water, cooling tower blowdown, and boiler blowdown at an annual average flow not to exceed 537,000 gallons via irrigation and evaporation, which will remain the same. The wastewater is land applied on 98 acres of Coastal Bermuda grass at an application rate not to exceed 5.7 acre-feet per acre irrigated per year (acre-feet/acre/year), and can be routed to holding and irrigation ponds with a combined surface area of 21.1 acres and storage capacity of 164.3 acre-feet, which will remain the same. This permit will not authorize discharge of pollutants into water in the State. The facility and land application site are located at 25549 Farm-to-Market (FM) Road 88, approximately one-fourth mile west of FM Road 88, adjacent to the abandoned Missouri Pacific Railroad Track in the Community of Monte Alto, Hidalgo County, Texas 78538.

CITY OF LA JOYA has applied for a minor amendment to the TPDES Permit No. WQ0012675001 to authorize the addition of an Interim II Phase discharge of treated domestic wastewater at an annual average flow not to exceed 1,200,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,470,000 gallons per day. The facility is located approximately 1.5 miles south-southwest of the intersection of

U.S. Highway 83 and Farm-to-Market Road 2521 in Hidalgo County, Texas 78560.

ARKEMA INC, P.O. Box 1427, Beaumont, Texas 77704-1427, which operates Arkema Beaumont Plant, a mercaptans and sulfide manufacturing plant, has applied for a minor amendment to TPDES Permit No. WQ0001872000 to authorize changes to the sampling types for total suspended solids and total dissolved solids from composite to grab in discharges made via Outfall 201, and add a footnote that states that sampling is to occur only when discharges are being made via Outfall 201. The existing permit authorizes the discharge of untreated stormwater runoff, stormwater from the process area (Sulfox), and previously monitored effluents (utility wastewater generated by the reverse osmosis (RO) system, non-contact cooling-tower blowdown, raw water, filtered water, and stormwater runoff from internal Outfall 201) at an intermittent and flow-variable rate; and utility wastewater generated by the reverse osmosis (RO) system, non-contact cooling-tower blowdown, raw water, filtered water, and stormwater runoff at a daily average flow rate not to exceed 180,000 gallons per day, via internal Outfall 201. The facility is located at 2810 Gulf States Road, approximately 2 miles east of the intersection of Washington Blvd. and Spur 380 (South Martin Luther King Parkway), near the City of Beaumont, Jefferson County, Texas 77701.

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-201304911
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 30, 2013

Notice of Water Rights Application

Revised Notice issued October 22, 2013.

PERMIT NO. 12468A; The City of Dallas (City) seeks an amendment to Water Use Permit No. 12468 to authorize the use of the bed and banks of the Trinity River, Trinity River Basin downstream of the City of Dallas's Central and Southside Waste Water Treatment Plants (WWTPs), within Dallas, Kaufman, Ellis, Henderson, and Navarro counties, to convey not to exceed 247,200 acre-feet of authorized return flows for subsequent diversion and use. Notice for the referenced application was issued on October 17, 2013, and contained an incorrect deadline to provide written public comments and to request a public meeting or contested case hearing. This revised notice contains the correct deadline. The application and required fees were received on November 10, 2011. Additional information was received on March 7, May 8, and May 15, 2012. The application was declared administratively complete and filed with the Office of the Chief Clerk on June 14, 2012. The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would contain special conditions including, but not limited to, streamflow restrictions. The application, technical memoranda, and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F, Austin, 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 November 26, 2013.

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 in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, 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 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. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201304912
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 30, 2013

October 2013 Draft Water Quality Management Plan Update

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft October 2013 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The WQMP is developed and promulgated in accordance with the requirements of federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) updates.

A copy of the draft October 2013 WQMP update may be found on the commission's Web site located at *http://www.tceq.texas.gov/permitting/wqmp/WQmanagement_updates.html.* A copy of the draft may

also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on December 10, 2013. For further information, or questions, please contact Ms. Vignali at (512) 239-1303 or by email at *Nancy.Vignali@tceq.texas.gov.*

TRD-201304902
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 29, 2013

Texas Facilities Commission

Request for Proposals #303-5-20405

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-5-20405. TFC seeks a five (5) or ten (10) year lease of approximately 2,146 square feet of office space in Dallas, Texas.

The deadline for questions is November 11, 2013 and the deadline for proposals is November 19, 2013 at 3:00 p.m. The award date is December 18, 2013. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=108636.*

TRD-201304838
Kay Molina
General Counsel
Texas Facilities Commission
Filed: October 23, 2013

General Land Office

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 September 23, through October 28, 2013. 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 web site. The notice was published on the web site on October 30, 2013. The public comment period for this project will close at 5:00 p.m. on November 29, 2013.

FEDERAL AGENCY ACTIONS:

Applicant: BOEM - Castex Offshore, Inc.; Location: OCS-G34025 Block 117, High Island Area. Latitude 29.28406 North, Longitude 93.872564 West. Project Description: Operator proposes to install a braced caisson and commence production from one well location. CMP Project No: 14-1110-F4. Type of Application: OCS Plan.

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 applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Mr. Ray Newby, P.O. Box 12873, Austin, Texas 78711-2873 or via email at federal.consistency@glo.texas.gov. Comments should be sent to Mr. Newby at the above address or by email.

TRD-201304952
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: October 30, 2013

Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Dallas	Dallas Medical Center, L.L.C.	L06584	Dallas	00	10/02/13
Laredo	Oncology & Hematology of South Texas, P.A.	L06585	Laredo	00	10/15/13
Throughout TX	Henderson Inspection Services, L.L.C.	L06583	Henderson	00	10/01/13

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	The University of Texas at Austin Environmental Health and Safety	L00485	Austin	86	10/01/13
Austin	Austin Texas Radiation Oncology Group, P.A. dba Austin Cancer Centers	L01761	Austin	70	10/04/13
Austin	Austin Heart, P.L.L.C. dba Austin Heart	L04623	Austin	75	10/14/13
Austin	St. David's Healthcare Partnership, L.P., L.L.P. dba St. David's Medical Center	L05856	Austin	10	10/16/13
Bay City	Matagorda County Hospital District dba Matagorda Regional Medical Center	L02701	Bay City	19	10/03/13
Bedford	Texas Health Harris Methodist Hospital Hurst Euless Bedford	L02303	Bedford	39	10/10/13
Cleveland	Nadim M. Zacca, M.D., P.A.	L05570	Cleveland	07	10/08/13
Dallas	Methodist Hospitals of Dallas Radiology Svcs.	L00659	Dallas	94	10/03/13
Dallas	Baylor University Medical Center	L01290	Dallas	113	10/07/13
Dallas	Cardiology & Interventional Vascular Associates	L05412	Dallas	09	10/04/13
Dallas	Peloton Therapeutics, Inc.	L06490	Dallas	03	10/15/13
Dallas	Texas Health Physicians Group dba Texas Health Presbyterian Heart and Vascular Group	L06578	Dallas	01	10/14/13
Denton	Texas Health Presbyterian Hospital Denton	L04003	Denton	50	10/03/13
Denton	Denton Heart Group, P.A.	L05381	Denton	08	10/01/13
Edinburg	The University of Texas Pan American	L00656	Edinburg	33	10/16/13
El Paso	Tenet Hospitals Limited dba Providence Memorial Hospital	L02353	El Paso	110	10/18/13
El Paso	Tenet Hospitals Limited dba Sierra Medical Center	L02365	El Paso	77	10/15/13
El Paso	El Paso Heart Center	L04828	El Paso	19	10/11/13
El Paso	Texas Oncology, P.A. dba El Paso Cancer Treatment Center	L05774	El Paso	10	10/11/13
Fort Worth	Texas Christian University	L01096	Fort Worth	42	10/01/13
Fort Worth	Fort Worth Heart, P.A.	L05480	Fort Worth	43	10/07/13
Freeport	Solvay USA, Inc.	L02807	Freeport	41	10/14/13
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	185	10/03/13
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	186	10/09/13
Houston	The Methodist Hospital dba Houston Methodist	L00457	Houston	190	10/04/13
Houston	The Methodist Hospital dba Houston Methodist	L00457	Houston	191	10/15/13
Houston	The Methodist Hospital dba Houston Methodist	L00457	Houston	192	10/16/13

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	The University of Texas M.D. Anderson Cancer Center	L00466	Houston	145	10/14/13
Houston	Memorial Hermann Health System dba Memorial Hermann Texas Medical Center	L00650	Houston	90	10/07/13
Houston	Memorial Hermann Health System dba Memorial Hermann Memorial City Medical Center	L01168	Houston	141	10/07/13
Houston	Houston Community College System	L03099	Houston	20	10/02/13
Houston	Institute of Biosciences and Technology	L04681	Houston	41	10/09/13
Houston	Tolunay Wong Engineers, Inc.	L04848	Houston	16	10/07/13
Houston	American Diagnostic Tech, L.L.C.	L05514	Houston	93	10/14/13
Houston	NIS Holdings, Inc. dba Nuclear Imaging Services	L05775	Houston	90	10/14/13
Houston	Houston Northwest Operating Company, L.L.C. dba Houston Northwest Medical Center	L06190	Houston	19	10/15/13
Houston	Red Oak Hospital, L.L.C.	L06536	Houston	01	10/15/13
Lubbock	Covenant Medical Center	L00483	Lubbock	151	10/09/13
Lubbock	University Medical Center	L04719	Lubbock	125	10/04/13
McAllen	Heart Clinic, P.L.L.C.	L04514	McAllen	27	10/07/13
McAllen	Heart Clinic, P.L.L.C.	L04514	McAllen	28	10/16/13
McAllen	McAllen Hospitals, L.P. dba McAllen Medical Heart Hospital	L04902	McAllen	24	10/10/13
Mesquite	Texas Oncology, P.A. dba Texas Cancer Center Mesquite	L05741	Mesquite	14	10/14/13
North Richland Hills	Dallas Cardiology Associates dba Heartplace North Richland Hills	L05548	North Richland Hills	19	10/04/13
Paris	Heart Clinic of Paris, P.A.	L06013	Paris	04	10/14/13
Pittsburg	East Texas Medical Center Pittsburg	L03106	Pittsburg	30	10/15/13
Plano	Texas Health Resources dba Heart First	L06480	Plano	04	10/02/13
Richardson	Methodist Hospitals of Dallas dba Methodist Richardson Medical Center	L06474	Richardson	01	10/08/13
Round Rock	Scott & White Hospital Round Rock	L06085	Round Rock	12	10/15/13
Round Rock	Texas Oncology, P.A.	L06349	Round Rock	09	10/03/13
San Angelo	Shannon Clinic	L04216	San Angelo	53	10/02/13
San Antonio	VHS San Antonio Partners, L.L.C. dba Baptist Health System	L00455	San Antonio	224	10/02/13
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	148	
San Antonio	Trinity University	L01668	San Antonio	52	10/14/13
San Antonio	Southwest General Hospital, L.L.P. dba Southwest General Hospital	L02689	San Antonio	44	10/09/13
San Antonio	University Physicians Group	L05410	San Antonio	18	10/10/13
San Antonio	Radiation Oncology of San Antonio, P.A. dba Oncology San Antonio	L05853	San Antonio	14	10/04/13
Sugar Land	Thermo Process Instruments, L.P. A Subsidiary of Thermo Fisher Scientific, Inc.	L03524	Sugar Land	85	10/01/13
Texarkana	Alumax Mill Products, Inc.	L04663	Texarkana	19	10/11/13
Throughout TX	Eagle NDT, L.L.C.	L06176	Abilene	19	10/01/13
Throughout TX	Fox NDE, L.L.C.	L06411	Abilene	08	10/02/13
Throughout TX	Desert NDT, L.L.C. dba Midwest Inspection Services	L06462	Abilene	14	10/03/13
Throughout TX	Desert NDT, L.L.C. dba Midwest Inspection Services	L06462	Abilene	16	10/10/13
Throughout TX	Fesco, Ltd.	L06343	Alice	04	10/16/13

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout TX	Water Remediation Technology, L.L.C.	L06316	Arvada	05	10/11/13
Throughout TX	Terracon Consultants, Inc.	L05268	Dallas	43	10/11/13
Throughout TX	Mistras Group, Inc.	L06369	Deer Park	12	10/09/13
Throughout TX	Probe Technology Services, Inc.	L05112	Fort Worth	29	10/02/13
Throughout TX	Recon Petrotechnologies, Inc.	L06026	Fort Worth	17	10/11/13
Throughout TX	Bonded Inspections, Inc.	L00693	Garland	88	10/07/13
Throughout TX	Insight Health Corporation	L05504	Garland	13	10/07/13
Throughout TX	Pre-Test Laboratory of Central Texas	L02524	Georgetown	15	10/10/13
Throughout TX	GE Oil & Gas Logging Services, Inc.	L05262	Houston	49	10/11/13
Throughout TX	Nondestructive & Visual Inspection, L.L.C.	L06162	Houston	12	10/10/13
Throughout TX	Acuren Inspection, Inc.	L01774	La Porte	277	10/03/13
Throughout TX	RWLS, L.L.C. dba Renegade Services	L06307	Levelland	17	10/01/13
Throughout TX	Tracerco	L03096	Pasadena	83	10/02/13
Throughout TX	Petrochem Inspection Services, Inc.	L04460	Pasadena	118	10/01/13
Throughout TX	CIMA Inspection, Inc.	L06586	Pasadena	00	10/16/13
Throughout TX	Hirschfeld Steel Company	L04361	San Angelo	20	10/15/13
Throughout TX	Medical and Radiation Physics, Inc.	L01417	San Antonio	32	10/01/13
Throughout TX	Schlumberger Technology Corporation	L01833	Sugar Land	171	10/16/13
Throughout TX	APEX Geoscience, Inc.	L04929	Tyler	45	10/15/13
Tomball	RCOA Imaging Services, Inc.	L06091	Tomball	11	10/03/13
Tyler	Mother Frances Hospital Regional Health Care Center	L01670	Tyler	188	10/03/13
Tyler	Nutech, Inc.	L04274	Tyler	71	10/10/13
Victoria	Victoria of Texas, L.P. dba Detar Hospital Navarro	L01630	Victoria	48	10/01/13
Waco	Hillcrest Baptist Medical Center	L00845	Waco	95	10/15/13

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Baytown	Lanxess Corporation	L05810	Baytown	07	10/15/13
Dallas	Heartplace, P.A.	L05541	Dallas	11	10/10/13
Fort Worth	Baylor All Saints Medical Center Radiology Department	L02212	Fort Worth	91	10/04/13
Irving	Dallas-Ft Worth Veterinary Imaging Center dba Animal Imaging	L04602	Irving	13	10/14/13
San Antonio	San Antonio Endovascular and Heart Institute	L05766	San Antonio	09	10/14/13
Throughout TX	The Murillo Company Geotechnical and Environmental Consultants	L01373	Houston	21	09/30/13

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Dallas	Metrocrest Hospital Authority dba Dallas Medical Center	L02314	Dallas	63	10/01/13
Dallas	PAJ, Inc. dba Prime Art & Jewel	L06115	Dallas	02	10/01/13
El Paso	Desert Imaging, L.P.	L05626	El Paso	15	10/15/13
Houston	USON, L.P.	L05669	Houston	03	10/07/13
Houston	Diagnostic Nuclear Imaging	L05769	Houston	05	10/03/13
Laredo	Metabolic Imaging of Laredo, L.L.P.	L05890	Laredo	06	10/15/13
Plano	Texas Regional Heart Center, P.A. dba Legacy Heart Center	L03704	Plano	35	09/30/13

TERMINATIONS OF LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Pleasanton	Tan Heart Clinic, L.L.C.	L06571	Pleasanton	01	10/03/13
San Antonio	Pasteur Plaza Surgery Center, L.P.	L05659	San Antonio	06	10/01/13
Throughout TX	American X-Ray & Inspection Services, Inc. dba Axis	L06450	Midland	02	10/03/13

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201304839
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: October 24, 2013

Texas Department of Insurance

Company Licensing

Application to change the name of GENERALI USA LIFE REASSURANCE COMPANY to SCOR GLOBAL USA REINSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Kansas City, Missouri.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201304915
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: October 30, 2013

Texas Department of Insurance, Division of Workers' Compensation

Correction of Error

The Texas Department of Insurance, Division of Workers' Compensation proposed amendments to 28 TAC Chapter 133, General Medical Provisions, in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7601). Due to a Texas Register editing error in §133.2, Definitions, amended paragraph (9) concerning "retrospective utilization review" on page 7606 was formatted incorrectly. The corrected definition reads as follows:

"(9) [~~(7)~~] Retrospective utilization review--A form of utilization review for health care services that have been provided to an injured employee. Retrospective utilization review does not include review of services for which prospective or concurrent utilization reviews were previously conducted or should have been previously conducted. [~~The process of reviewing the medical necessity and reasonableness of health care that has been provided to an injured employee.~~]"

TRD-201304898

Texas Lottery Commission

Instant Game Number 1583 "100X the Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1583 is "100X THE CASH." The play style is "key number match."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1583 shall be $20.00 per Ticket.

1.2 Definitions in Instant Game No. 1583.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45,

46, 47, 48, 49, 5X SYMBOL, 10X SYMBOL, 20X SYMBOL, 50X SYMBOL, 100X SYMBOL, $10.00, $15.00, $20.00, $30.00, $50.00, $75.00, $100, $200, $500, $1,000, $20,000, $100,000 and $2,500,000.

D. Play Symbols 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. 1583 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
6	SIX
7	SVN
8	EGT
9	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI

5X SYMBOL	TIMES5
10X SYMBOL	TIMES10
20X SYMBOL	TIMES20
50X SYMBOL	TIMES50
100X SYMBOL	TIMES100
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$30.00	THIRTY
$50.00	FIFTY
$75.00	SEVENTY FIV
$100	ONE HUND
$200	TWO HUND
$500	FIV HUND
$1,000	ONE THOU
$20,000	20 THOU
$100,000	HUN THOU
$2,500,000	2 MILL 5 HUN

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $20.00.

G. Mid-Tier Prize - A prize of $30.00, $50.00, $100, $200 or $500.

H. High-Tier Prize - A prize of $1,000, $20,000, $100,000 or $2,500,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1583), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 1583-0000001-001.

K. Pack - A Pack of "100X THE CASH" Instant Game Tickets contains 025 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 025 while the other fold will show the back of Ticket 001 and front of 025.

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 "100X THE CASH" Instant Game No. 1583 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "100X THE CASH" Instant Game is determined once the latex on the Ticket is scratched off to expose 66 (sixty-six) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If a player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. If a player reveals a "20X" Play Symbol, the player wins 20 TIMES the prize for that symbol. If a player reveals a "50X" Play Symbol, the player wins 50 TIMES the prize for that symbol. If a player reveals a "100X" Play Symbol, the player wins 100 TIMES the prize for that symbol. 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 66 (sixty-six) 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 66 (sixty-six) 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 66 (sixty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 66 (sixty-six) 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 Texas 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 thirty (30) 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. The top Prize Symbol will appear on every ticket unless otherwise restricted by parameters, play action or prize structure.

D. The $10 and $15 Prize Symbols will only appear on winning Tickets in which the $10 and $15 prizes are part of a winning pattern.

E. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 15 and $15).

F. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

G. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

H. Each Ticket will have six (6) different "WINNING NUMBERS" Play Symbols.

I. Non-winning Prize Symbols will never appear more than three (3) times.

J. The "5X", "10X", "20X", "50X" and "100X" Play Symbols will never appear in the "WINNING NUMBERS" Play Symbol spots.

K. The "5X", "10X", "20X", "50X" and "100X" Play Symbols will only appear as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "100X THE CASH" Instant Game prize of $20.00, $30.00, $50.00, $100, $200, 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 $30.00, $50.00, $100, $200 or $500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "100X THE CASH" Instant Game prize of $1,000, $20,000 or $100,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "100X THE CASH" top level prize of $2,500,000, the claimant must sign the winning Ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. 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.

D. As an alternative method of claiming a "100X THE CASH" 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.

E. 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 Texas 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.

F. 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 under $600 from the "100X THE CASH" 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 "100X THE CASH" 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 12,000,000 Tickets in the Instant Game No. 1583. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1583 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$20	1,920,000	6.25
$30	1,440,000	8.33
$50	480,000	25.00
$100	240,000	50.00
$200	96,000	125.00
$500	10,000	1,200.00
$1,000	3,000	4,000.00
$20,000	90	133,333.33
$100,000	14	857,142.86
$2,500,000	8	1,500,000.00

*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 2.86. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1583 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. 1583, 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-201304907
Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 29, 2013

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Texas Low-Level Radioactive Waste Disposal Compact Commission

Notice of Receipt of Application for Amendment to Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an amendment application for import for disposal of low-level radioactive waste from:

Pacific Gas and Electric Company - Diablo Canyon Power Plant (TLL-RWDCC #1-0024-01)

P.O. Box 56/MC 104/5/13B

Avila Beach, CA 93424

The amendment application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the amendment applications are due to be received by November 19, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attn: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, TX 78701

Comments may also be submitted via email to: administration@tllrwdcc.org.

TRD-201304879
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: October 25, 2013

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Notice of Receipt of Application for Amendment to Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an amendment application for import for disposal of low-level radioactive waste from:

Pacific Gas and Electric Company - Humboldt Bay Power Plant (TLL-RWDCC #1-0028-02)

1000 King Salmon Road

Eureka, CA 95503

The amendment application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the amendment applications are due to be received by November 19, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attn: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, TX 78701

Comments may also be submitted via email to: administration@tllrwdcc.org.

TRD-201304880
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: October 25, 2013

Public Utility Commission of Texas

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

The Public Utility Commission of Texas (commission) received an application on October 25, 2013, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cebridge Acquisition, L.P. d/b/a Suddenlink Communications to Amend Its State-Issued Certificate of Franchise Authority, Project Number 41968.

The requested amendment is to expand the service area footprint to include city limits of Toco, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 41968.

TRD-201304901
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 28, 2013

Notice of Application for Sale, Transfer, or Merger Pursuant to Public Utility Regulatory Act §39.158

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on October 21, 2013, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §39.158 (Vernon 2007 and Supp. 2013) (PURA).

Docket Style and Number: Application of Koch Power Solutions, LLC Pursuant to §39.158 of the Public Utility Regulatory Act, Docket Number 41955.

The Application: Koch Power Solutions, LLC (Applicant) has filed an application for approval of the proposed acquisition by Applicant of 100% of the ownership interests in Odessa Power Holdings, LLC (Transaction). Odessa Power Holdings, LLC directly or indirectly owns 100% of the issued and outstanding limited liability company interests or partnership interests in: (i) Odessa Power, LLC; (ii) Odessa-Ector Power I, LLC; (iii) Odessa-Ector Power II, LLC; (iv) Odessa-Ector Power Partners, LP; and (v) Odessa-Ector Power Partner Services, LLC. These entities are referred to in the application as the OEP Companies.

The OEP Companies own and operate the Odessa-Ector Power Partners, LP generating facility (Odessa Facility), a 1,000 MW combined cycle gas-fired generating facility in Odessa, Texas, within the Electric Reliability Council of Texas (ERCOT) power region. The Odessa Facility holds Power Generation Company Registration No. 20001. As a result of the transaction, Odessa Power Holdings, LLC will become a wholly owned, indirect subsidiary of Koch Industries, Inc. INVISTA S.a.r.l., an indirect, wholly-owned subsidiary of Koch Industries, Inc., owns and operates a nylon intermediates manufacturing facility in Victoria, Texas, within ERCOT, which includes a 90 MW gas-fired, topping cycle generating facility that is a Qualifying Facility and holds Self Generation Company Registration No. 70061.

Koch Industries, Inc. also owns Georgia-Pacific, LLC which, in turn owns all of the equity interests in ten separately incorporated entities that own qualifying cogeneration facilities in the southeast region of the United States referred to in the application as the Georgia Pacific Companies. The Georgia Pacific Companies own and operate a combined total of approximately 975 MW of generating capacity in the SERC power region. Approximately 215 MW of this capacity is capable of being delivered into ERCOT.

The Applicant is required to obtain commission approval before completing the Transaction if the electricity to be offered for sale in a power region will exceed one percent of the total electricity for sale in the power region if the Application is approved. Under PURA §39.154, a power generation company may not own and control more than 20% of the installed generation capacity located in, or capable of delivering electricity to a power region in Texas.

Following the acquisition of Odessa Power Holdings, LLC, the combined generation directly and indirectly owned and controlled by Koch Industries, Inc. and its subsidiaries and affiliates will exceed 1% of the installed generation capacity of ERCOT. However, Applicant has stated that the Transaction will not result in a violation of the installed capacity share limitations set forth in PURA §39.154.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711- 3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 41955.

TRD-201304900
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 28, 2013

South East Texas Regional Planning Commission

Notice of Request for Proposals for Third Party Drug and Alcohol Testing Services

South East Texas Regional Planning Commission (SETRPC) is seeking proposals for Third Party Administrators for drug and alcohol testing to administer the federally mandated and drug free workplace drug testing program for a period of five (5) years. SETRPC is seeking a third party provider for on-site/collection site drug and alcohol testing of transit employees in the rural areas of Jefferson, Orange, and Hardin Counties.

The primary objective of the service is to comply with the Federal Transit Administration prevention of alcohol misuse and prohibited drug use in transit operations (49 CFR Part 655) effective August 1, 2001.

Copies of the Request for Proposals (RFP) can be downloaded from the SETRPC website at www.setrpc.org on or after October 28, 2013. The RFP can also be obtained by calling (409) 899-8444, ext 7520.

Proposals and bids received after the deadline will be returned unopened. If envelope is not marked properly, proposal may not be considered. It is not necessary to be present at the proposal/bid opening. If you have any questions regarding this matter, please contact our agency at the above web address or telephone (409) 899-8444, ext 7520.

Disadvantaged Business Enterprises will be afforded full opportunity to submit proposals. Proposers will not be discriminated against on the grounds of race, color, sex, disability, age, or national origin in considering an award.

SETRPC reserves the right to reject any and all proposals.

Proposals will be accepted until 2:00 p.m. CST, November 19, 2013, at South East Texas Regional Planning Commission, Attention: Bob Dickinson, 2210 Eastex Freeway, Beaumont, Texas 77703. Facsimile submittals will not be accepted.

TRD-201304888
Bob Dickinson
Director, Transportation and Environmental Resources
South East Texas Regional Planning Commission
Filed: October 28, 2013

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Texas Department of Transportation

Notice of Availability - Draft Environmental Impact Statement

The Texas Department of Transportation (TxDOT) is advising the public of the availability of the approved Draft Environmental Impact Statement (DEIS) for the proposed construction of the new location, full control of access reliever route around the city of Lindale in Smith County, Texas, referred to as U.S. Highway (US) 69/Loop 49 North Lindale Reliever Route (Lindale Reliever Route). The proposed action is intended to provide relief to the existing US 69 through the city of Lindale and extend a proposed toll facility (Loop 49 West) from IH 20 southwest of Lindale to US 69 north of Lindale. This proposed facility would extend north from the completed Loop 49 West terminus at Interstate Highway (IH) 20, bypassing Lindale and terminating at US 69 north of Lindale. The proposed action was developed, analyzed and vetted through an extensive feasibility and routing process which included many public involvement opportunities from 1999 through the 2013 date of this Draft Environmental Impact Statement (DEIS). The proposed project began National Environmental Policy Act (NEPA) compliance activity as an Environmental Assessment (EA) and was elevated to an Environmental Impact Statement (EIS), due in part to proximity of western alternative corridors to the city of Hideaway and eastern alternative corridors to the city of Lindale and youth camp facilities.

Over the course of three steering committee meetings, four public meetings, two public scoping meetings, three public participating agency meetings and three affected property owner meetings, a technically preferred alignment with broad support was identified (Alternative G). Alternatives to the proposed action include taking no action or building alternative alignments D or G, which range in length from 7.0 to 7.4 miles, respectively. Alternatives D and G would both be new location roadways consisting of a four-lane divided freeway ultimate section in a usual minimum 450-foot right-of-way. The project would most likely be built in phases, with an interim design consisting of a two-lane section, similar to existing Loop 49 West. Neither the interim nor ultimate design provides for continuous access or frontage roads. Alternative G is identified as the technically preferred alternative primarily due to fewer impacts to the human environment. Environmental impacts caused by the construction and operation of the proposed roadway would vary according to the alignment utilized. Direct impacts of the build alternatives would include construction detours, construction traffic, air and noise impacts from construction equipment and operation of the roadway, surface water impacts from construction activities and roadway storm water runoff, impacts to waters of the US including wetlands, impacts to wildlife habitat, impacts to cultural resources, and impacts to residents and businesses based on potential relocations. The project alternatives, including no action, would have indirect and cumulative impacts on the environment. The build alternatives would result in safety, mobility, and capacity improvements to the regional transportation system that would not be provided by the No Build Alternative.

Copies of the DEIS and other information about the project can be obtained by contacting Mr. Dale Booth at the TxDOT Tyler District at (903) 510-9113 or by email at Dale.Booth@txdot.gov. The document is on file and available for review at the following locations: (1) Robert R. Muntz Library, 3900 University Boulevard, Tyler, Texas 75799; (2) Tyler Public Library, 201 South College Avenue, Tyler, Texas 75702; (3) TxDOT Tyler District, 2709 West Front Street, Tyler, Texas 75702; (4) East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662; (5) Tyler City Hall, 423 W. Ferguson, Tyler, Texas 75702; (6) Lindale City Hall, 105 Ballard Dr., Lindale, Texas 75771; (7) Hideaway City Hall, 101-B Hideaway Lane Central, Hideaway, Texas 75771-5001; (8) North East Texas Regional Mobility Authority (NETRMA), 909 ESE Loop 323, STE 360, Tyler, Texas 75701. You may view the DEIS at the following addresses: http://www.txdot.gov/inside-txdot/district/tyler.html; http://ftp.dot.state.tx.us/pub/txdot-info/tyl/draft-eis.pdf.

Copies of the DEIS and other information about the project may also be requested from Hicks & Company in writing at 1504 West 5th Street, Austin, Texas 78703 or by email at info@hicksenv.com. Paper copies may be obtained for a fee of approximately $350.00.

Comments regarding the DEIS may be submitted to TxDOT, Attention: Lindale Reliever Route Project Manager, 2709 West Front Street, Tyler, Texas 75702. Comments will also be accepted by email to TYL_LindaleRelieverRoute@txdot.gov. A public hearing concerning the DEIS is scheduled for January 9, 2014 at 5:30 p.m. at the Lindale High School Cafeteria, 920 East Hubbard (FM 16), Lindale, Texas 75771. The public comment period will close January 20, 2014. TxDOT will publish notice of the public hearing in a local newspaper, in accordance with TxDOT rules.

TRD-201304916
Leonard Reese
Office of General Counsel Lead Attorney
Texas Department of Transportation
Filed: October 30, 2013

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Notice of Call for Projects

The Texas Department of Transportation (department) announces a Call for Projects for:

1. State Planning Assistance - 49 U.S.C. §5304, 43 Texas Administrative Code (TAC) §31.22

2. Rural Transportation Assistance - 49 U.S.C. §5311(b)(3), 43 TAC §31.37

3. Intercity Bus - 49 U.S.C. §5311(f), 43 TAC §31.36

4. Rural Discretionary - 49 U.S.C. §5311 - Discretionary Program, 43 TAC §31.36

These public transportation projects will be funded through the Federal Transit Administration (FTA) §§5304, 5311(b)(3), 5311(f), and 5311 - Discretionary program. It is anticipated that multiple projects from multiple funding programs will be selected for State Fiscal Year 2015. Project selection will be administered by the Public Transportation Division (PTN). Selected projects will be awarded in the form of grants, with payments made for allowable reimbursable expenses or for defined deliverables. The applicant will become a sub-recipient of the department.

Purpose: The Call for Projects invites applications for services to develop, promote, coordinate, or support public transportation. The objectives for these applications are to support the non-urbanized and small urban areas of Texas, to support services to meet the intercity travel needs of residents, or to support the infrastructure of the public transportation network through planning, marketing assistance, local match assistance, and vehicle capital and facility investment. In the process of meeting these objectives, projects are also to support and promote the coordination of public transportation services across geographies, jurisdictions, and program areas. Coordination between non-urbanized and urbanized areas and between client transportation services and other types of public transportation are particular objectives.

Eligible Projects: Eligible types of projects have been defined by the department in accordance with FTA guidelines, other laws and regulations, and in consultation with members of the public transportation and the intercity bus industries. Projects include funding for vehicle capital, planning, marketing, facilities, training, technical and operating assistance, and research.

Eligible Applicants: Applicants shall be required to enter into a grant agreement as a sub-recipient of the department. Eligible sub-recipients include state agencies, local public bodies and agencies thereof, private-nonprofit organizations, operators of public transportation services, state transit associations, transit districts, and private for-profit operators. Eligible applicants are defined in 43 TAC Chapter 31.

Availability of Funds: In accordance with Transportation Code, Chapter 455, the department currently provides funding for public transportation projects, funded through FTA §5304 State Planning Assistance, §5311(b)(3) Rural Transportation Assistance, §5311(f) Intercity Bus program, §5311 - Rural Discretionary programs. The department will also consider offering transportation development credits to assist with some local match needs for capital projects.

Review and Award Criteria: Applications will be evaluated against a matrix of criteria and then prioritized. Subject to available funding, the department is placing no precondition on the number or on the types of projects to be selected for funding. The department reserves the right to conduct negotiations pertaining to a proposer's initial responses including but not limited to specifications and prices. An approximate balance in funding awarded to the types of projects, or an approximate geographic balance to selected projects, may be seen as appropriate, depending on the proposals that are received. The department may consider these additional criteria when recommending prioritized projects to the Texas Transportation Commission.

Key Dates and Deadlines:

November 13, 2013: Statewide pre-application webinar.

December 5, 2013: Statewide pre-application webinar. To include response to written questions submitted by November 27th.

January 3, 2014: Deadline for submitting written questions.

January 15, 2014: Target date for written responses to questions to be posted on the PTN website.

February 12, 2014: Deadline for receipt of applications.

April 1, 2014: Target date for the department to complete the evaluation, prioritization, and negotiation of applications.

May 23, 2014: Target date for presentation of project selection recommendations to the Texas Transportation Commission for action.

September 1, 2014: Target date for most project grant agreements to be executed, with approved scopes of work and calendars of work.

To Obtain a Copy of the Call for Projects: The Call for Projects will be posted on the Public Transportation Division website at http://www.txdot.gov/business/governments/grants/public_transportation.htm.

Applicants with questions relating to the Call for Projects should email PTN_ProgramMgmt@txdot.gov.

TRD-201304918
Leonard Reese
Office of General Counsel Lead Attorney
Texas Department of Transportation
Filed: October 30, 2013

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Public Hearing Notice - Unified Transportation Program

The Texas Department of Transportation (department) will hold a public hearing on Tuesday, November 26, 2013 at 10:00 a.m. at 118 East Riverside Drive, First Floor ENV Conference Room, in Austin, Texas to receive public comments on the proposed updates to the 2014 Unified Transportation Program (UTP).

The UTP is a 10-year program that guides the development and authorizes construction of transportation projects and projects involving aviation, public transportation, and the state's waterways and coastal waters. The Texas Transportation Commission has adopted rules located in 43 Texas Administrative Code Chapter 16, governing the planning and development of transportation projects, which include guidance regarding public involvement related to adoption of the UTP and approval of any updates to the program.

Information regarding the proposed updates to the 2014 UTP will be available at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5038, and on the department's website at: http://www.txdot.gov/public_involvement/utp.htm

Persons wishing to speak at the hearing may register in advance by notifying the Transportation Planning and Programming Division, at (512) 486-5038 no later than Monday, November 25, 2013, or they may register at the hearing location beginning at 9:00 a.m. on the day of the

hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division, at 118 East Riverside Drive Austin, Texas 78704-1205, (512) 486-5038. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the updates to the 2014 UTP to Marc D. Williams, Director of Planning, P.O. Box 149217, Austin, Texas 78714-9217. Interested parties may also submit comments regarding the updates to the 2014 UTP by phone at (800) 687-8108. In order to be considered, all comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, December 9, 2013.

TRD-201304917
Leonard Reese
Office of General Counsel Lead Attorney
Texas Department of Transportation
Filed: October 30, 2013

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Texas Workforce Commission

Correction of Error

The Texas Workforce Commission (TWC) submitted six notices of proposed rule review for publication in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7479). The notices concerned 40 TAC Chapters 807, 811, 835, 841, 847 and 849. Due to a Texas Register editing error, the email addresses for receipt of comments in each of the documents was incorrectly stated as "TWCPolicyComments@twc.texas.gov". The email address for comments concerning the rule reviews should be "TWCPolicyComments@twc.texas.state.tx.us". The corrected contact information follows:

"Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.texas.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*."

TRD-201304887

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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 38 (2013) is cited as follows: 38 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 "38 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 38 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)*

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Note**: Back issues of the ***Texas Register, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (512) 463-5561.

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