TEXAS REGISTER

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Annaliese M. Fisher

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

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

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IN THIS ISSUE

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.)

Request for Opinions

RQ-0740-GA

Requestor:

Mr. Allan B. Polunsky, Chair

Public Safety Commission

5805 North Lamar Boulevard

Austin, Texas 78752-4431

Re: Whether the Public Safety Commission may authorize statewide drivers license checkpoints (RQ-0740-GA)

Briefs requested by October 23, 2007

RQ-0741-GA

Requestor:

Mr. Robert Scott

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Authority of a home-rule city to enforce zoning ordinances against a school district for the purpose of aesthetics and the maintenance of property values (RQ-0741-GA)

Briefs requested by October 23, 2007

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

TRD-200805120
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: September 23, 2008

♦ ♦ ♦

Opinions

Opinion No. GA-0665

The Honorable Susan Combs

Comptroller of Public Accounts

Post Office Box 13528

Austin, Texas 78711-3528

Re: Whether an applicant who has a leasehold interest in "qualified property" is eligible to apply for a limitation on the appraised value of the qualified property (RQ-0684-GA)

S U M M A R Y

Tax Code section 313.025(a) authorizes "the owner of qualified property" to apply to a school district for a limitation on the appraised value of the qualified property for the purposes of school district-imposed maintenance and operation property taxes. Under Tax Code section 313.021(2), land, building or other improvement, and tangible personal property each constitute "qualified property." Accordingly, a person that owns a building or other improvement or tangible personal property is an "owner of qualified property" under section 313.025(a). Thus, a person meeting the other requirements of chapter 313 who owns such qualified property--building or other improvement or tangible personal property--is eligible to apply for a limitation on the appraised value of the person's qualified property irrespective of whether the person owns or leases the land on which the qualified property is to be placed.

Opinion No. GA-0666

The Honorable Beverly Woolley

Chair, Committee on Calendars

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the Texas Association of Appraisal Districts is a "governmental body" for purposes of chapter 552 of the Government Code, the Public Information Act (RQ-0691-GA)

S U M M A R Y

Whether an entity is a "governmental body" under the Public Information Act, chapter 552 of the Government Code, depends largely upon whether that entity is supported in whole or in part by public funds. The extent to which an entity is supported by public funds requires an analysis of the facts surrounding each entity. Inquiries as to whether a particular entity is a governmental body are particularly appropriate to the Attorney General's open records process under the Public Information Act.

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

TRD-200805119
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: September 23, 2008

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TEXAS ETHICS COMMISSION

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

Advisory Opinion Request

AOR-545. The Texas Ethics Commission has been asked to consider the following questions:

1. Does a person who is subject to the restrictions on expenditures in §305.024(a)(2)(A) of the Government Code make a prohibited expenditure for transportation or lodging if the individual to whom the transportation or lodging is provided makes a prepayment in full for the transportation or lodging?

2. If an expenditure for the transportation or lodging at issue is not prohibited because a prepayment is made, what is an acceptable method for calculating a prepayment?

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

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

TRD-200805112
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: September 23, 2008

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EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

SUBCHAPTER A. EXAMINATION

22 TAC §571.19

The Texas Board of Veterinary Medical Examiners (Board) adopts, on an emergency basis, a new rule to this title, §571.19, relating to the temporary licensure of veterinarians displaced by Hurricane Ike. As authorized by Texas Government Code §2001.034, the Board may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the Board finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days notice. An emergency rule adopted under §2001.034 may be effective for not longer than 120 days and may be renewed for not longer 60 days. In addition, under Texas Occupations Code §801.258, the Board may by rule provide for the issuance of a temporary license.

The Board finds that there is a continuing imminent peril to public welfare due to the number of veterinarians in Texas who may have been displaced by Hurricane Ike and are not available to provide necessary veterinary services in the disaster areas and to accommodate the licensed veterinarians from other jurisdictions who wish to provide relief veterinary services to supplement this public need. On September 8, 2008, Governor Rick Perry issued a disaster proclamation certifying that Hurricane Ike had created an emergency disaster and emergency conditions for Texas. On September 17, 2008, the Board held a meeting at 11:15 a.m. by telephone conference from the Board's offices in Austin to consider this emergency rule.

Under this emergency rule, the Board will issue a temporary license to veterinarians who can demonstrate that they are licensed in good standing in any of the United States. The veterinarian must complete and file an Application for Temporary Emergency License, and the application fee is waived. An application for a Texas Department of Public Safety Controlled Substances Registration must also be submitted to that agency.

This emergency rule is adopted on an emergency basis under Texas Government Code §2001.034, relating to emergency rulemaking, Texas Occupations Code §801.151, relating to rules, and Texas Occupations Code §801.258, relating to temporary license. Texas Government Code §2001.034 authorizes the adoption of an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing if an agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. Texas Occupations Code §801.151 authorizes the Board to adopt rules as necessary to administer the Veterinary Licensing Act. Texas Occupations Code §801.258 authorizes the Board by rule to issue temporary licenses. The emergency rule has been reviewed by legal counsel and is within the Board's authority to adopt.

No other statutes, articles, or codes are affected by this emergency rule.

§571.19. Temporary Licensure of Veterinarians Displaced by Hurricane Ike.

(a) An individual who is licensed to practice veterinary medicine in any of the United States may be issued a temporary license under the following circumstances:

(1) The applicant must complete an Application for Temporary Emergency License.

(2) The Board will verify that the veterinarian is licensed in the states indicated in the Application and will confirm good standing.

(3) The applicant must file an application with the Texas Department of Public Safety for a controlled substances registration.

(4) An application fee is waived.

(b) A veterinarian granted a temporary emergency license under this section shall abide by the Texas Veterinary Licensing Act and the Board's rules. Violations of the Act, Board rules, or the temporary emergency license will subject the temporary licensee to disciplinary action by the Board.

(c) A temporary emergency license issued under this emergency rule will be valid until January 14, 2009 unless the Executive Director extends this emergency rule for an additional 60 days, in which case, a temporary license will be valid until March 15, 2009.

(d) A temporary emergency license issued prior to the expiration of this emergency rule will remain in effect until the temporary license expires even if this emergency rule is no longer in effect.

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

Filed with the Office of the Secretary of State on September 17, 2008.

TRD-200805081
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective Date: September 17, 2008
Expiration Date: January 14, 2009
For further information, please call: (512) 305-7563

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 175. COLLECTION IMPROVEMENT PROGRAM

SUBCHAPTER A. GENERAL COLLECTION IMPROVEMENT PROGRAM PROVISIONS

1 TAC §175.3

The administrative director of the Office of Court Administration of the Texas Judicial System proposes amendments to 1 TAC Chapter 175, §175.3, concerning its collection improvement program. The proposed amendments clarify the calculation of deadline dates for compliance with program requirements.

The proposed amendments add language to §175.3(a) that deadline dates falling on weekends, holidays or other days on which the office is closed for business will be advanced to the next day the office is open for business. The need for this change is to be consistent with normal government business practice allowing an extension of deadlines to the next day the office is open for business.

The proposed amendments to §175.3(c)(1) and (4) - (7) change the calculation of deadline dates from days to months. The need for this change is to be consistent with normal collection processes, in which deadlines and due dates are set to the same day of each month. For example, a payment that is due on the fifteenth of the first month will be due on the fifteenth of successive months. The proposed amendments also add language to §175.3(c)(7) to clarify that if a capias pro fine will be sought, another contact must be made within one month of the later of the previous telephone or mail contacts regarding the past-due payments. Clarification is needed because different offices make the telephone and send the mail contacts in different sequences.

Glenna Bowman, Chief Financial Officer, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Berny Schiff, Collections Program Financial Analyst, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of the amended calculation methodology will be alleviation of confusion among court collection improvement programs and auditors from the Comptroller of Public Accounts, as well as consistency of operations among the programs. There will be no cost to small business or individuals as a result of the amendments.

Comments on the proposal may be submitted in writing to Berny Schiff, at berny.schiff@courts.state.tx.us, at P.O. Box 12066, Austin, Texas 78711-2066, or by fax to (512) 463-1648.

The amendments are proposed under Article 103.0033 of the Code of Criminal Procedure.

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

§175.3. OCA's Collection Improvement Program Requirements.

(a) OCA Program Requirements. OCA's program has 10 critical components. Three critical components relate to the way a local program should be implemented, staffed, and operated. The other seven critical components relate to the way program staff communicates with defendants and documents those communications. In accordance with Article 103.0033(j), the Comptroller will periodically audit counties and municipalities to confirm implementation of the critical components of OCA's program; the audit standards are more fully described in §175.5 of this chapter. In computing any period of time under these rules, when the last day of the period falls on a Saturday, Sunday, legal holiday, or other day on which the office is not open for business, then the period runs until the end of the next day on which the office is open for business.

(b) (No change.)

(c) Critical Components for Defendant Communications.

(1) Application or Contact Information. For payment plans set by a judge, defendant must provide or acknowledge contact information and program staff must document it. In other cases, defendant must provide a signed or acknowledged application for extended payment that includes both contact information and payment ability information. Programs may use a single form for both contact information and payment ability information, and the required information must be obtained within one month [~~30 days~~] of the assessment date.

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

(4) Specified Payment Terms.

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

(C) Time Requirements. Payment plans set by program staff shall meet the following time requirements:

(i) In municipal and justice court cases, full payment within four months [~~120 days~~] of the assessment date.

(ii) In county and district court cases involving community supervision, full payment at least two months [~~60 days~~] before expiration of the term of community supervision.

(iii) In county and district court cases not involving community supervision and not involving incarceration, full payment within six months [~~180 days~~] of the assessment date. Time requirements for payment plans set by a judge are within judicial discretion.

(5) Telephone Contact for Past-Due Payments. Within one month [~~30 days~~] of a missed payment, a phone call must be made to a defendant who has not contacted the program staff. Phone calls may be made by an automated system, but an electronic report or manual documentation of the telephone contact must be available on request.

(6) Mail Contact for Past-Due Payments. Within one month [~~30 days~~] of a missed payment, a written delinquency notice must be sent to a defendant who has not contacted the program. Written notice may be sent by an automated system, but an electronic report or manual documentation of the mail contact must be available on request.

(7) Contact if Capias Pro Fine Sought. If a capias pro fine will be sought, the program must make another phone call or send another written notice to the defendant within one month [~~30 days~~] of the phone call described in paragraph (5) of this subsection or the written delinquency notice described in paragraph (6) of this subsection, whichever is later. An electronic report or manual documentation of the contact must be maintained.

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

Filed with the Office of the Secretary of State on September 17, 2008.

TRD-200805065
Margaret Bennett
General Counsel, State Office of Court Administration
Texas Judicial Council
Earliest possible date of adoption: November 2, 2008
For further information, please call: (512) 463-6321

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 80. PROFESSIONAL CONDUCT

22 TAC §80.11

The Texas Board of Chiropractic Examiners ("Board") proposes new §80.11, concerning a Code of Ethics. The new rule is proposed to address a gap in the Board's rules by codifying a standard of ethics and professional responsibility. This rule is modeled on the Code of Ethics of the American Chiropractic Association, which is available at https://www.acatoday.org/content_css.cfm?CID=719.

Glenn Parker, Executive Director, has determined that for the first five-year period the new rule is in effect there will be no additional costs to state or local governments as a result of enforcing or administering the rule.

Mr. Parker has also determined that for each year of the first five-year period the new rule is in effect the public benefit will be an increase in adherence to higher ethical standards by licensed doctors of chiropractic in Texas.

Mr. Parker has also determined that there will be no costs associated with this rule and no costs or adverse economic effects to small or micro businesses. Because there is no adverse economic effect, an economic impact statement and regulatory flexibility analysis is not required for this new rule.

Comments on the proposed new rule may be submitted to Mary Feys, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701 or via e-mail to mary.feys@tbce.state.tx.us or via facsimile to (512) 305-6705 no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The new rule is proposed under the Texas Occupations Code §201.152, relating to rules, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic.

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

§80.11. Code of Ethics.

(a) Licensees shall employ their best good faith efforts to provide information and facilitate understanding to enable the patient to make an informed choice in regard to proposed chiropractic treatment. Licensees shall allow the patient to make his or her own determination on such treatment.

(b) Licensees shall willingly consult other health care professionals when such consultation would benefit their patients or when their patients express a desire for such consultation.

(c) Licensees shall not discriminate as to which patients they choose to serve on the basis of race, religion, ethnicity, nationality, creed, gender, handicap or sexual preference.

(d) Licensees shall conduct themselves as members of a learned profession and as members of the greater healthcare community dedicated to the promotion of health, the prevention of illness and the alleviation of suffering. As such, licensees should collaborate and cooperate with other health care professionals to protect and enhance the health of the public with the goals of reducing morbidity, increasing functional capacity, increasing the longevity of the U.S. population and reducing health care costs.

(e) Licensees shall not behave in a manner which gives the appearance of professional impropriety. So as not to erode the public trust, licensees shall avoid any actions which may benefit the licensee to the detriment of the profession.

(f) Licensees shall recognize their obligation to help others acquire knowledge and skill in the practice of the profession. They shall maintain the highest standards of scholarship, education and training in the accurate and full dissemination of information and ideas.

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

Filed with the Office of the Secretary of State on September 19, 2008.

TRD-200805089
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: November 2, 2008
For further information, please call: (512) 305-6901

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PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING RULES

SUBCHAPTER A. LICENSING

22 TAC §851.32

The Texas Board of Professional Geoscientists (TBPG or Board) proposes an amendment to 22 TAC §851.32, regarding continuing education. The proposed amendment removes the requirement for continuing education activities to be pre-approved by the Board.

Mr. Vincent Houston, Acting Executive Director of TBPG, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Houston has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhancement of the professional practice of geoscientists by ensuring that only qualified and licensed persons and entities practice geoscience before the public, and allowing individual license holders to determine whether their continuing education activities meet the requirements of the Board. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on this proposal may be submitted in writing to: Molly B. Roman, Administrative Coordinator, P.O. Box 13225, Austin, Texas 78711, (512) 936-4405. Comments may also be submitted electronically to mroman@tbpg.state.tx.us or faxed to (512) 936-4409. Comments must be submitted no later than 30 days from the date the proposed amendments are posted in the *Texas Register*. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by Ms. Roman no more than 15 calendar days after notice of proposed amendments to this section have been published in the *Texas Register*.

This amendment is proposed under the Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties. This amendment is also proposed under the Texas Occupations Code §1002.302, which allows the board to establish continuing education requirements.

The proposed amendment implements the Texas Occupations Code, §1002.151 and §1002.302.

§851.32. Continuing Education Program.

(a) Each license holder shall meet the Continuing Education Program (CEP) requirements for professional development as a condition for license renewal.

(b) Terms used in this section are defined as follows:

(1) Professional Development Hour (PDH)--A contact hour (clock hour) of CEP activity. PDH is the basic unit for CEP reporting.

(2) Continuing Education Unit (CEU)--Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.

(3) College/Unit Semester/Quarter Hour--Credit for course in a discipline of geoscience or other related technical elective of the discipline.

(4) Course/Activity--Any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the license holder's field of practice.

(c) Every license holder is required to obtain 15 PDH units during the renewal period year.

(d) A minimum of 1 PDH per renewal period must be in the area of professional ethics, roles and responsibilities of professional geoscientists, or review on-line of the Texas Geoscientist Practice Act and Board Rules.

(e) If a license holder exceeds the annual requirement in any renewal period, a maximum of 30 PDH units may be carried forward into the subsequent renewal periods.

(f) PDH units may be earned as follows:

(1) Successful completion or auditing of college credit courses.

(2) Successful completion of continuing education courses, either offered by a professional or trade organization, university or college, or offered in-house by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(3) Successful completion of correspondence, on-line, televised, videotaped, and other short courses/tutorials.

(4) Presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences sponsored by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(5) Teaching or instructing as listed in paragraphs (1) - (4) of this section.

(6) Authoring published papers, articles, books, or accepted licensing examination items.

(7) Active participation in professional or technical societies, associations, agencies, or organizations, including:

(A) Serving as an elected or appointed official;

(B) Serving on a committee of the organization;

(C) Serving in other official positions.

(8) Patents Issued.

(9) Engaging in self-directed course work.

(10) Software Programs Published.

(g) All activities described in subsection (f) of this section shall be relevant to the practice of a discipline of geoscience and may include technical, ethical, or managerial content.

(h) The conversion of other units of credit to PDH units is as follows and subject to subsection (g) of this section

(1) 1 College or unit semester hour--15 PDH

(2) 1 College or unit quarter hour--10 PDH

(3) 1 Continuing Education Unit--10 PDH

(4) 1 Hour of professional development in course work, seminars, or professional or technical presentations made at meetings, conventions, or conferences--1 PDH

(5) 1 Hour of professional development through self-directed course study (Not to exceed 5 PDH)--1 PDH

(6) Each published paper or article--10 PDH and book--45 PDH

(7) Active participation, as defined in subsection (f)(7) of this section, in professional or technical society, association, agency, or organization (Not to exceed 5 PDH per year)--1 PDH

(8) Each patent issued--15 PDH

(9) Each software program published--15 PDH

(10) Teaching or instructing as described in subsection (f)(5) of this section--3 times the PDH credit earned.

(i) Determination of Credit

(1) The Board shall be the final authority with respect to whether a course or activity meets the requirements of these rules.

(2) The Board shall not pre-approve or endorse any CEP activities [~~during the first two years after the effective date of this rule~~]. It is the responsibility of each license holder to use his/her best professional judgment by reading and utilizing the rules and regulations to determine whether all PDH credits claimed and activities being considered meet the continuing education requirement [~~assure that all PDH credits claimed meet CEP requirements~~]. However, a course provider may contact the Board for an opinion for whether or not a course or technical presentation would meet the CEP requirements. [~~Two years after the effective date of this rule, pre-approval will be required.~~]

(3) Credit for college or community college approved courses will be based upon course credit established by the college.

(4) Credit for qualifying seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at qualifying programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.

(5) Credit for self-directed course work will be based on one PDH unit for each hour of study and is not to exceed 5 PDH per renewal period. Credit determination for self-directed course work is the responsibility of the license holder and subject to review as required by the board.

(6) Credit determination for activities described in subsection (h)(6) of this section is the responsibility of the license holder and subject to review as required by the board.

(7) Credit for activity described in subsection (h)(7) of this section requires that a license holder serve as an officer of the organization, actively participate in a committee of the organization, or perform other activities such as making or attending a presentation at a meeting or writing a paper presented at a meeting. PDH credits are not earned until the end of each year of service is completed.

(8) Teaching credit, as defined in subsection (f)(5) of this section, is valid for teaching a course or seminar for the first time only.

(j) The license holder is responsible for maintaining records to be used to support credits claimed. Records required include, but are not limited to:

(1) A log, on a form provided by TBPG, showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; and

(2) Attendance verification records in the form of completion certificates, receipts, attendance roster, or other documents supporting evidence of attendance.

(k) The license holder must submit CEP certification on the log form provided by TBPG and a list of each activity, date, and hours claimed that satisfy the CEP requirement for that renewal year when audited. A percentage of the licenses will be randomly audited each year.

Figure: 22 TAC §851.32(k) (No change.)

(l) CEP records for each license holder must be maintained for a period of three years by the license holder.

(m) CEP records for each license holder are subject to audit by the board or its authorized representative.

(1) Copies must be furnished, if requested, to the Board or its authorized representative for audit verification purposes.

(2) If upon auditing a license holder, the Board finds that the activities cited do not fall within the bounds of educational, technical, ethical, or professional management activities related to the practice of geoscience; the board may require the license holder to acquire additional PDH as needed to fulfill the minimum CEP requirements.

(n) A license holder may be exempt from the professional development educational requirements for one of the following reasons listed in paragraphs (1) - (4) of this subsection:

(1) New license holders by way of examination shall be exempt for their first renewal period.

(2) A license holder serving on active duty and deployed outside the United States, its possessions and territories, in or for the military service of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year.

(3) A license holder employed outside the United States, its possessions and territories, actively engaged in the practice of geoscience for a period of time exceeding three hundred (300) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year except for five (5) hours of self-directed course work.

(4) License holders experiencing long term physical disability or illness may be exempt. Supporting documentation must be furnished to the board.

(o) A license holder may bring a lapsed license to active status by obtaining all delinquent PDH units. However, if the total number required to become current exceeds 30 units, then 30 units shall be the maximum number required.

(p) Noncompliance:

(1) If a license holder does not certify that CEP requirements have been met for a renewal period, the license shall be considered expired and subject to late fees and penalties.

(2) A determination by audit that CEP requirements have been falsely reported shall be considered to be misconduct and will subject the license holder to disciplinary action.

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

Filed with the Office of the Secretary of State on September 17, 2008.

TRD-200805077
Vincent Houston
Acting Executive Director
Texas Board of Professional Geoscientists
Earliest possible date of adoption: November 2, 2008
For further information, please call: (512) 936-4405

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22 TAC §851.80

The Texas Board of Professional Geoscientists (TBPG or Board) proposes an amendment to 22 TAC §851.80, regarding fees. The proposed amendment reduces the license renewal fees for persons sixty-five years of age or older.

Mr. Vincent Houston, Acting Executive Director of TBPG, has determined that for the first five-year period the section is in effect there will be little or no fiscal impact for state or local government as a result of enforcing or administering the section.

Mr. Houston has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhancement of the professional practice of geoscientists by allowing licensees who are 65 years or older to retain their license at a reduced cost to them, ensuring that qualified and licensed persons and entities continue practicing geoscience before the public. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on this proposal may be submitted in writing to: Molly B. Roman, Administrative Coordinator, P.O. Box 13225, Austin, Texas 78711, (512) 936-4405. Comments may also be submitted electronically to mroman@tbpg.state.tx.us or faxed to (512) 936-4409. Comments must be submitted no later than 30 days from the date the proposed amendments are posted in the *Texas Register*. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by Ms. Roman no more than 15 calendar days after notice of proposed amendments to this section have been published in the *Texas Register*.

This amendment is proposed under the Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties, and §1002.152, which authorizes the Board to set reasonable and necessary fees.

The proposed amendment implements the Texas Occupations Code, §1002.151 and §1002.152.

§851.80. Fees.

(a) All fees are non-refundable.

(b) Application and License fee $200.

(c) Examination processing fee of $25 for all disciplines and examination fee:

(1) Geology--Fundamentals and Practice as determined by ASBOG.

(2) Geophysics--$175.

(3) Soil Science--Fundamentals and Practice as determined by CSSE.

(d) Issuance of a revised or duplicate license $25.

(e) Renewal fee $168 or as prorated under §851.28(b) of this chapter. The fee for annual renewal of licensure for any person sixty-five (65) years of age or older as of the renewal date shall be half the current renewal fee.

(f) Late Renewal fee $50.

(g) Fee for affidavit of licensure $15.

(h) Verification of licensure--$15.

(i) Temporary license--$200.

(j) Firm Registration--$75.

(k) Firm Registration Renewal--$150.

(l) Sole Proprietorship Registration--$25.

(m) Sole Proprietorship Renewal--$25.

(n) Insufficient funds fee--$25.

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

Filed with the Office of the Secretary of State on September 17, 2008.

TRD-200805078
Vincent Houston
Acting Executive Director
Texas Board of Professional Geoscientists
Earliest possible date of adoption: November 2, 2008
For further information, please call: (512) 936-4405

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER LL. REQUIREMENTS FOR SUBMISSION OF INFORMATION AND DATA TO FACILITATE STUDY BY ADVISORY COMMITTEE ON HEALTH NETWORK ADEQUACY

28 TAC §§21.4601 - 21.4605

The Texas Department of Insurance proposes new Subchapter LL, §§21.4601 - 21.4605, concerning the requirements for health benefit plan issuers' submission of information and data relating to the use of non-network providers by health benefit plan insureds and enrollees and the payments made to those providers, as well as similar information and data for in-network providers necessary to support the study of facility-based provider network adequacy of health benefit plans by the Advisory Committee on Health Network Adequacy. The proposed new subchapter is necessary to implement Section 20 of Senate Bill (SB) 1731, as enacted by the 80th Legislature, Regular Session, effective September 1, 2007, and to facilitate the study of network adequacy by the Advisory Committee on Health Network Adequacy.

SB 1731 enacts new Insurance Code §1456.0065 which requires the Commissioner of Insurance to establish an advisory committee to study the facility-based provider network adequacy of health benefit plans. Pursuant to SB 1731, Section 20, the Commissioner must require by rule that each health benefit plan issuer subject to Insurance Code Chapter 1456 submit information to the Department concerning the use of non-network providers by health benefit plan insureds and enrollees and the payments made to those providers. The information collected must cover a 12-month period specified by the Commissioner. The Commissioner is directed to work with the advisory committee to develop the data collection and evaluate the information collected. Proposed new §§21.4601 - 21.4605 are necessary to implement the information and data collection requirement in SB 1731, Section 20 and to facilitate the study of health network adequacy mandated by the Insurance Code §1456.0065.

In accordance with the Insurance Code §1456.0065, the Commissioner appointed an advisory committee to study facility-based provider network adequacy (the Advisory Committee on Health Network Adequacy), finalizing appointments to the committee on November 28, 2007, in Order No. 07-1062. As required by the Insurance Code §1456.0065, the committee membership includes physician representatives; hospital representatives; health benefit plan representatives; and association representatives representing physicians, hospitals, and health benefit plans. The Advisory Committee on Health Network Adequacy has thus far met on December 10, 2007, January 24, 2008, February 26, 2008, April 17, 2008, May 22, 2008, and August 13, 2008, and the proposed rule incorporates the guidance provided by the committee members.

Further, the Department published an informal draft of this proposal on its website on July 11, 2008, and invited public comment. Interested parties submitted comments to the informal draft which the Department has incorporated into this proposal. Finally, consistent with the Insurance Code §1212.002(b), the Department apprised the Technical Advisory Committee on Claims Processing of progress regarding this proposal during that committee's July 30, 2008 meeting, and invited comment from those committee members, as well. The Technical Advisory Committee on Claims Processing is appointed by the Commissioner pursuant to the Insurance Code §1212.001. Pursuant to §1212.002(a) of the Insurance Code, the committee is to advise the Commissioner on technical aspects of coding of health care services and claims development, submission, processing, adjudication, and payment, as well as the impact on those processes of contractual requirements and relationships, including relationships among employers, health benefit plans, insurers, health maintenance organizations, preferred provider organizations, electronic clearinghouses, physicians and other health care providers, third-party administrators, independent physician associations, and medical groups. Section 1212.002(b) of the Insurance Code requires the Commissioner to consult with the technical advisory committee before adopting any rule described by §1212.002(a).

The following is an overview of the proposed sections.

Proposed §21.4601 states the purpose of the proposed new subchapter. Proposed §21.4602 addresses applicability of the new subchapter, specifying the types of health benefit plans to which the subchapter does and does not apply. Pursuant to SB 1731, Section 20, the Commissioner must require by rule that each health benefit plan issuer subject to the Insurance Code Chapter 1456 submit information to the Department concerning the use of non-network providers by health benefit plan insureds and enrollees and the payments made to those providers. The proposed applicability accords with the Insurance Code §1456.002 and in proposed §1456.002(b) clarifies the applicability of the proposed information and data reporting requirements to governmental employee plans. Governmental employee plans means certain of those health benefit plans under Title 8, Health Insurance and Other Health Coverages, Subtitle H, Health Benefits and Other Coverages for Governmental Employees, specifically Insurance Code Chapters 1551, 1575, 1578, 1579, and 1601. Insurance Code §1456.0065 requires the health care network adequacy advisory committee to study facility-based provider network adequacy of "health benefit plans" and broadly defines "health benefit plan" to mean "an insurance policy or a contract or evidence of coverage issued by a health maintenance organization or an employer or employee sponsored health plan." Inclusion of the designated governmental employee plans in this data and information study is consistent with the mandate in Insurance Code §1456.0065. This clarification is necessary to eliminate any ambiguity in the applicability to governmental employee plans.

Proposed §21.4603 addresses the requirement to collect the requested information and data and the time periods for which the information and data is to be provided. Proposed §21.4603(a) requires health benefit plan issuers to collect the underlying data necessary for submission of all information specified in the Health Benefit Plan/Provider Contracting Practices Survey, Form No. LHL608, that is proposed for adoption by reference in §21.4605(a) and in the Health Benefit Plan Issuer Hospital Grid, Form No. LHL609, that is proposed for adoption by reference in §21.4605(b). Proposed §21.4603(b) addresses the time periods for which the information and data is to be provided. It provides that (i) the 12-month reporting period for the information and data requested in the Health Benefit Plan/Provider Contracting Practices Survey form, including the data for the in-network and non-network claims for facility-based physicians, is calendar year 2007; (ii) the enrollment data required in the Health Benefit Plan/Provider Contracting Practices Survey form and the Health Benefit Plan Issuer Hospital Grid form for private market plans, government employee plans, and Local Government Code Chapter 172 risk pools, is for the total number of lives covered under the plans as of September 1, 2008; and (iii) the information and data requested in the Health Benefit Plan Issuer Hospital Grid form is to be based on the health benefit plan issuer's current practices and network arrangements.

Proposed §21.4604 addresses the requirements and deadlines for the submission of the requested information and data. New §21.4604(a) proposes the deadlines for the submission of the required information and data. The proposed deadline is January 9, 2009 for both the Health Benefit Plan/Provider Contracting Practices Survey, Form No. LHL608, and the Health Benefit Plan Issuer Hospital Grid, Form No. LHL609. Proposed §21.4604(b) specifies the procedures for electronic filing of the required information and data.

Section 21.4605 proposes the adoption by reference of the two forms to be used in reporting the information and data required in the new subchapter. Proposed §21.4605(a) adopts by reference Form No. LHL608, entitled Health Benefit Plan/Provider Contracting Practices Survey. Health benefit plan issuers must utilize this form to submit summary company identification and contact information and to provide general information in narrative responses regarding current contracting practices relating to the use of in-network and non-network providers

by health benefit plan enrollees and the payments made to those providers. Health benefit plan issuers must also use this form, which contains detailed instructions for completion of the form, to submit individual health benefit plan issuer information for both in-network and non-network claims for facility-based physicians for calendar year 2007, including for each type of facility-based physician listed on the form (Anesthesiologist, Pathologist, Radiologist, Neonatologist, Emergency Department Physician) total claim units, total billed amount, and total allowed amount. Proposed §21.4605(a) also provides a link for accessing the form on the Department's website.

In the Health Benefit Plan/Provider Contracting Practices Survey, Form No. LHL608, which is proposed to be adopted by reference in §21.4605(a), the definitions for the terms used in the form are set forth in the instructions in Instruction No. 7. The terms in-network and non-network are defined consistent with common usage in the health insurance and medical provider communities. The definition of the term balance billing excludes patient financial responsibility amounts attributable to copayments, coinsurance or deductible amounts for the purpose of eliciting information more specifically related to the issue of network adequacy. The questions in the Health Benefit Plan/Provider Contracting Practices Survey were developed with input and assistance from the Advisory Committee on Health Network Adequacy. The questions are designed to allow for a free form narrative response and to elicit information regarding the methods and means for identifying facility-based providers at in-network facilities and how health benefit plan issuers contract with those providers. During the development of the survey questions, committee members particularly focused on the need to obtain information regarding general contracting practices between health benefit plan issuers and health care providers while respecting the need to maintain the confidential nature of specific contracting practices. The Department and the Advisory Committee on Health Network Adequacy therefore drafted the questions to obtain general information that will support the committee's statutory mandate to study facility-based provider network adequacy without infringing upon issuer or provider interests in maintaining the confidentiality of proprietary information.

Proposed §21.4605(b) adopts by reference Form No. LHL609, entitled Health Benefit Plan Issuer Hospital Grid. This form requires the same company identification and contact information required in Form No. LHL608. Health benefit plan issuers must utilize this form, which contains detailed instructions, to submit information regarding which hospitals are in-network facilities and for those hospitals, which in-network physician or physician practice groups have clinical privileges. The Department has selected 281 hospitals for which information is requested in the Health Benefit Plan Issuer Hospital Grid; these hospitals include every acute care hospital in the state with 100 or more beds and 20 percent of smaller acute care hospitals, as identified by the Texas Department of State Health Services. While not every hospital in the state is included in the survey, these hospitals constitute a representative sample that will enable the Department to collect information and data concerning hospitals ranging from the very large to the smaller hospitals. The Department is using this representative sampling to reduce the number of facilities that must be contacted for purposes of time and cost efficiency. The Department is of the opinion that the hospitals included in the survey will provide the information and data necessary to identify whether there are disparate problems in insureds and enrollees being able to access in-network providers as a result of the size or location of the facility. Proposed §21.4605(b) also provides a link for accessing the form on the Department's website.

FISCAL NOTE. Dianne Longley, Director of Research and Analysis, Life/Health Division, 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. Longley also has determined that the anticipated public benefit will be that the Advisory Committee on Health Network Adequacy, appointed pursuant to §1456.0065(b) of the Insurance Code, will have information regarding the use of in-network and non-network providers by health benefit plan insureds and enrollees, including contracting practices, reimbursement rate methodologies, availability of in-network hospital based physicians, and the payments made to those providers. As required by §1456.0065 of the Insurance Code, this information will assist the advisory committee and the Department to study facility-based provider network adequacy of health benefit plans and to advise the Legislature and other state officials, including the Governor, Lieutenant Governor, Speaker of the House of Representatives, Commissioner, and the Chairs of the standing committees of the Senate and House of Representatives that have primary jurisdiction over health benefit plans, of the findings. More specifically, the data collected under the proposal will enable the Advisory Committee on Health Network Adequacy to advise the Legislature and other state officials on the existence, scale, and possible sources of issues pertaining to the use of non-network providers and network adequacy. The findings may influence future actions of the Legislature, the Department, or other interested parties, potentially regarding the affordability, availability, and delivery of health care.

Section 20 of SB 1731 requires the Commissioner by rule to require each health benefit plan issuer subject to Insurance Code Chapter 1456 to submit information to the Department concerning the use of non-network providers by health benefit plan insureds and enrollees and the payments made to those providers. SB 1731, Section 20, requires that the information collected cover a 12-month period specified by the Commissioner.

The Department is proposing to adopt two reporting forms by reference, the Health Benefit Plan/Provider Contracting Practices Survey form that is proposed to be adopted by reference in §21.4605(a) and the Health Benefit Plan Issuer Hospital Grid that is proposed to be adopted by reference in §21.4605(b). The completion of these forms by the health benefit plan issuers and the submission of these forms to the Department constitute the entirety of the requirements imposed under the proposal. The persons required to comply with the proposal are issuers of any health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including (i) an individual, group, blanket, or franchise insurance policy or insurance agreement, (ii) a group hospital service contract, or (iii) an individual or group evidence of coverage that is offered by an insurance company, (iv) a group hospital service corporation operating under the Insurance Code Chapter 842, (v) a fraternal benefit society operating under the Insurance Code Chapter 885, (vi) a stipulated premium company operating under the Insurance Code Chapter 884, (vii) a health maintenance organization operating under the Insurance Code

Chapter 843, (viii) a multiple employer welfare arrangement that holds a certificate of authority under the Insurance Code Chapter 846, (ix) an approved nonprofit health corporation that holds a certificate of authority under the Insurance Code Chapter 844, (x) any health benefit plan that provides health and accident coverage through a risk pool created under Chapter 172, Local Government Code, (xi) a basic coverage plan under the Insurance Code Chapter 1551, (xii) a basic plan under the Insurance Code Chapter 1575, (xiii) a basic plan under the Insurance Code Chapter 1578, (xiv) a primary care coverage plan under the Insurance Code Chapter 1579, and (xv) a basic coverage plan under the Insurance Code Chapter 1601.

In estimating probable costs to comply with the proposed information and data reporting requirements, the Department considered the following mitigating factors. Because SB 1731 requires only one time data reporting by the health benefit plan issuers, the Department does not anticipate that the costs associated with the data collection will be re-occurring. Additionally, some health benefit plan issuers may report information and data on behalf of certain government employee plans or risk pools. As set forth in the proposed Health Benefit Plan/Provider Contracting Practices Survey form, Instruction Nos. 9 and 10, and in the proposed Health Benefit Plan Issuer Hospital Grid form, Instruction Nos. 6 and 7, each designated governmental employee plan and each risk pool operating under Local Government Code Chapter 172 shall either independently submit the reports required pursuant to this proposal or shall authorize and require the entity administering the governmental employee plan or risk pool to submit the information and data on its behalf. A governmental employee plan or risk pool may determine that the entity with which it contracts is most appropriately situated to provide the requested information. The proposal therefore affords some flexibility to governmental employee plans and risk pools with respect to the manner of submission of the required information and data. Health benefit plan issuers submitting the requested information and data on behalf of other entities in addition to submitting the information and data for themselves may incur some additional costs.

The probable costs to health benefit plan issuers required to comply with the proposed rules will result from the following cost components: (i) the number of staff hours required by current health benefit plan issuer employees to complete the proposed Health Benefit Plan/Provider Contracting Practices Survey form and the proposed Health Benefit Plan Issuer Hospital Grid form; (ii) the approximate average hourly wage of those employees; and (iii) the cost of additional technology or databases, if any, necessary to comply with certain of the rule reporting requirements, including the data enrollment information that is required in both of the proposed forms and the claims data information that is required in the proposed Health Benefit Plan/Provider Contracting Practices Survey form.

The Department requested cost information from health benefit plan issuer members of the Advisory Committee on Health Network Adequacy and by public comment during the posting of the informal draft of this proposal. The Department received estimates from two large, statewide health benefit plan issuers, a $2,000 estimate and a $10,000 estimate. The Department has not received cost information from smaller issuers or issuers with different administrative operations or complex network arrangements despite numerous efforts to obtain this information. However, the cost information collected for larger health benefit plan issuers provides a good basis of comparison for use in estimating the cost of compliance with this proposal for small health benefit plan issuers.

The actual total cost to each health benefit plan issuer required to comply with the proposed rule will depend on several factors but will depend primarily on the issuer's particular costs for each cost component, the availability and efficacy of the health benefit plan issuer's information technology processes and systems, the availability of provider contracting information, and differences in administrative operations. It is anticipated that the cost of compliance will not differ substantially, regardless of the size of the issuer, for completion of the information and data requested in the Health Benefit Plan/Provider Contracting Practices Survey form. The reason for this is that the information requested in Question Nos. 1 - 16 of the Health Benefit Plan/Provider Contracting Practices Survey pertains to business decisions that each issuer, regardless of size, must make at a strategic level and provide narrative responses that will not necessarily vary in complexity or length based on the size of the issuer. The cost of compliance may vary based on how an issuer operates, including whether the issuer uses more complex network arrangements. Variations in possible network arrangements may include: (i) direct contracts between the issuer and physicians and providers, (ii) rental agreements between the issuer and preferred provider networks, (iii) rental agreements between the issuer and multiple preferred provider organizations, and (iv) establishment of multiple networks with varying levels of availability to different health benefit plans. The cost of collecting contracting information and claims data may be higher for issuers without direct access to some of the information and data for the network that the survey requires. The claims data requested in Question No. 17 of the Health Benefit Plan/Provider Contracting Practices Survey will need to be determined via data queries and the time and expense will depend on the capabilities of the issuer's existing technology capabilities. Issuers without full and complete information are given the opportunity to report information and data based on the best of their ability, so long as these limitations and assumptions are disclosed. The Department does not expect issuers to recode past claims data or report information and data not readily available. It is anticipated that issuers with larger provider networks and/or multiple provider networks will incur greater costs in completing the Health Benefit Plan Issuer Hospital Grid form than those issuers with single small provider networks. The greater the number of in-network hospitals utilized by an issuer the more personnel time that will be required by issuer personnel to obtain the information and complete the form. Because information on which hospital based physicians have been granted clinical privileges by each individual hospital may not be readily available, it may be necessary for issuer personnel to contact each network hospital to obtain the necessary information. Issuers with different administrative operations, including multiple or complex network arrangements, may have higher costs to complete the Health Benefit Plan Issuer Hospital Grid form than other issuers. Issuers with multiple network arrangements are required to complete the Health Benefit Plan Issuer Hospital Grid twice, providing responsive information for both the largest and smallest network based upon enrollment. A health benefit plan issuer may have to include disclosures or limitations and assumptions in the reporting of the form as a result of its particular administrative operations or network arrangements.

Individual issuers will be able to use the Department's cost analysis approach to calculate their own costs for compliance with the rule based on their own network arrangements and estimated costs for the various individual cost components. The proba-

ble costs of compliance with the rule are primarily the result of the enactment of SB 1731, which specifically requires in Section 20 the submission of information by each health benefit plan issuer subject to Insurance Code Chapter 1456 to the Department concerning the use of non-network providers by health benefit plan enrollees and the payments made to those providers, and which specifically requires in Insurance Code §1456.0065 that the Commissioner appoint an advisory committee to study facility-based provider network adequacy of health benefit plans.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. The Government Code §2006.002(c) requires that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. The Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated, and has fewer than 100 employees or less than $6 million in annual gross receipts. The Government Code §2006.001(1) defines "micro business" similarly to "small business" but specifies that such a business may not have more than 20 employees. The Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined in Government Code §2006.002(b) - (d) for small businesses. The Department has determined that the proposal may have an adverse economic impact on approximately 10 to 25 health benefit plan issuers that qualify as small or micro businesses under the Government Code §2006.001(1) and (2) and that are required to comply with the proposed rules. The adverse economic impact of the proposed rules anticipated by the Department on these 10 to 25 health benefit plan issuers will result from the costs required to comply with the reporting requirements in the Health Benefit Plan/Provider Contracting Practices form that is proposed to be adopted by reference in §21.4605(a) and the Health Benefit Plan Issuer Hospital Grid that is proposed to be adopted by reference in §21.4605(b). The completion of these forms by the health benefit plan issuers and the submission of these forms to the Department constitute the entirety of the requirements imposed under the proposal. The cost components and cost analysis that are outlined in the Public Benefit/Cost Note part of this proposal notice also apply to those health benefit plan issuers that are small or micro businesses. The actual total cost to each small or micro business issuer required to comply with the proposed rule will depend on several factors but will depend primarily on the issuer's particular costs for each cost component, the availability and efficacy of the health benefit plan issuer's information technology processes and systems, the availability of provider contracting information, and differences in administrative operations. It is anticipated that the cost of compliance will not differ substantially between larger issuers and small or micro business issuers for completion of the information and data requested in the Health Benefit Plan/Provider Contracting Practices Survey form. The reason for this is that the information requested in Question Nos. 1-16 of the Health Benefit Plan/Provider Contracting Practices Survey pertains to business decisions that each issuer, regardless of size, must make at a strategic level and provide narrative responses that will not necessarily vary in complexity or length based on the size of the issuer. The claims data requested in Question No. 17 of the Health Benefit Plan/Provider Contracting Practices Survey will need to be determined via data queries and the time and expense will depend on the capabilities of the issuer's existing technology capabilities. The Department is giving issuers without full and complete information the opportunity to report information and data based on the best of their ability, so long as these limitations and assumptions are disclosed. The Department does not expect issuers to recode past claims data or report information and data not readily available. This should assist small and micro business issuers to reduce their costs of compliance. Also, because it is anticipated that issuers with larger provider networks and/or multiple provider networks will incur greater costs in completing the Health Benefit Plan Issuer Hospital Grid form than those issuers with single small provider networks, it is expected that small or micro business issuers will incur less costs to complete that form.

Individual small and micro business issuers will be able to use the Department's cost analysis approach to calculate their own costs for compliance with the rule based on their own network arrangements and estimated costs for the various individual cost components.

Additionally, the Department has determined that the proposal may have an indirect adverse economic impact on hospitals. Of the 281 hospitals included in the Health Benefit Plan Issuer Hospital Grid, 181 have fewer than 100 beds. In collecting the necessary information and data for the Health Benefit Plan Issuer Hospital Grid, health benefit plan issuers may contact the hospitals because hospitals may be in the best position to determine which physicians currently hold privileges. Therefore, hospitals may incur a cost for providing information to each health benefit plan issuer with which the hospital has a contract as an in-network provider as an indirect result of this rule. However, information provided by the hospital to the issuers should be the same for each issuer.

Pursuant to Government Code §2006.002(c), the Department has considered not collecting the information and data from issuers that qualify as small business or micro businesses. The Department has also considered collecting a reduced amount of information and data from issuers that qualify as small businesses or micro businesses.

The law authorizing this proposal, Section 20 of SB 1731 and §1456.0065 of the Insurance Code, as enacted by the 80th Legislature, Regular Session, requires each health benefit plan issuer subject to the Insurance Code Chapter 1456 to submit information to the Department concerning the use of non-network providers by health benefit plan insureds and enrollees and the payments made to those providers. Further, Insurance Code §1456.0065(b) requires the advisory committee appointed by the Commissioner to study facility-based provider network adequacy of health benefit plans. The purpose of the proposal is to collect information regarding the use of in-network and non-network providers by health benefit plan insureds and enrollees, including contracting practices, reimbursement rate methodologies, availability of in-network hospital based physicians, and the payments made to those providers. This information, in accordance with §1456.0065 of the Insurance Code, will assist the Advisory Committee on Health Network Adequacy and the Department to study facility-based provider network adequacy of health benefit plans and to advise the Legislature and other state officials of the findings.

The data collected under the proposal will enable the Advisory Committee on Health Network Adequacy to advise the Legislature and other state officials on the existence, scale, and possible

sources of issues pertaining to the use of non-network providers and network adequacy. Omitting small and micro businesses from compliance with the proposal or requesting less information from small and micro businesses may result in incomplete or misleading data that may not only frustrate the purpose of both Section 20 of SB 1731 and §1456.0065 of the Insurance Code, but may also result in the Legislature and other state officials not having the necessary information to adequately study the existence, scale, and possible sources of issues pertaining to the use of non-network providers and network adequacy of health benefit plan issuers that cover a large number of Texas consumers and to develop possible legislation.

The Department has determined in accordance with §2006.002(c) of the Government Code that because the purpose of the proposal and the authorizing statute, Section 20 of SB 1731 and §1456.0065 of the Insurance Code, is to collect information and data pertaining to the use of non-network providers and network adequacy, the regulatory alternative of exempting some health benefit plan issuers mandated by §1456.002 will not sufficiently provide the Legislature with the information necessary to adequately study and develop possible legislation related to the use of non-network providers and network adequacy. Collecting a reduced amount of information would also frustrate the purpose of the data collection. The Department has weighed the potential costs to small and micro businesses of compliance with this rule against the purpose of the required data collection. Absent compelling cost information from small and micro businesses, at this time the Department has determined that it is not necessary to adopt regulatory alternatives to the proposed rule. The proposal includes provisions that should assist small and micro business issuers to alleviate some of their costs of compliance. Small and micro business issuers that do not have full and complete information will have the opportunity to report information and data based on the best of their ability, so long as these limitations and assumptions are disclosed. They also will not be required to recode past claims data or report information and data not readily available.

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, therefore, does not constitute a taking or require a takings impact assessment under the 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 November 3, 2008, to Gene C. Jarmon, General Counsel and Chief Clerk, 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 Dianne Longley, Director of Research and Analysis, Life/Health Division, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will consider the adoption of the proposed new sections in a public hearing under Docket Number 2697, at 9:30 a.m., October 14, 2008 in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas 78701. Written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The new sections are proposed under Section 20 of SB 1731, as enacted by the 80th Legislature, Regular Session, effective September 1, 2007, and the Insurance Code §§1456.0065, 1212.002, and 36.001. Section 20(a) of SB 1731 provides that the Commissioner shall by rule require each health benefit plan issuer subject to Insurance Code Chapter 1456 to submit information to the Department concerning the use of non-network providers by health benefit plan enrollees and the payments made to those providers. The Commissioner is required to work with the network adequacy study group to develop the data collection and evaluate the information collected. Section 20(b) of SB 1731 provides that an issuer that fails to submit data as required under Section 20 is subject to an administrative penalty under the Insurance Code Chapter 84. Further, each date the issuer fails to submit the data as required is a separate violation for purposes of penalty assessment. Section 1456.0065 requires the Commissioner to appoint an advisory committee to study facility-based provider network adequacy of health benefit plans. The advisory committee is required to be composed of one or more physician representatives; one or more hospital representatives; one or more health benefit plan representatives to equal the total number of physician and hospital representatives; and one representative each from associations representing physicians, hospitals, and health benefit plans. The advisory committee is required to advise periodically and not later than December 1, 2008, the Governor, Lieutenant Governor, Speaker of the House of Representatives, Commissioner, and the Chairs of the standing committees of the Senate and House of Representatives that have primary jurisdiction over health benefit plans, of its findings. Chapter 1212 of the Insurance Code provides for the appointment and operation of the Technical Advisory Committee on Claims Processing. Section 1212.002 requires the Commissioner to consult with the technical advisory committee before adopting any rule related to the coding of health care services and claims development, submission, processing, adjudication, and payment, as well as the impact on those processes of contractual requirements and relationships, including relationships among employers, health benefit plans, insurers, health maintenance organizations, preferred provider organizations, electric clearinghouses, physicians and other health care providers, third-party administrators, independent physician associations and medical groups. Section 36.001 authorizes the Commissioner of Insurance to 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 §1456.0065, Section 20 of Senate Bill (SB) 1731, as enacted by the 80th Legislature, Regular Session, effective September 1, 2007.

§21.4601. Purpose.

The purpose of this subchapter is to:

(1) prescribe the requirements for the information and data to be submitted to the department concerning the use of non-network providers by insureds and enrollees of health benefit plans subject to Chapter 1456 of the Insurance Code and the payments made to those providers, as required by Section 20 of SB 1731, 80th Legislature, Regular Session, effective September 1, 2007 (Section 20 of SB 1731); and

(2) facilitate the study of facility-based provider network adequacy of health benefit plans by the Advisory Committee on Health Network Adequacy appointed by the commissioner, as required by the Insurance Code §1456.0065.

§21.4602. Applicability.

(a) Pursuant to Section 20 of SB 1731 and the Insurance Code §1456.002(a), this subchapter applies to issuers of:

(1) any health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(A) an insurance company;

(B) a group hospital service corporation operating under the Insurance Code Chapter 842;

(C) a fraternal benefit society operating under the Insurance Code Chapter 885;

(D) a stipulated premium company operating under the Insurance Code Chapter 884;

(E) a health maintenance organization operating under the Insurance Code Chapter 843;

(F) a multiple employer welfare arrangement that holds a certificate of authority under the Insurance Code Chapter 846; or

(G) an approved nonprofit health corporation that holds a certificate of authority under the Insurance Code Chapter 844; or

(2) any health benefit plan that provides health and accident coverage through a risk pool created under Chapter 172, Local Government Code, notwithstanding §172.014, Local Government Code, or any other law.

(b) Pursuant to Section 20 of SB 1731 and the Insurance Code §1456.002(b), this subchapter applies to any person to whom a health benefit plan contracts to process or pay claims, to obtain the services of physicians or other providers to provide health care services to insureds and enrollees, or to issue verifications or preauthorizations, including:

(1) a basic coverage plan under the Insurance Code Chapter 1551;

(2) a basic plan under the Insurance Code Chapter 1575;

(3) a basic plan under the Insurance Code Chapter 1578;

(4) a primary care coverage plan under the Insurance Code Chapter 1579; and

(5) a basic coverage plan under the Insurance Code Chapter 1601.

(c) Pursuant to the Insurance Code §1456.002(c), this subchapter does not apply to:

(1) Medicaid managed care programs operated under the Government Code Chapter 533;

(2) Medicaid programs operated under the Human Resources Code Chapter 32; or

(3) the state child health plan operated under the Health and Safety Code Chapters 62 or 63.

§21.4603. Requirement to Collect Information and Data.

(a) Each health benefit plan issuer identified in §21.4602(a) and (b) of this subchapter (relating to Applicability) shall collect the information and data specified in the Health Benefit Plan/Provider Contracting Practices Survey, Form No. LHL608, that is adopted by reference in §21.4605(a) of this subchapter (relating to Report Forms) and in the Health Benefit Plan Issuer Hospital Grid, Form No. LHL609, that is adopted by reference in §21.4605(b) of this subchapter and shall prepare and file information and data in accordance with the requirements in §21.4604 of this subchapter (relating to Submission of Information and Data).

(b) The 12-month reporting period for the information and data requested in the Health Benefit Plan/Provider Contracting Practices Survey form, including the data for the in-network and non-network claims for facility-based physicians, is calendar year 2007. The enrollment data required in the Health Benefit Plan/Provider Contracting Practices form and the Health Benefit Plan Issuer Hospital Grid form for private market plans, governmental employee plans, and Local Government Code Chapter 172 risk pools, is for the total number of lives covered under the plans as of September 1, 2008. The information and data requested in the Health Benefit Plan Issuer Hospital Grid form is to be based on the health benefit plan issuer's current practices and network arrangements.

§21.4604. Submission of Information and Data.

(a) Each health benefit plan issuer identified in §21.4602(a) and (b) of this subchapter (relating to Applicability) shall submit to the department the information and data required in the Health Benefit Plan/Provider Contracting Practices Survey, Form No. LHL608, that is adopted by reference in §21.4605(a) of this subchapter (relating to Report Forms) by no later than January 9, 2009, and the information and data required in the Health Benefit Plan Issuer Hospital Grid, Form No. LHL609, that is adopted by reference in §21.4605(b) of this subchapter by no later than January 9, 2009.

(b) The information and data filed pursuant to this section shall be filed electronically by accessing a link designated on the department's website, www.tdi.state.tx.us, and by emailing the completed forms to networkadequacy@tdi.state.tx.us.

§21.4605. Report Forms.

(a) The commissioner adopts by reference the Health Benefit Plan/Provider Contracting Practices Survey form, Form No. LHL608, which contains instructions for completion of the form; requires information to be provided regarding health benefit plan issuer identification; and requires narrative responses to 16 questions relating to how health benefit plan issuers contract with providers and determine reimbursement rates. The form also requests in Question No. 17 individual health benefit plan issuer information for both in-network and non-network claims for facility-based physicians for calendar year 2007, including for each type of facility-based physician listed on the form (Anesthesiologist, Pathologist, Radiologist, Neonatologist, Emergency Department Physician) total claim units, total billed amount, and total allowed amount. The form is available at www.tdi.state.tx.us/forms/form10other.html.

(b) The commissioner adopts by reference the Health Benefit Plan Issuer Hospital Grid form, Form No. LHL609, which contains instructions for completion of the form; requires information to be provided regarding health benefit plan issuer identification; and requires information to be provided by each health benefit plan issuer regarding which hospitals are in-network facilities and for those hospitals, which in-network physician or physician practice groups have clinical privileges. The 281 hospitals listed in the form include every acute care hospital in the state with 100 or more beds and 20 percent of smaller acute care hospitals, as identified by the Texas Department of State Health Services. The form is available at www.tdi.state.tx.us/forms/form10other.html.

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

Filed with the Office of the Secretary of State on September 17, 2008.

TRD-200805082
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: November 2, 2008
For further information, please call: (512) 463-6327

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SUBCHAPTER MM. WELLNESS PROGRAMS

28 TAC §§21.4701 - 21.4707

The Texas Department of Insurance proposes new Subchapter MM, §§21.4701 - 21.4707, concerning standards for the establishment of, and requirements applicable to, wellness programs designed to promote disease prevention, wellness and health, and developed pursuant to applicable provisions of the Insurance Code Title 8, Chapters 1201 and 1501. The proposed new sections are necessary to implement House Bill (HB) 2252, 80th Legislature, Regular Session, which created the Insurance Code §1201.013 to provide that an insurer issuing an accident and health insurance policy may establish premium discounts, rebates, or a reduction in otherwise applicable copayments, coinsurance, or deductibles, or any combination of these incentives, in return for an insured's participation in programs promoting disease prevention, wellness and health; and which also amended the Insurance Code §1501.107, to provide that a small or large employer health benefit plan issuer may establish premium discounts, rebates, or a reduction in otherwise applicable copayments, coinsurance, or deductibles or any combination of such incentives, in return for participation in programs promoting disease prevention, wellness and health.

Proposed new §21.4701 states the applicability and scope of the new sections.

Proposed new §21.4702 provides definitions for certain terms.

Proposed new §21.4703 provides the statement of exception to federal and state statutory prohibitions against discriminating based on health status related factors in group health coverage products. The exception expressly permits incentives to be provided by issuers based on whether an individual has met the standards of a wellness program that satisfies the requirements of the subchapter.

Proposed new §21.4704 sets out the purpose of the subchapter.

Proposed new §21.4705 sets out baseline criteria that must be met in order for a program to be considered a wellness program that constitutes a permitted exception to the federal and state statutory prohibitions against discrimination based on a health status-related factor.

Proposed new §21.4706 sets out provisions for wellness programs that predicate eligibility for reward under the program solely on the basis of participation in the program.

Proposed new §21.4707 sets out provisions for wellness programs that base reward eligibility on satisfaction of a health status related standard.

FISCAL NOTE. Katrina Daniel, Associate Commissioner of the Life, Health, and Licensing Division, 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 or local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Daniel also has determined that for each year of the first five years the proposed new sections are in effect, the public benefits anticipated as a result of the proposed new sections will be facilitation of wellness programs, potentially making health coverage more affordable and accessible than it might otherwise be, and encouraging covered individuals to participate in programs designed to promote disease prevention, wellness and health. The proposed new sections, and their focus on wellness programs to promote educating and empowering covered persons to take charge of their own health, manage chronic conditions and adopt healthier behaviors, will make available a means to help employees, group members, and other persons covered under group plans or individual policies to understand the state of their own health. The proposed new sections will permit development and implementation of initiatives by health plan issuers and group contract holders that are designed to improve or maintain personal health, as well as incentives to help assure strong levels of participation in programs with strategies targeting the adoption of personal health behavior modification(s) supporting healthier lifestyles. Any costs to persons required to comply with these proposed new sections for each year of the first five years the proposed new sections will be in effect are the result of the enactment of HB 2252 and not the result of the adoption, enforcement, or administration of the proposed new sections. There is no anticipated difference in cost of compliance between small and large businesses.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accordance with the Government Code §2006.002(c), the Department has determined that the proposed new sections concerning standards for the establishment of, and requirements applicable to, wellness programs designed to promote disease prevention, wellness and health will not have an adverse economic effect on small businesses or micro businesses that are required to comply with the proposal. Because the proposal does not impose any new requirements or costs with which businesses, regardless of size, must comply, any costs to persons required to comply with these proposed new sections are the result of the enactment of HB 2252, and not the result of the adoption, enforcement, or administration of the proposed new sections. In accordance with the Government Code §2006.002(c), the Department has therefore determined that a regulatory flexibility analysis is not required because the proposal will not have an adverse impact on small or micro businesses.

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, therefore, does not constitute a taking or require a takings impact assessment under the 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 November 3, 2008, to Gene C. Jarmon, General Counsel and Chief Clerk, 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 Doug Danzeiser, Deputy Commissioner for Regulatory Matters, Life, Health and Licensing Division, Mail Code 107-2A,

Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The new sections are proposed under the Insurance Code §§1201.006, 1501.010, and 36.001. Section 1201.006 authorizes the Commissioner to adopt reasonable rules as necessary to implement the purposes and provisions of Chapter 1201, relating to the regulation of Accident and Health Insurance. Section 1501.010 authorizes the Commissioner of Insurance to adopt rules as necessary to implement Chapter 1501, relating to the Health Insurance Portability and Availability Act. 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 §1201.013 and §1501.107

§21.4701. Applicability and Scope.

This subchapter applies to any small employer health benefit plan issuer, any large employer health benefit plan issuer, and any insurer issuing an accident and health insurance policy, with respect to a policy or plan that establishes premium discounts, rebates, or reductions in otherwise applicable copayments, coinsurance, or deductibles, or any combination of these incentives, in return for participation in programs designed to promote disease prevention, wellness and health.

§21.4702. Definitions.

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

(1) Health status related factor--Health status; medical condition, including both physical and mental illnesses; claims experience; receipt of health care; medical history; genetic information; evidence of insurability, including conditions arising out of acts of domestic violence; and disability.

(2) Wellness Program--Any program designed to promote disease prevention, wellness and health.

§21.4703. Wellness Programs Exception.

(a) Notwithstanding the provisions of the Insurance Code Chapter 1501, §541.056(a) and §544.052, and the provisions of Chapter 26, Subchapter A of this title (relating to Small Employer Health Insurance Portability and Availability Act Regulations), a group health benefit plan issuer or an accident and health insurance issuer may vary the amount of premium or contribution it requires similarly situated individuals to pay, and/or vary benefits, including cost-sharing mechanisms such as a deductible, copayment, or coinsurance, based on whether an individual has met the standards of a wellness program that satisfies the requirements of §21.4706 or §21.4707 of this subchapter (relating to Wellness Programs With Participation as Sole Basis for Reward Eligibility and Wellness Programs With Reward Eligibility Based on Satisfying a Health Status Related Standard).

(b) Notwithstanding the provisions of the Insurance Code §541.056(a) and §544.052, an insurer issuing an accident and health insurance policy may vary the amount of premium or contribution it requires similarly situated individuals or individuals of the same class and of essentially the same hazard to pay, and/or vary benefits, including cost-sharing mechanisms such as a deductible, copayment, or coinsurance, based on whether an individual has met the standards of a wellness program that satisfies the requirements of §21.4706 or §21.4707 of this subchapter.

§21.4704. Purposes.

The purposes of this subchapter are to provide for the circumstances under which, and the constraints within which, a group health benefit plan issuer or an accident and health insurance issuer may:

(1) vary benefits, including cost-sharing mechanisms such as a deductible, copayment, or coinsurance, based on whether an individual has met the standards of a wellness program that satisfies the requirements of §21.4706 or §21.4707 of this subchapter (relating to Wellness Programs With Participation as Sole Basis for Reward Eligibility and Wellness Programs With Reward Eligibility Based on Satisfying a Health Status Related Standard); and/or

(2) vary the amount of premium or contribution it requires similarly situated individuals to pay based on whether an individual has met the standards of a wellness program that satisfies the requirements of §21.4706 or §21.4707 of this subchapter.

§21.4705. General Provisions Applicable to Wellness Programs.

(a) Wellness programs as set out in this subchapter are excepted from the general prohibitions against discrimination based on a health status related factor for plan provisions that vary benefits, including cost-sharing mechanisms, or the premium or contribution for individuals eligible for plan coverage, in connection with participation in such a wellness program.

(b) A wellness program must be reasonably designed to promote disease prevention, wellness and health. A program satisfies this standard if it:

(1) has a reasonable probability of improving the health of, or preventing disease in, participating individuals;

(2) is not overly burdensome;

(3) is not a subterfuge for otherwise prohibited discrimination based on a health status related factor; and

(4) is not highly suspect in the method chosen to promote disease prevention, wellness and health.

(c) A wellness program must comply, as applicable, with the Insurance Code §1701.061 and provisions of rules codified in this title relating to the Insurance Code §1701.061 and the administration of noninsurance benefits.

§21.4706. Wellness Programs With Participation as Sole Basis for Reward Eligibility.

(a) A wellness program which contains no condition for obtaining a reward that is premised on an individual satisfying a standard that is associated with a health status related factor does not violate this subchapter so long as participation in the program is made available to all individuals eligible for coverage under the plan.

(b) Wellness programs meeting the description of this section would include the following program types:

(1) a program that reimburses all or part of the cost for membership in a fitness center;

(2) a diagnostic testing program that provides a reward for participation and does not base any part of the reward on testing outcomes;

(3) a program that encourages preventive care through the waiver of the copayment or deductible requirement under a group health plan or individual policy for the costs of a particular preventive care item or items;

(4) a program that reimburses covered individuals for the costs of smoking cessation programs without regard to whether the individual quits smoking; or

(5) a program that provides a reward to covered individuals for attending a monthly health education seminar.

§21.4707. Wellness Programs With Reward Eligibility Based on Satisfying a Health Status Related Standard.

A wellness program which contains any condition for obtaining a reward that is premised on an individual satisfying a standard that is associated with a health status related factor does not violate this subchapter so long as the requirements of paragraphs (1) - (6) of this section are met.

(1) For a group health benefit plan, the reward for the wellness program, coupled with the reward for other wellness programs offered under the same plan and which also require satisfaction of a standard associated with a health status related factor, must not exceed in total value 20 percent of the cost of employee-only, or member-only, coverage under the plan. However, if, in addition to employees or members, any class of dependents--such as spouses or spouses and dependent children--may participate in the wellness program, the reward must not exceed 20 percent of the cost of the coverage in which an employee, or member, and any dependents are enrolled.

(A) For purposes of this section, the cost of coverage is determined based on the total amount of employer and employee contributions, or member contributions, for the benefit package under which the employee or member is, or the employee, or member, and any dependents are, receiving coverage.

(B) A reward can be in the form of a discount or rebate of a premium or contribution; a waiver of all or part of a cost-sharing mechanism such as deductibles, copayments, or coinsurance; the absence of a surcharge; or the value of a benefit that would otherwise not be provided under the plan.

(2) The program must meet the criteria set out in §21.4705 of this subchapter (relating to Wellness Programs General Provisions).

(3) The program must give individuals eligible for the program the opportunity to qualify for the reward under the program at least once per year.

(4) The reward under the program must be available to all similarly situated individuals.

(A) A reward under this subchapter is available to all similarly situated individuals for a period so long as the program allows, at a minimum:

(i) a reasonable alternative standard, or waiver of the otherwise applicable standard, for obtaining the reward for any individual for whom, for that period, it is unreasonably difficult due to a medical condition or other health status related factor to satisfy the otherwise applicable standard; and

(ii) a reasonable alternative standard, or waiver of the otherwise applicable standard, for obtaining the reward for any individual for whom, for that period, it is medically inadvisable to attempt to satisfy the otherwise applicable standard.

(B) A plan or issuer may seek verification, such as a statement from an individual's physician, that medical condition or other health status related factor makes it unreasonably difficult or medically inadvisable for the individual to satisfy or attempt to satisfy the otherwise applicable standard.

(5) The health benefit plan or policy, or health benefit plan or policy issuer, must disclose, in all plan materials describing the terms of the program, the availability of a reasonable alternative standard or the possibility of waiver of the otherwise applicable standard required under paragraph (4) of this section. However, if plan materials merely mention that a program is available, without describing its terms, this disclosure is not required.

(6) The following language, or substantially similar language, can be used to satisfy the requirement of paragraph (5) of this section: "If it is unreasonably difficult due to a medical condition for you to achieve the standards for the reward under this program, or if it is medically inadvisable for you to attempt to achieve the standards for the reward under this program, call us at (insert telephone number) and we will work with you to develop another way to qualify for the reward."

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

Filed with the Office of the Secretary of State on September 19, 2008.

TRD-200805086
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: November 2, 2008
For further information, please call: (512) 463-6327

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PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 130. IMPAIRMENT AND SUPPLEMENTAL INCOME BENEFITS SUBCHAPTER B. SUPPLEMENTAL INCOME BENEFITS

28 TAC §§130.101 - 130.109

The Texas Department of Insurance, Division of Workers' Compensation (Division) proposes amendments to §§130.101 - 130.109, concerning supplemental income benefits (SIBs). These amendments are necessary to implement statutory provisions of House Bill (HB) 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005, and to clarify the process injured employees are required to follow to qualify for SIBs.

One of the changes to the Labor Code by HB 7 was the addition of new §408.1415, which requires the Commissioner of Workers' Compensation (Commissioner) to adopt compliance standards for SIB's recipients that require each recipient to demonstrate an active effort to obtain employment. Section 408.1415 also requires the Commissioner to: (1) establish the level of activity that a recipient should have with the Texas Workforce Commission (TWC) and the Department of Assistive and Rehabilitative

Services (DARS); (2) define the number of job applications required to be submitted by a recipient to satisfy the work search requirements; and, (3) consider factors affecting the availability of employment, including the recognition of access to employment in rural areas, economic conditions, and other appropriate employment availability factors. HB 7 also amended §408.142 and §408.143 to eliminate the prior "good faith" work search standard and require injured employees seeking SIBs to comply with §408.1415.

Section 408.1415(a) requires a supplemental income benefit recipient to demonstrate an active effort to obtain employment by providing evidence satisfactory to the Division of: (1) active participation in a vocational rehabilitation program conducted by DARS or a private vocational rehabilitation provider; (2) active participation in work search efforts conducted through the TWC; or (3) active work search efforts documented by job applications submitted by the recipient.

In evaluating job search efforts by injured employees, the current Division process is consistent with §408.1415(a) in that present rules include the consideration of applications or resumes which document the job search efforts, participation in a DARS or other vocational rehabilitative program, and registration with TWC. Although the current rules consider the number of jobs an injured employee applies for during a qualifying period in order to qualify for SIBs, there is no defined number of required weekly applications.

Amendments to the current rules are necessary because §408.1415(b) requires the Commissioner to "establish the level of activity that a recipient should have with TWC and DARS" and to "define the number of job applications required to be submitted by a recipient to satisfy the work search requirements." The Commissioner is also required to "consider factors affecting the availability of employment, including the recognition of access to employment in rural areas, economic conditions, and other appropriate employment availability factors."

In accordance with the statutory requirements the proposed amendments change the requirements from the Division "evaluating" good faith efforts by injured employees to requiring injured employees to comply with active work search requirements for SIBs eligibility. The proposed amendments require the injured employee to actively participate in a vocational rehabilitation program, actively participate in work search efforts conducted through the TWC, and/or to perform active work search efforts on one's own documented through job applications. Work search efforts, either through TWC or on one's own, must be sufficiently documented to indicate that the employee made the requisite number of applications required for unemployment compensation in the county of residence as established by the TWC Local Workforce Development Board.

The proposed amendments also establish the specific number of weekly job applications required during a qualifying period. In establishing the required number of job applications during a qualifying period, the Division consulted with TWC regarding its work search requirements. The TWC is part of a local-state network comprised of the statewide efforts of the Commission coupled with planning and service provisions on a regional basis by 28 Local Workforce Development Boards. Each Board sets work search requirements for the counties in the respective regions which are derived in part from an assessment of economic conditions in that region. The work search requirements include a minimum number of weekly work search contacts, which have ranged from one (1) to seven (7), depending on the region. Only "rural" counties, which are defined by the TWC as "counties having a population estimated by the Texas State Data Center at Texas A&M University to be not more than 10,000 as of July 1 of the most recent year for which county population estimates have been published," are permitted to set a work search contact requirement lower than three (3) per week. Likewise, based on specific labor market information and conditions, a Local Workforce Development Board may advise that an unemployment benefits recipient within the area covered by the Board is required to make more than three (3) work search contacts per week. TWC has implemented rules and provides guidelines that describe the types of activities that may constitute a work search contact. See 40 TAC §815.28.

In establishing the number of job applications required of a SIBs recipient, the Commissioner has determined that it is appropriate to require compliance consistent with the number of TWC's work search contacts required for an injured employee's county of residence. TWC standards take into account the labor market and economic conditions in the area and whether the county is rural or urban, both of which are specifically mentioned in §408.1415(b)(3) as factors that the Commissioner is to consider in adopting compliance standards.

The Division has established open communication with TWC in order to obtain and maintain up-to-date TWC work search requirements for Texas counties. In addition to being provided with the number of work search contacts required by TWC and contact information for the local workforce Board, injured employees will be able to contact Division field offices and the Office of the Injured Employee Counsel for assistance regarding qualifications and applications for SIBs.

As part of the development of these proposed amended sections, the Division posted an informal working draft of the proposed amended sections on its website in February 2008.

DESCRIPTION OF THE PROPOSED AMENDMENTS

The proposed amendments change all references in these sections from "commission" to "Division" pursuant to HB 7 merger of the functions of the former Texas Workers' Compensation Commission within the Texas Department of Insurance to form the new Division.

Proposed amendments to §130.101 paragraph (1) amend the definition for "Application for Supplemental Income Benefits" by removing the citation to a specific agency form and instead providing a general statement that the Division application form required for SIBs is pursuant to Labor Code §408.143(b). Section 130.101 is also amended by removing rule language pertaining to an employee's statement regarding "good faith" job searches and adding rule language that requires the employee's statement that "the employee has met the work search compliance standards described in Labor Code §408.1415." New language is also added to this section that pertains to the documentation required of self-employed individuals to establish earnings income along with the deletion of specific documentation examples.

Proposed amendments to §130.101 paragraph (4) amend the definition for "Qualifying period" by adding the provision that the filing period is as provided in Labor Code §408.143(b).

Proposed amendments to §130.101 paragraph (8) change the term to be defined from "Full time vocational rehabilitation program" to "Vocational rehabilitation program" and amends the definition by replacing the reference to the previous Texas Reha-

bilitation Commission with Texas Department of Assistive and Rehabilitative Services (DARS). The amendments add that an Individual Plan for Employment may also be provided by "a vocational rehabilitation plan provided by a comparable federally funded rehabilitation program in another state under the Rehabilitation Act of 1973, as amended."

Proposed amendments to §130.102(a) change language from "An injured employee shall not be entitled . . ." to "An injured employee is not entitled . . ." for clarification. Amendments to subsection (b) clarify that the eligibility criteria excludes injured employees who have permanently lost entitlement to supplemental income benefits; and, that the eligibility criteria includes completion and filing of an Application for Supplemental Income Benefits in accordance with §§130.103, 130.104, and 130.105. Also, paragraph (b)(2) is amended to delete language regarding "good faith" efforts to obtain employment and add the requirement that an active effort to obtain employment must comply with work search standards described in Labor Code §408.1415.

Proposed amendments to §130.102(d) change the subsection title from "Good Faith Effort" to "Work Search Requirements." The proposed amendments delete language regarding "good faith" efforts to obtain employment and add language regarding work search requirements. Subsection (d)(2) is amended by adding the word "actively" and deleting the language "enrolled in, and satisfactorily" before "participated in," and deleting "full time" before "vocational rehabilitation program." The amendments also delete "sponsored by the Texas Rehabilitation Commission during the qualifying period" after "vocational rehabilitation program" and instead adds "as defined in §130.101 of this Chapter." Subsection (d)(3) is amended to delete the language "has during the qualifying period been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program provided by a private provider that is included in the Registry of Private Providers of Vocational Rehabilitation Services" and adds the following language "has actively participated in work search efforts conducted through the Texas Workforce Commission (TWC)." Subsection (d)(5) is amended to delete the following language "provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment" after the word "has" and instead adds the language "performed active work search efforts documented by job applications."

Proposed amendments to §130.102(e) change the subsection title from "Job Search Efforts and Evaluation of Good Faith Effort" to "Active Participation and Active Work Search Efforts." The proposed amendments delete language regarding an injured employee's "good faith" efforts to obtain employment commensurate with the employee's ability to work and a reviewing authority's evaluation of the employee's "good faith" efforts in this regard. The proposed amendments add language regarding the required documentation an injured employee must provide to sufficiently establish active participation in a vocational rehabilitation program. The proposed amendments recognize that actual or substantial compliance with the vocational rehabilitation program requirements may fulfill the appropriate level of activity. The proposed amendments also add language regarding the required documentation an injured employee must provide to sufficiently establish active work search efforts.

Proposed amendments to §130.103(a) include the addition of the word "insurance" before the term "carrier" and the addition of "electronic transmission" as a method of notifying the injured employee and the insurance carrier of the Division's determination of entitlement to SIBs for the first quarter. The term electronic transmission encompasses facsimile transmission, e-mail and other electronic modes of electronic transmission that may not be currently feasible or available but may be so in the future. Use of the general term will allow the broader methods of electronic delivery as they become available provided the injured employee and the insurance carrier have the means for receipt of the notification in the particular mode or format. An additional proposed amendment to §130.103 is the deletion of subsection (d) regarding the referral to the Texas Rehabilitation Commission (TRC). This language is deleted because the TRC agency is no longer in existence and the injured employee's requirement to actively participate in a vocational rehabilitation program conducted by the DARS or a private vocational rehabilitation provider is contained in the statute.

Proposed amendments to §130.104 include the addition of the word "insurance" before the term "carrier." An additional amendment in subsection (c) is the deletion of the term "facsimile" and the addition of the term "electronic transmission." The term "electronic transmission" encompasses facsimile transmission, e-mail and other electronic modes of electronic transmission that may not be currently feasible or available but may be so in the future. Use of the general term broadens the methods of delivery the injured employee may use for submitting an application for SIBs to the insurance carrier provided the insurance carrier has the means for receipt of the application in the particular mode or format. Amendments to subsection (e) expand the methods of delivery from "mailing" of the notice of determination to the injured employee from the insurance carrier to require the notice be sent by first class mail, personal delivery or electronic transmission. Also, the language "form DWC-52" is deleted to allow a broader citation to the Division's form by using only the form's title. This is also consistent with the amendment to the definition of Application for Supplemental Income Benefits at §130.101. Language is also amended to clarify that the insurance carrier must include the "reason" for it's determination in the carrier's notice to the injured employee and a new example of language that does not satisfy this requirement is added. Amendments also include the deletion of language referring to "good faith effort" as this term is obsolete as a result of Labor Code §408.1415.

Proposed amendments to §130.105 include the addition of the word "insurance" before the term "carrier."

Proposed amendments to §130.106 include an amendment to reflect a change in the rule title and the addition of new subsection (c). The rule title deletes the word permanent to allow this rule to address the loss of an individual quarter of SIBs in addition to a permanent loss of SIBs. Proposed subsection (c), regarding refusal of vocational services, is added to clarify that an injured employee in a vocational rehabilitation plan who refuses vocational services or refuses to cooperate with services provided at any time during a qualifying period is not entitled to SIBs for the related quarter. This provision is consistent with Labor Code §408.1415.

Proposed amendments to §130.107 and §130.108 include the addition of the word "insurance" before the term "carrier."

Additional proposed amendments to §130.108 include the deletion of subsection (a), regarding general dispute information, and the subsequent renumbering of the subsections. Subsection (a) language concerning carrier and injured employee conduct was determined to be no longer appropriate for placement in this section. Carrier and injured employee conduct is more suc-

cinctly covered at Labor Code, Chapter 415, "Administrative Violations." Proposed subsection (a) is amended to allow the injured employee to contest the SIBs determination of the insurance carrier, as well as that of the Division. The citation to a specific rule is amended in favor of a broader citation to the applicable rule chapter. The reference to the rule title is also amended to reflect a reference to the rule chapter title. The citations to specific rules in subsections (b) and (c) are also amended in favor of a broader citation to the applicable rule chapter with corresponding amendments to reference the rule chapter title rather than the rule title. The reference in subsection (d) to renumbered subsection (a) is also amended to reflect the proposed change in subsection (a).

Proposed amendments to §130.109 include the deletion of a specific rule reference. The citation to a specific rule is amended in favor of a broader citation to the applicable rule chapter. The reference to the rule title is also amended to reflect the reference to the rule chapter title.

Mr. Robert E. Lang, Deputy Commissioner of Hearings, has determined that for each year of the first five years the proposed amended sections will be in effect, there will be minimal fiscal implication for state government as a result of enforcing or administering the proposed amendments.

Increased costs may include expenses associated with the preparation of training materials and presentation of training programs for Division staff and other system participants. There will be no fiscal implications for local governments as a result of enforcing or administering the proposed amendments because they do not enforce or administer the rule.

Local government and state government as a covered regulated entity will be impacted in the same manner as persons required to comply with the proposed amendments, as described later in this preamble.

Mr. Lang has also determined that for each year of the first five years the sections are in effect, the proposed amendments will not have a measurable effect on local employment or the local economy as a result of the proposed amendments.

Mr. Lang has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated is that the proposed sections will provide positive benefits to most system participants: injured employees, employers, and insurance carriers. The proposed amended sections do not affect health care providers.

The Division does not anticipate an increase in disputes relating to SIBs as a result of these proposed amended sections. A decrease in the number of disputes relating to SIBs is expected because the rule will include strict numerical requirements and no longer require a subjective standard in order to apply and qualify for SIBs.

The proposed amended sections benefit both injured employees and insurance carriers by outlining a more clearly defined process for establishing entitlement to SIBs and by providing identifiable compliance standards. The identification of compliance standards will also provide guidelines for a quicker determination of an injured employee's entitlement/non-entitlement to SIBs.

There will be no additional economic costs to injured employees, as these proposed rules do not impose any new requirements on injured employees. Injured employees will continue to have some costs associated with completing the application for SIBs form provided by the Division, including attachments to the application form of any required supporting documentation for the insurance carrier.

Insurance carriers have already incurred the start up costs for processing requests for SIBs, so there should be minimal additional adjustment costs to process requests for SIBs under this proposal. Most workers' compensation insurance carriers will not experience an increase in income benefit costs as a result of these proposed rules.

There are no costs imposed upon health care providers or employers by these proposed amendments because these proposed amendments do not impose requirements upon those entities. Further, employers who purchase workers' compensation insurance should experience no direct economic impact from the requirement to comply with these proposed rule amendments because there is no additional administrative requirement for the employer.

As required by Government Code §2006.002(c), the Division has determined that these proposed amendments will not have an adverse economic effect on small or micro-businesses. The Division's analysis of any possible costs for compliance with these proposed amendments that are detailed in the Public Benefit/Cost Note section of this proposal is also applicable to small and micro-businesses. Because these proposed amendments will not have an adverse economic effect on small or micro-businesses, Government Code §2006.002(c) does not require an economic impact statement or regulatory flexibility analysis.

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, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on November 3, 2008. Comments may be submitted via the Internet through the Division's Internet website at http://www.tdi.state.tx.us/wc/rules/proposedrules/toc.html or by mailing or delivering your comments to Victoria Ortega, Legal Services, MS-4D, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744.

Any request for a public hearing must be submitted separately to the Office of General Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744 by 5:00 p.m. on November 3, 2008. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendments are proposed under the Labor Code §§402.00111, 402.061, 408.141, 408.1415, 408.142, 408.143, 408.150, and 408.151. Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under Labor Code, Title 5. Labor Code §402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act. Labor Code §408.141, Award of Supplemental Income Benefits, provides that an award of SIBs must be made in accordance with Subchapter H, Supplemental Income Benefits. Labor Code §408.1415, Work Search Compliance Standards, provides that the Commissioner shall adopt by rule compliance standards for SIBs recipients that require each recipient to demonstrate an active effort to obtain employment.

Labor Code §408.142, Supplemental Income Benefits, provides that an employee is entitled to SIBs if on the expiration of the impairment income benefit period, the employee: (1) has an impairment rating of 15% or greater from the compensable injury; (2) has not returned to work or has returned to work earning less than 80% of the employee's average weekly wage as a direct result of the employee's impairment; (3) has not elected to commute a portion of the impairment income benefits; and (4) has compiled with the requirements adopted under §408.1415. Labor Code §408.143, Employee Statement, provides that after the Commissioner's initial determination of SIBs, an employee must file a statement with the insurance carrier stating that the employee has earned less than 80% of the employee's average weekly wage as a result of the impairment, the amount of wages earned during the quarterly filing period and that the employee has compiled with the requirements adopted under §408.1415. Labor Code §408.147, Contest of Supplemental Income Benefits By Insurance Carrier; Attorney's Fees, provides that an insurance carrier may request a Benefits Review Conference to dispute an injured employee's entitlement to SIBs, the time frame in which to do so and the consequences should the insurance carrier not prevail. Labor Code §408.150, Vocational Rehabilitation, provides that if the Division determines that an employee can be materially assisted by vocational rehabilitation or training services in returning to employment, the Division shall refer the employee to DARS and notify the insurance carrier of the need for vocational rehabilitation services. The carrier may provide the services through a private provider of vocational services. The statute also provides that an employee who refuses services or refuses to cooperate with services provided by DARs or a private provider loses entitlement to SIBs.

The following statutes are affected by this proposal: Labor Code §§408.141, 408.1415, 408.142, 408.143, 408.147, 408.150, Labor Code Subchapter H, Chapter 408.

§130.101. Definitions.

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

(1) Application for Supplemental Income Benefits--The Division [~~Commission~~] form required pursuant to Labor Code §408.143(b) [~~TWCC 52~~] containing the following information:

(A) a statement, with supporting payroll documentation, that the employee has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury;

(B) the amount of the employee's wages during the qualifying period;

(C) a statement, with supporting documentation [~~information such as~~] that the employee has met the work search compliance standards described in Labor Code §408.1415 as implemented [~~outlined~~] in §130.102(d) [~~(e)~~] of this title (relating to Eligibility for Supplemental Income Benefits; Amount)[~~, that the employee has in good faith sought employment commensurate with the employee's ability to work~~]; and

(D) for self-employed individuals, copies of all supporting documentation to establish the amount of self-employment income earned during the qualifying period using generally accepted accounting principles [~~such as, business plans, contacts, sales tax registration,~~] and any other pertinent documentation of [~~to document all~~] efforts to establish or maintain a self-employed enterprise during the qualifying period.

(2) First Quarter--The 13 weeks beginning on the day after the last day of the impairment income benefits period.

(3) Impairment income benefits period--The number of weeks computed under the Act, [~~Texas~~] Labor Code, §408.121 for which the injured employee is entitled to receive impairment income benefits, starting with the day after the date the employee reached maximum medical improvement.

(4) Qualifying period--The filing period provided in Labor Code §408.143(b); a [~~A~~] period of time for which the employee's activities and wages are reviewed to determine eligibility for supplemental income benefits. The qualifying period ends on the 14th [~~fourteenth~~] day before the beginning date of the quarter and consists of the 13 previous consecutive weeks.

(5) Reviewing authority--The person who reviews the Application for Supplemental Income Benefits and other information to make the determination of entitlement or non-entitlement to supplemental income benefits including Division [~~Commission~~] staff for the first quarter determination and the insurance adjuster for subsequent quarter determinations.

(6) Subsequent Quarter--A 13-week period beginning on the day after the last day of a previous quarter. The term subsequent quarter applies to all quarters after the first quarter.

(7) Vocational Rehabilitation Services--Services which can reasonably be expected to benefit the employee in terms of employability including, but not limited to, identification of the employee's physical and vocational abilities, training, physical or mental restoration, vocational assessment, transferable skills assessment, development of and modifications to an individualized vocational rehabilitation plan, or other services necessary to enable an injured employee to become employed in an occupation that is reasonably consistent with his or her strengths, physical abilities including ability to travel, educational abilities, interest, and pre-injury income level.

(8) Vocational Rehabilitation Program [~~Full time vocational rehabilitation program~~]--Any Individual Plan for Employment [~~program~~], provided by the Texas Department of Assistive and Rehabilitative Services (DARS), a vocational rehabilitation plan provided by a comparable federally-funded rehabilitation program in another state under the Rehabilitation Act of 1973, as amended, [~~Texas Rehabilitation Commission~~] or a private provider of vocational rehabilitation services that is included in the Registry of Private Providers of Vocational Rehabilitation Services[~~, for the provision of vocational rehabilitation services~~] designed to assist the injured employee to return to work that includes a vocational rehabilitation plan. A vocational rehabilitation plan includes, at a minimum, an employment goal, any intermediate goals, a description of the services to be provided or arranged, the start and end dates of the described services, and the injured employee's responsibilities for the successful completion of the plan.

(9) Wages--All forms of remuneration payable for personal services rendered during the qualifying period as defined in [~~Texas~~] Labor Code, §401.011(43), including the wages of a bona fide offer of employment which was not accepted.

§130.102. Eligibility for Supplemental Income Benefits; Amount.

(a) General. An injured employee is [~~shall~~] not [~~be~~] entitled to supplemental income benefits until the expiration of the impairment income benefit period.

(b) Eligibility Criteria. An injured employee who has an impairment rating of 15% or greater, [~~and~~] who has not commuted any impairment income benefits, and who has not permanently lost entitlement to supplemental income benefits, is eligible to complete and file

an Application for Supplemental Income Benefits in accordance with §§130.103, 130.104, and 130.105 of this title to receive supplemental income benefits if, during the qualifying period, the employee:

(1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury; and

(2) has demonstrated an active effort to obtain employment in accordance with work search compliance standards described in Labor Code §408.1415 as implemented in subsection (d) of this section [~~has made a good faith effort to obtain employment commensurate with the employee's ability to work~~].

(c) Direct Result. An injured employee has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings.

(d) Work Search Requirements [~~Good Faith Effort~~]. An injured employee has complied with the work search requirements [~~made a good faith effort to obtain employment commensurate with the employee's ability to work~~] if, during the qualifying period, the employee:

(1) has returned to work in a position which is relatively equal to the injured employee's ability to work;

(2) has actively [~~been enrolled in, and satisfactorily~~] participated in a [~~, a full time~~] vocational rehabilitation program as defined in §130.101 of this title (relating to Definitions) [~~sponsored by the Texas Rehabilitation Commission during the qualifying period~~];

(3) has actively participated in work search efforts conducted through the Texas Workforce Commission (TWC) [~~has during the qualifying period been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program provided by a private provider that is included in the Registry of Private Providers of Vocational Rehabilitation Services~~];

(4) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work; or

(5) has performed active work search efforts documented by job applications [~~provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment~~].

(e) Active Participation and Active Work [~~Job~~] Search Efforts [~~and Evaluation of Good Faith Effort~~]. As [~~Except as~~] provided in subsection (d)[~~(1), (2), (3), and (4)~~] of this section, regarding active participation in a vocational rehabilitation program, an injured employee shall provide documentation sufficient to establish that he or she has met, or substantially met the requirements established by the Individual Plan for Employment during the qualifying period. As provided in subsection (d)(3) and (5) of this section regarding active work search efforts, an injured employee shall provide documentation sufficient to establish that he or she has, during the qualifying period, made the minimum number of work search contacts required for unemployment compensation for the injured employee's county of residence pursuant to the TWC Local Workforce Development Board requirements. If residing out of state, the minimum number of work search contacts required will be the number required by the public employment service in accordance with applicable unemployment compensation laws for the employee's place of residence. [~~an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. In determining whether or not the injured employee has made a good faith effort to obtain employment under subsection (d)(5) of this section, the reviewing authority shall consider the information from the injured employee, which may include, but is not limited to information regarding:~~]

[~~(1) number of jobs applied for throughout the qualifying period;~~]

[~~(2) type of jobs sought by the injured employee;~~]

[~~(3) applications or resumes which document the job search efforts;~~]

[~~(4) cooperation with the Texas Rehabilitation Commission;~~]

[~~(5) cooperation with a vocational rehabilitation program provided by a private provider that is included in the Registry of Private Providers of Vocational Rehabilitation Services;~~]

[~~(6) education and work experience of the injured employee;~~]

[~~(7) amount of time spent in attempting to find employment;~~]

[~~(8) any job search plan by the injured employee;~~]

[~~(9) potential barriers to successful employment searches;~~]

[~~(10) registration with the Texas Workforce Commission; or~~]

[~~(11) any other relevant factor.~~]

(f) Calculation of amount. Subject to any approved reduction for the effects of contribution, the monthly supplemental income benefit payment is calculated quarterly as follows:

(1) multiply the injured employee's average weekly wage by 80% (.80);

(2) add the injured employee's wages for all 13 weeks of the qualifying period;

(3) divide the total wages by 13;

(4) subtract this figure from the result of paragraph (1) of this subsection;

(5) multiply the difference by 80% (.80);

(6) if the resulting amount is greater than the maximum rate under the Act, [~~Texas~~] Labor Code, §408.061, use the maximum rate; and,

(7) multiply the result by 4.34821.

(g) Maximum Medical Improvement and Impairment Rating Disputes. If there is no pending dispute regarding the date of maximum medical improvement or the impairment rating prior to the expiration of the first quarter, the date of maximum medical improvement and the impairment rating shall be final and binding.

(h) Services Provided by a Carrier Through a Private Provider of Vocational Rehabilitation Services. The insurance carrier may provide vocational rehabilitation services through a provider of such services provided that the individual is registered as a private provider in accordance with §136.2 of this title (relating to Registry of Private Providers of Vocational Rehabilitation Services) and that the insurance carrier will be responsible for reasonable travel expenses incurred by the injured employee if the employee is required to travel in excess of 20 miles one way from the injured employee's residence to obtain vocational rehabilitation services.

§130.103. Determination of Entitlement or Non-entitlement for the First Quarter.

(a) Division [~~Commission~~] Determination. For each injured employee with an impairment rating of 15% or greater, and who has not commuted any impairment income benefits, the Division [~~commission~~] will make the determination of entitlement or non-entitlement for the first quarter of supplemental income benefits. This determination shall be made not later than the last day of the impairment income benefit period and the notice of determination shall be sent to the injured employee and the insurance carrier by first class mail, electronic transmission or personal delivery.

(b) Determination of Entitlement. If the Division [~~commission~~] determines that the injured employee is entitled to supplemental income benefits for the first quarter, the notice of determination shall include:

(1) the beginning and end dates of the first quarter;

(2) the amount of the monthly payments;

(3) the amount of the wages used to calculate the monthly payment;

(4) instructions for the parties of the procedures for contesting the Division's [~~commission's~~] determination as provided by §130.108 of this title (relating to Contesting Entitlement or Amount of Supplemental Income Benefits; Attorney Fees); and

(5) an Application for Supplemental Income Benefits, filing instructions, a filing schedule, and a description of the consequences of failing to timely file.

(c) Determination of non-entitlement. If the Division [~~commission~~] determines that the injured employee is not entitled to supplemental income benefits for the first quarter, the notice of determination shall include:

(1) the grounds for this determination;

(2) the beginning and end dates of the first quarter;

(3) instructions for the parties of the procedures for contesting the Division's [~~commission's~~] determination as provided by §130.108 of this title [~~(relating to Contesting Entitlement or Amount of Supplemental Income Benefits; Attorney Fees)~~]; and

(4) an Application for Supplemental Income Benefits, filing instructions, a filing schedule, and a description of the consequences of failing to timely file.

~~[(d) Referral to the Texas Rehabilitation Commission. For each injured employee who may be eligible to receive supplemental income benefits, the Commission shall send the injured employee and the insurance carrier:]~~

~~[(1) a notice of the need for vocational rehabilitation or training services;]~~

~~[(2) a referral to the Texas Rehabilitation Commission for appropriate services; and]~~

~~[(3) a warning to the injured employee that refusing such services, or refusing to cooperate with such services, will result in loss of entitlement to supplemental income benefits.]~~

§130.104. Determination of Entitlement or Non-entitlement for Subsequent Quarters.

(a) Subsequent Quarter Determination. After the Division [~~commission~~] has made a determination of entitlement or non-entitlement for supplemental income benefits for the first quarter, the insurance carrier shall make determinations for subsequent quarters consistent with the provisions contained in §130.102 of this title (relating to Eligibility for Supplemental Income Benefits; Amount). The insurance carrier shall issue a determination of entitlement or non-entitlement within 10 days after receipt of the Application for Supplemental Income Benefits for a subsequent quarter.

(b) Application for Supplemental Income Benefits. An injured employee claiming entitlement to supplemental income benefits for a subsequent quarter must send the insurance carrier an Application for Supplemental Income Benefits as required under this section. With the first monthly payment of supplemental income benefits for any eligible quarter and with any insurance carrier determination of non-entitlement, the insurance carrier shall send the injured employee a copy of the Application for Supplemental Income Benefits and the proper address to file the subsequent application. On the Application for Supplemental Income Benefits sent by the insurance carrier, the insurance carrier shall fill in:

(1) the number of the applicable quarter;

(2) the dates of the qualifying period;

(3) the dates of the quarter; and

(4) the deadline for filing the application with the insurance carrier.

(c) Filing the Application for Supplemental Income Benefits. The employee shall file the Application for Supplemental Income Benefits and any applicable documentation with the insurance carrier by first class mail, or personal delivery or electronic transmission [~~facsimile~~]. Except as otherwise provided in this section, the Application for Supplemental Income Benefits shall be filed no later than seven days before, and no earlier than 20 days before, the beginning of the quarter for which the injured employee is applying for supplemental income benefits. If the Application for Supplemental Income Benefits is received by the insurance carrier more than 20 days before the beginning of the quarter, the insurance carrier shall return the form to the injured employee with detailed instructions on when the form is required to be filed. Any form returned to the injured employee because the form was filed early shall not be subject to the provisions of §130.108 of this title (relating to Contesting Entitlement to Supplemental Income Benefits).

(d) Date-Stamp. Upon receipt, the insurance carrier shall date-stamp all Application for Supplemental Income Benefits forms with the date the insurance carrier received the form.

(e) Notice of Determination. Upon making subsequent quarter determinations, the insurance carrier shall issue a notice of determination to the injured employee. The notice shall be sent by first class mail, personal delivery or electronic transmission [~~mailed~~] and shall contain all the information required in the Notice of Entitlement or Non-entitlement portion of the [~~form DWC-52,~~] Application for Supplemental Income Benefits. The notice of determination of non-entitlement shall contain sufficient claim specific information to enable the employee to understand the reason for the insurance carrier's determination. A generic statement such as "failure to satisfy the compliance standards of Labor Code §408.1415" [~~"not a good faith effort"~~], "not a direct result", or similar phrases without further explanation does not satisfy the requirements of this section.

(f) Accrual date. If the employee is entitled to supplemental income benefits for a subsequent quarter, the benefits begin to accrue on the later of:

(1) the first day of the applicable quarter; or

(2) the date the Application for Supplemental Income Benefits is received by the insurance carrier, subject to the provisions of

§130.105 of this title (relating to Failure to Timely File Application for Supplemental Income Benefits; Subsequent Quarters).

(g) Changes in Amount. A change in the monthly amount of supplemental income benefits from one quarter to the next does not constitute a dispute subject to §130.108 of this title [~~(relating to Contesting Entitlement to Supplemental Income Benefits)~~]. An insurance carrier that does not contest the entitlement to supplemental income benefits for a subsequent quarter, but determines a different monthly amount is due, shall:

(1) send the notice as required in subsection [~~§130.104~~] (e) of this section [~~title (relating to Determination of Eligibility for Subsequent Quarters)~~];

(2) include instructions about the procedures for contesting the insurance carrier's determination as provided by §130.108 of this title [~~(relating to Contesting Entitlement or Amount of Supplemental Income Benefits; Attorney Fees)~~]; and

(3) issue payment based on the newly calculated amount.

§130.105. Failure to Timely File Application for Supplemental Income Benefits; Subsequent Quarters.

(a) Failure to timely file. An injured employee who does not timely file an Application for Supplemental Income Benefits with the insurance carrier shall not receive supplemental income benefits for the period of time between the beginning date of the quarter and the date on which the form was received by the insurance carrier, unless the following apply:

(1) the failure of the insurance carrier to timely mail the form to the injured employee as provided by §130.104 of this title (relating to Determination of Entitlement or Non-entitlement for Subsequent Quarters);

(2) the failure of the Division [~~commission~~] to issue a determination of entitlement or non-entitlement for the first quarter and the quarter applied for immediately follows the first quarter; or,

(3) a finding of an impairment rating of 15% or greater in an administrative or judicial proceeding when the previous impairment rating was less than 15%.

(b) Calculation. If the injured employee has failed to timely file the Application for Supplemental Income Benefits and none of the exceptions listed in subsection (a) of this section apply, the payment of supplemental income benefits for that particular payment period shall be prorated as follows:

(1) divide the weekly amount of supplemental income benefits (as calculated pursuant to §130.102(f)(5) and (6) of this title (relating to Eligibility for Supplemental Income Benefits; Amount)) by seven to determine the daily rate;

(2) calculate the number of days between the date the Application for Supplemental Income Benefits was received and the end of that particular payment period; and

(3) multiply the number of days and the daily rate to determine the amount of the payment.

§130.106. [~~Permanent~~] Loss of Entitlement to Supplemental Income Benefits.

(a) 12-Month Provision. Except as provided in §130.109 of this title (relating to Reinstatement of Entitlement if Discharged with Intent to Deprive of Supplemental Income Benefits), an injured employee who is not entitled to supplemental income benefits for a period of four consecutive quarters permanently loses entitlement to such benefits.

(b) 401-Week Provision. An injured employee permanently loses entitlement to supplemental income benefits upon the expiration of the 401-week period calculated pursuant to [~~Texas~~] Labor Code, §408.083. Except for situations where the injured employee has previously permanently lost entitlement to supplemental income benefits, the insurance carrier shall send two notices to the injured employee prior to the expiration of the 401-week period if the employee has submitted an Application for Supplemental Income Benefits during the 12 months immediately preceding the expiration of the 401-week period. This notification shall be in the form and manner prescribed by the Division [~~commission~~] and shall be sent:

(1) no later than four months prior to the expiration of the 401-week period; and

(2) one month prior to the expiration of the 401-week period.

(c) Refusal of Vocational Services. An injured employee, in a vocational rehabilitation plan as defined in §130.101(8) of this title (relating to Definitions), who refuses vocational services or refuses to cooperate with services provided at any time during a qualifying period is not entitled to supplemental income benefits for the related quarter.

§130.107. Payment of Supplemental Income Benefits.

(a) First Quarter. After the Division's [~~commission's~~] initial determination of entitlement, the insurance carrier shall pay supplemental income benefits as follows:

(1) the first payment shall be made on or before the tenth day after the day on which the insurance carrier received the Division [~~commission~~] determination of entitlement or the seventh day of the quarter, whichever is later;

(2) the second payment shall be made on or before the 37th day of the first quarter; and

(3) the last payment shall be made on or before the 67th day of the first quarter.

(b) Subsequent Quarters. For subsequent quarters, the insurance carrier shall pay supplemental income benefits as follows:

(1) the first payment shall be made on or before the tenth day after the day on which the insurance carrier received the Application for Supplemental Income Benefits, or the seventh day of the quarter, whichever is later;

(2) the second payment shall be made on or before the 37th day of the quarter; and

(3) the last payment shall be made on or before the 67th day of the quarter.

§130.108. Contesting Entitlement or Amount of Supplemental Income Benefits; Attorney Fees.

~~[(a) Disputes, General. The injured employee, the injured employee's representative, and the insurance carrier shall not pursue a dispute on entitlement or non-entitlement to supplemental income benefits without a factual or legal basis. Further, the insurance carrier shall not dispute entitlement to a subsequent quarter without considering a comparison of the factual situation of the qualifying period for the previous quarter with the factual situation of the current qualifying period.]~~

(a) [~~(b)~~] Injured Employee Disputes. An injured employee may contest the determination by the Division [~~commission~~] or the insurance carrier regarding non-entitlement to, or the amount of, supplemental income benefits by requesting a benefit review conference as provided by Chapter 141 [~~§141.1~~] of this title (relating to Dispute Resolution--[~~Requesting and Setting a~~] Benefit Review Conference).

(b) [(c)] Insurance Carrier Dispute; First Quarter. If an insurance [a] carrier disputes a Division [commission] finding of entitlement to, or amount of, supplemental income benefits for the first quarter, the insurance carrier shall request a benefit review conference as provided by Chapter 141 [§141.1 of this title (relating to Requesting and Setting a Benefit Review Conference)] within 10 days after receiving the Division [commission] determination of entitlement. A carrier waives the right to contest the Division's [commission's] determination of entitlement to, or amount of, supplemental income benefits for the first quarter if the request is not received by the Division [commission] within 10 days after the date the insurance carrier received the determination.

(c) [(d)] Insurance Carrier Dispute; Subsequent Quarter With Prior Payment. If an insurance carrier disputes entitlement to a subsequent quarter and the insurance carrier has paid supplemental income benefits during the quarter immediately preceding the quarter for which the Application for Supplemental Income Benefits is filed, the insurance carrier shall dispute entitlement to the subsequent quarter by requesting a benefit review conference as provided by Chapter 141 [§141.1 of this title (relating to Requesting and Setting a Benefit Review Conference)] within 10 days after receiving the Application for Supplemental Income Benefits. An insurance [A] carrier waives the right to contest the entitlement to supplemental income benefits for the subsequent quarter if the request is not received by the Division [commission] within 10 days after the date the insurance carrier received the Application for Supplemental Income Benefits. The insurance carrier does not waive the right to contest entitlement to supplemental income benefits if the insurance carrier has returned the injured employee's Application for Supplemental Income Benefits pursuant to §130.104(c) of this title (relating to Determination of Entitlement or Non-entitlement for Subsequent Quarters).

(d) [(e)] Insurance Carrier Disputes; Subsequent Quarter Without Prior Payment. If an insurance carrier disputes entitlement to a subsequent quarter and the insurance carrier did not pay supplemental income benefits during the quarter immediately preceding the quarter for which the Application for Supplemental Income Benefits is filed, the insurance carrier shall send the determination to the injured employee within 10 days of the date the form was filed with the insurance carrier and include the reasons for the insurance carrier's finding of non-entitlement and instructions about the procedures for contesting the insurance carrier's determination as provided by subsection (a) [(b)] of this section.

(e) [(f)] Liability. An insurance carrier who unsuccessfully contests a Division [commission] determination of entitlement to supplemental income benefits is liable for:

(1) all accrued, unpaid supplemental income benefits, and interest on that amount, and;

(2) reasonable and necessary attorney's fees incurred by the employee as a result of the insurance carrier's dispute which have been ordered by the Division [commission] or court.

§130.109. Reinstatement of Entitlement If Discharged with Intent to Deprive of Supplemental Income Benefits.

(a) An employee who has lost entitlement to supplemental income benefits under §130.106(a) of this title (relating to [Permanent] Loss of Entitlement to Supplemental Income Benefits), and is discharged from employment within 12 months of losing entitlement, will become re-entitled if the employer discharged the employee with intent to deprive the employee of supplemental income benefits.

(b) An employee seeking reinstated supplemental income benefits under this section shall request a benefit contested case hearing, as provided by Chapter 142 [§142.5] of this title (relating to Dispute Resolution--Benefit Contested Case Hearing [Sequence of Proceedings To Resolve Benefit Disputes]).

(c) The employee bears the burden of proof of discharge with intent to deprive.

(d) Supplemental income benefits reinstated under this section begin to accrue on the day after the employee's discharge.

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

Filed with the Office of the Secretary of State on September 22, 2008.

TRD-200805105
Stanton K. Strickland
Deputy Commissioner, Legal Services
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: November 2, 2008
For further information, please call: (512) 804-4715

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE
SUBCHAPTER A. PROCEDURES FOR THE ADOPTION OF RULES

31 TAC §51.3

The Texas Parks and Wildlife Department proposes an amendment to §51.3, concerning consideration and disposition of petitions for rulemaking. The proposed amendment is necessary as a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Under the provisions of Government Code, §2001.021, an interested person by petition may request that a state agency adopt a rule and each state agency is required to prescribe by rule the form for such petitions and the procedure for the submission, consideration, and disposition of petitions.

The proposed amendment would alter current subsections (c) - (e) and would add a new subsection (g).

Under current rule, all petitions received by the department are forwarded to each member of the commission, accompanied by the staff recommendation to either initiate rulemaking or deny the petition. If within 50 days after the date the department received the petition, no commissioner requests that the department initiate rulemaking, the petition is considered denied.

The proposed amendment to subsection (c) would remove the requirement that the department verify that each commissioner has received petition materials sent to them. The amendment is necessary because the department has determined that it is unnecessary and duplicative. The department mails petition pack-

ages to the address on file with the department for each commissioner. If the mail is not deliverable, it will be returned to the department and the department will investigate the problem. Also, many commissioners choose to receive department communications via fax or e-mail rather than by overland mail. Again, if a fax number or e-mail address is inoperable, the department will contact the involved commissioner to rectify the problem.

The proposed amendment to subsection (d) would alter the current procedure by requiring the executive director, in instances when the staff recommendation is to initiate rulemaking, to place the item on the agenda of a commission meeting. The amendment is intended to streamline the petition process by allowing staff to place items on the agenda instead of having to potentially wait up to 50 days for a response from the commission.

The proposed amendment to subsection (e) is nonsubstantive, adding language to make the subsection grammatically parallel to the proposed changes to subsection (d).

The proposed amendment also would create a new subsection (g) that would allow the executive director to deny a petition if the petition seeks essentially the same action as a petition that has been denied within the preceding six months. The amendment is necessary to avoid burdening staff and commissioners with repetitious and unnecessary administrative activities.

Ann Bright, General Counsel, has determined that for the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcement or administration of the rule.

Ms. Bright also has determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the elimination of unnecessary and duplicative administrative activity.

There will be no adverse economic effect on persons required to comply with the amendment as proposed.

The department has determined that small or micro-businesses will not be affected by the proposed rule. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Ann Bright, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8558 (e-mail: ann.bright@tpwd.state.tx.us).

The amendment is proposed under the authority of Government Code, §2001.021, which requires each state agency to prescribe by rule the form for petitions for adoption of rules and the procedure for submission, consideration, and disposition of such petitions.

The proposed amendment affects Government Code, Chapter 2001.

§51.3. Consideration and Disposition.

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

(c) The executive director shall forward to each member of the commission a copy of the petition and the staff recommendation [~~and shall verify that each commissioner has received a copy of the petition and the staff recommendation~~].

(d) If the staff recommendation is to initiate rulemaking [~~a member of the commission determines that further deliberations are warranted~~], the executive director shall place the petition on the agenda of a [~~the~~] commission meeting and notify the petitioner in writing of the date, time, and place of the commission meeting at which the petition will be deliberated.

(e) If the staff recommendation is to deny the rulemaking and, by the 50th day following the submission of the petition, no member of the commission has determined that further deliberations are warranted, the petition will be considered denied. The department shall notify the petitioner in writing of the staff recommendation and final disposition of the petition by no later than the 60th day after submission of the petition.

(f) (No change.)

(g) If a petition for rulemaking seeks essentially the same action as a petition that has been denied within the preceding six months, then the executive director may deny the petition without forwarding the petition to commissioners.

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

Filed with the Office of the Secretary of State on September 19, 2008.

TRD-200805090
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: November 2, 2008
For further information, please call: (512) 389-4775

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SUBCHAPTER C. EMPLOYEE FUNDRAISING AND SPONSORSHIPS

31 TAC §51.70

The Texas Parks and Wildlife Department proposes an amendment to §51.70, concerning Gifts to the Department. The proposed amendment is necessary as a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Under Government Code, §575.003, a state agency that has a governing board may accept a gift of cash or property valued at greater than $500 only if the agency has the authority to accept the gift and a majority of the board, in an open meeting, acknowledges the acceptance of the gift not later than the 90th day after the date the gift is accepted. Under Parks and Wildlife Code, §11.026, the department may accept gifts of property or money in support of any department purpose authorized by the Parks and Wildlife Code. Under Parks and Wildlife Code, §11.0182, the commission is required to adopt policies by rule to govern

fund-raising activities by department employees on behalf of the department with respect to gifts of greater than $500.

The proposed amendment would alter the current rule to allow the executive director of the department or his or her designee to contingently accept gifts of money or property of more than $500, in accordance with the commission's budget policy, prior to the formal acknowledgment of such gifts by the commission. The commission meets five times per year. The proposed amendment would allow the department to more efficiently and immediately utilize gifts in support of agency functions between commission meetings.

The proposed amendment also replaces the word "delegate" with the word "designee" to correct an inaccurate term.

Ann Bright, General Counsel, has determined that for the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcement or administration of the rule.

Ms. Bright also has determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the ability of the department to quickly use gifts in support of department programs that benefit the public.

There will be no adverse economic effect on persons required to comply with the amendment as proposed.

The department has determined that small or micro-businesses will not be affected by the proposed rule. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Ann Bright, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8558 (e-mail: ann.bright@tpwd.state.tx.us).

The amendment is proposed under the authority of Parks and Wildlife Code, §11.0182, which requires the commission to adopt policies by rule to govern fund-raising activities by department employees on behalf of the department with respect to gifts of greater than $500.

The proposed amendment affects Parks and Wildlife Code, Chapter 11.

§51.70. Gifts to the Department.

(a) Gifts of money or property $500 or more may [~~in value must~~] be accepted by the executive director or his or her designee contingent upon approval by the presiding officer of the commission and the Chair of the commission's finance committee in accordance with the commission's budget policy [~~contingent upon Commission approval~~]. The department may not accept or receive gifts or bequests from any source until such gifts or bequests have been approved for acceptance by the executive director or his or her designee [~~delegate~~]. Acceptance of gifts is hereby delegated as follows.

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

(3) Gifts or improvements valued at greater than $5,000 may be contingently accepted by the executive director or his or her designee. All [~~and all~~] gifts of real property or interests in real property may be accepted only by the commission [~~must be contingently accepted by the executive director~~].

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

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

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TRD-200805091
Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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SUBCHAPTER D. EDUCATION

31 TAC §51.80

The Texas Parks and Wildlife Department proposes an amendment to §51.80, concerning Hunter Education Course and Instructors. The proposed amendment would establish a minimum test score of 80 for persons who take the hunter education course online or by home study. The current rule requires a minimum score of 70 on the examination, which is based on the traditional, classroom-style of study personally supervised by a certified hunter education instructor. The intent of the amendment is to create a slightly higher standard for persons who take the course on-line or by correspondence, options that do not include the supervision of a hunter education instructor.

Steve Hall, Education Director, has determined that for the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcement or administration of the rule.

Mr. Hall also has determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be additional assurance that persons who take the hunter education course online or via home study have absorbed and understand the instructional materials.

There will be no adverse economic effect on persons required to comply with the amendment as proposed.

The department has determined that small or micro-businesses will not be affected by the proposed rule. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Steve Hall, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4568 (e-mail: steve.hall@tpwd.state.tx.us).

The amendment is proposed under the authority of Parks and Wildlife Code, §62.014, which authorizes the department to adopt rules necessary to implement the hunter education program.

The proposed amendment affects Parks and Wildlife Code, Chapter 62.

§51.80. Hunter Education Course and Instructors.

(a) (No change.)

(b) Hunter Education Requirements.

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

(5) The course is successfully completed when the student:

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

(C) has taken an examination prescribed by the department and scored a minimum of:

(i) 80 points, if the course was taken online or by home study; or

(ii) 70 points, if the course was taken in person under the supervision of a certified hunter education instructor.

~~[(C) scores a minimum of 70 points on an examination prescribed by the department.]~~

(6) - (8) (No change.)

(c) (No change.)

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

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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CHAPTER 52. STOCKING POLICY

31 TAC §52.101

The Texas Parks and Wildlife Department proposes an amendment to §52.101, concerning Purpose and Scope. The proposed amendment is necessary as a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review. The proposed amendment would remove the term "undesignated head" and replace it with the word "chapter." The former is an artifact of a naming convention that is no longer used in the Texas Administrative Code. The amendment also retitles the chapter. The new chapter title would be "Stocking Policy," to more accurately reflect the contents of the chapter.

Robert Macdonald, Regulations Coordinator, has determined that for the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcement or administration of the rule.

Mr. Macdonald also has determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be accurate regulatory terminology.

There will be no adverse economic effect on persons required to comply with the amendment as proposed.

The department has determined that small or micro-businesses will not be affected by the proposed rule. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 (e-mail: robert.macdonald@tpwd.state.tx.us).

The amendment is proposed under the Parks and Wildlife Code, §§1.012, 12.001, 12.013 - 12.015, and 66.015, which provide the Parks and Wildlife Commission with the authority to promulgate regulations governing the stocking of wildlife in the state.

The proposed amendment affects Parks and Wildlife Code, Chapters 1, 12, and 66.

§52.101. Purpose and Scope.

This chapter constitutes [~~The sections under this undesignated head constitute~~] the policy of the commission concerning stocking of fish and wildlife. All stockings made or authorized by the department shall be consistent with this policy.

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

Filed with the Office of the Secretary of State on September 19, 2008.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: November 2, 2008
For further information, please call: (512) 389-4775

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CHAPTER 61. DESIGN AND CONSTRUCTION SUBCHAPTER E. GUIDELINES FOR ADMINISTRATION OF TEXAS LOCAL PARKS,

RECREATION, AND OPEN SPACE FUND PROGRAM

31 TAC §§61.133 - 61.139

The Texas Parks and Wildlife Department (the department) proposes amendments to §§61.133 - 61.139, concerning Guidelines for Administration of Texas Local Parks, Recreation, and Open Space Fund Program. The proposed amendments are necessary as a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The proposed amendments to §§61.133 - 61.136, 61.138, and 61.139 would implement a new definition of low-income status. Prior to this year, the rules defined "low-income status" as the "USDA National School Lunch Program Income Eligibility Guidelines" federal poverty definition midpoint. The department in a rulemaking earlier this year replaced that definition with a generic definition that recognized low-income status as "any federal determination of low-income status." The department has since learned that the generic definition is too broad. The proposed amendment would define "low-income" as "median income or lower according to the most recent U.S. census (Median Household Income by State)," which the department has determined is an appropriate standard that can be easily determined by grant applicants seeking to provide recreation and parks services to low-income populations.

The proposed amendment to §61.137, concerning Grants for Regional Parks Grant Programs, consists of several changes.

The amendment to §61.137(a)(2) would clarify that the acquisition priority category includes the development of natural resource areas in addition to their acquisition.

The amendment to §61.137(a)(2) and (3) would add qualifying language to clarify that the term "appropriate development," as used in the section, means development that is consistent with sound ecological management and stewardship of natural resources. The department's primary mission includes the conservation, management, and protection of natural resources. The department believes it is necessary to assist other entities in furthering that mission.

The proposed amendment to §61.137(b)(3) would alter a reference to the funding source used by the department to award grants for regional parks. The current rule refers to the "availability of TRPA funds," (Texas Recreation and Parks Account) which, though technically correct, is too broad. The proposed amendment would reference "federal Land and Water Conservation Fund" funds, since the regional parks grants program is entirely funded by the federal Land and Water Conservation Fund.

The proposed amendment to §61.137(b)(6)(A)(iii) would provide a more detailed description of what the department evaluates when it considers project proposals that contemplate the acquisition of land for conservation areas and provides that points will not be awarded for proposed acquisitions that are intended to satisfy mitigation requirements. The current rule simply allows for the award of points for prospective acquisitions that would be used as "conservation areas." The department is interested in providing guidance to applicants as to what constitutes "conservation" for the purpose of award. Therefore, the proposed amendment would implement qualifying language to clarify that project proposals contemplating the acquisition of land as conservation areas will be evaluated on the extent to which the acquisition would preserve or conserve vulnerable natural resources, ecological processes, or rare, threatened, or endangered species of vegetation or wildlife. The intent of the amendment is to provide guidance as to what can reasonably considered "conservation." The proposed amendment also provides that points will not be awarded for proposed acquisitions that are intended to satisfy mitigation requirements. The department reasons that if some other, unrelated action by an entity has resulted in the entity's legal obligation to obtain mitigation property, the regional park grants program is not a suitable vehicle for that purpose. The regional park grants program is intended to recognize and assist with free-will conservation efforts and is not intended to function as a funding source for entities that are required to obtain property as a consequence of some other action. The proposed amendment also would increase the point award potential from five points to 15 points. The department believes that it is necessary to increase the point potential to emphasize the importance of conservation areas within the context of land acquisition.

The proposed amendment to §61.137(b)(6)(A)(v) would provide that projects proposing to offer managed natural resource access must do so in a responsible manner. The proposed amendment is necessary to ensure that an applicant does not offer more or inappropriate access to a natural resource than what is biologically or ecologically acceptable.

Similarly, the proposed amendment to §61.137(b)(6)(B)(i) would clarify that the development of water-based resources is understood by the department to mean development that is consistent with sound ecological management and stewardship. The department does not intend to award points to projects that are antithetical to the department's mission.

The proposed amendment to §61.137(b)(6)(B)(iii) would clarify that conservation of aquatic habitat includes the proposed acquisition of habitat.

The proposed amendment to §61.137(b)(6)(C) would eliminate the dedication of publicly owned non-parkland as match contribution and remove irrelevant language. The regional parks grants program is completely funded by the federal Land and Water Conservation Fund. Federal Land and Water Conservation Fund money cannot be matched with public lands. The proposed amendment also clarifies that match must be provided by local units of government to qualify for the award of points. The intent of the section is to encourage the planning and provision of recreational opportunity on a regional scale, which by definition makes coordination and participation among various local units of government desirable. Additionally, the current rule language refers to "sources other than sponsor." The source of match is irrelevant, so long as it is not public land. The proposed amendment to subparagraph (C) also reduces the potential points award from 15 to 5 for the category, because the proposed amendment adds a new §61.137(b)(6)(G) to award points for projects that encourage and reward public/private partnerships. Thus, the scoring coefficient in subparagraph (C) is lowered to compensate for the new category of award.

The proposed amendment to §61.137(b)(6)(F) would condition the award of points under the category of sustainable conservation, allowing for award based in significance of conservation activities, diversity, and/or cost. "Green" technologies or processes are an effective way to restore or maintain ecological integrity of natural systems and reduce operational costs of recreational sites, but are expensive to implement. The department wishes

to give additional weight to proposals that would embrace these more efficient and beneficial approaches.

The proposed amendment to §61.137(b)(6) would add a new subparagraph (G) to create a separate priority category for proposal elements that involve commitments of funds or resources from private or non-profit sources. Under current rule, commitments of funds or resources from any source were evaluated as a single criterion under §61.137(b)(6)(C). The department has determined that segregating the commitment of public resources from private resources is necessary because the department cannot accept publicly-owned land as program match under federal Land and Water Conservation Fund funding rules.

The proposed amendment to §61.137(b)(6) would add a new subparagraph (H) to allow for the award of points based on the degree to which a proposed project would support the department's Land and Water Resources Conservation and Recreation Plan (Plan). The Plan is the core guidance document that drives all of the department's efforts in conservation, management, and recreation.

Tim Hogsett, Director of Recreational Grants, has determined that for the first five years the rules as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Hogsett also has determined that for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be clear and concise definitions that will aid in the administration of the programs governed by the rules.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. The department has determined that there will be no direct economic effect on small or micro-businesses or persons required to comply as a result of the proposed rules. The rules would not compel or mandate any action on the part of any entity, including small businesses or micro-businesses.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Jill Parrish, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8175, e-mail: jill.parrish@tpwd.state.tx.us.

The amendments are proposed under Parks and Wildlife Code, Chapter 24, which requires the department to adopt regulations for grant assistance.

The proposed amendments affect Parks and Wildlife Code, Chapter 24.

§61.133. Grants for Outdoor Recreation Programs.

(a) Program purpose and priorities. All grant applications submitted to the department for outdoor recreation programs are evaluated for program eligibility and prioritized according to the Project Priority Scoring System set forth in this section. Scored applications are presented to the Texas Parks and Wildlife Commission for approval. In general, recommended priorities for outdoor recreation projects are:

(1) - (6) (No change.)

(7) to improve park and recreation opportunities for low income (for the purposes of this section, low income is defined as median income or lower according to the most recent U.S. census (Median Household Income by State), minority, and elderly citizens;

(8) - (14) (No change.)

(b) (No change.)

(c) Outdoor recreation project priority scoring system.

(1) - (6) (No change.)

(7) A project proposal meeting the requirements of paragraph (6) of this subsection shall be evaluated according to the extent that:

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

(F) the project improves park and recreation opportunities for low-income, minority, and elderly, up to a total of 15 points.

(i) project improves opportunities for low-income citizens [~~(defined as meeting any federal standard of eligibility for low-income status)~~]: determined by multiplying the percentage of population qualifying as low-income by 5 and dividing by 100. Maximum of 5 points.

(ii) - *(iii)* (No change.)

(G) - (O) (No change.)

§61.134. Grants for Indoor Recreation Programs.

(a) Program purpose and priorities. All grant applications submitted to the department for indoor recreation programs are evaluated for program eligibility and prioritized according to the Project Priority Scoring System set forth in this section. Scored applications are presented to the Texas Parks and Wildlife Commission for approval. The priority ranking of a project depends on its score in relation to the scores of other projects under consideration. Funding of projects will depend on the availability of TRPA funds. Projects which have not been approved after two considerations by the commission, without alterations to significantly raise the project score, shall be returned to the sponsor and not accepted for resubmission. In general, recommended priorities for indoor recreation projects are:

(1) - (6) (No change.)

(7) to improve indoor recreation opportunities for low-income (for the purposes of this section, low income is defined as median income or lower according to the most recent U.S. census (Median Household Income by State), minority, and elderly citizens;

(8) - (9) (No change.)

(b) (No change.)

(c) Indoor recreation project priority scoring system. If the sponsor is in full compliance at previously assisted grant project sites and is progressing on schedule with all active grant projects in accordance with the provisions of this subchapter, an application will be scored and presented for award consideration. If the sponsor does not meet the requirements of this paragraph, the application will not be

scored or considered further. A project proposal meeting the requirements of this paragraph shall be evaluated according to:

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

(6) the extent to which the project improves public indoor recreation opportunities for low-income, minority, or elderly citizens, up to a total of 15 points.

(A) project improves opportunities for low-income citizens [~~(defined as meeting any federal standard of eligibility for low-income status~~]: determined by multiplying the percentage of population qualifying as low-income by 5 and dividing by 100. Maximum of 5 points.

(B) - (C) (No change.)

(7) - (10) (No change.)

§61.135. Grants for Community Outreach Outdoor Programs.

(a) Program purpose and priorities. All grant applications submitted to the department for community outdoor outreach programs are evaluated for program eligibility and prioritized according to the Project Priority Scoring System set forth in this section. In general, recommended priorities for community outdoor outreach projects are:

(1) (No change.)

(2) to improve community outdoor outreach opportunities for inner-city, rural, low-income (for the purposes of this section, low income is defined as median income or lower according to the most recent U.S. census (Median Household Income by State), ethnic minority, female, physically/mentally challenged, and youth citizens;

(3) - (11) (No change.)

(b) Community outdoor outreach program project priority scoring system.

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

(5) A project proposal meeting the requirements of paragraph (4) of this subsection shall be evaluated according to:

(A) Proposed project's primary constituency. Maximum of 12 points.

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

(v) low-income [~~(defined as meeting any federal standard of eligibility for low-income status)~~] greater than or equal to 50% of total served population: 2 points;

(vi) - (vii) (No change.)

(B) - (K) (No change.)

§61.136. Small Community Grant Programs.

(a) Program purpose and priorities. All grant applications submitted to the department for the small community grant program are evaluated for program eligibility and prioritized according to the Project Priority Scoring System set forth in this section. Scored applications are presented to the Texas Parks and Wildlife Commission for approval. In general, recommended priorities for small community projects are:

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

(5) to improve park and recreation opportunities for low income (for the purposes of this section, low income is defined as median income or lower according to the most recent U.S. census (Median Household Income by State), minority, and elderly citizens;

(6) - (9) (No change.)

(b) Small communities project priority scoring system.

(1) - (6) (No change.)

(7) A project proposal meeting the requirements of paragraph (6) of this subsection shall be evaluated according to the extent that:

(A) - (C) (No change.)

(D) the project improves park and recreation opportunities for low-income, minority, and elderly citizens, up to a maximum of 15 points.

(i) the project improves opportunities for low-income citizens [~~(defined as meeting any federal standard of eligibility for low-income status)~~] as determined by multiplying the percentage of population qualifying as low income by five. Maximum of five points.

(ii) - (iii) (No change.)

(E) - (K) (No change.)

§61.137. Grants for Regional Parks Grant Programs.

(a) Program purpose and priorities. All grant applications submitted to the department for the regional park program are evaluated for program eligibility and prioritized according to the Project Priority Scoring System set forth in this section. Scored applications are presented to the Texas Parks and Wildlife Commission for approval. In general, recommended priorities for regional park projects are:

(1) (No change.)

(2) to reward acquisition of land for intensive use, linear greenway, conservation areas, access to natural water bodies, [~~and/or~~] access to, and/or appropriate development (defined as development that is consistent with sound ecological management and stewardship of natural resources) of other significant natural resources;

(3) to reward appropriate development (defined as development that is consistent with sound ecological management and stewardship of natural resources) of significant water-based or natural resource-based recreation or conservation of aquatic habitat;

(4) - (7) (No change.)

(b) Regional park project priority scoring system.

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

(3) Funding of projects will depend on the availability of federal Land and Water Conservation Fund [~~TRPA~~] funds.

(4) - (5) (No change.)

(6) A project proposal meeting the requirements of paragraph (5) of this subsection shall be evaluated according to the extent to which:

(A) the project provides for the acquisition of land for the purposes of:

(i) - (ii) (No change.)

(iii) acquisition and preservation/conservation of vulnerable natural resources, ecological processes, or rare, threatened, or endangered species of vegetation or wildlife for use as conservation areas (mostly passive use, dedication required). The department will not award points under this criteria for projects that are intended to satisfy mitigation requirements under state or federal law (one to 15 [~~five points~~]); and or

(iv) (No change.)

(v) responsibly managed natural resource access (such as mature forests, prairies, fault zones, listed species habitat, etc., other than water) (one to five points). One to five points will be awarded for each type of acquisition, based on acreage and significance, up to a maximum of 25 points.

(B) the project proposes appropriate development of significant natural resource-based recreation, up to a total of 15 points.

(i) project proposes appropriate development of water-based recreation ([~~one point per recreational opportunity,~~] up to a maximum of five points); and/or

(ii) project proposes appropriate development of natural resource-based recreation (other than water) (one point per recreational opportunity, up to a maximum of five points); and/or

(iii) project proposes acquisition and/or conservation of aquatic habitat (up to five points, based on ecological significance [~~one point per conservation element, up to a maximum of five points~~]).

(C) the project demonstrates matching fund contributions (privately owned land, [~~dedication of publicly owned non-park land,~~] money, in-kind) [~~from sources other than the sponsor~~]. Up to five [~~15~~] points may be awarded on a percentage basis, depending on the amount of matching funds provided by partner local units of government [~~the other entities~~] as determined by dividing the total outside contribution value by the total match and multiplying the result by five [~~15~~].

(D) - (E) (No change.)

(F) the project promotes conservation of natural resources and sustainable development through the use of activities or techniques such as xeriscape or native plant materials, drip or treated effluent irrigation systems, energy efficient lighting systems, recycled materials for facility construction, environmental education or interpretation, significant tree plantings where no trees exist, alternative energy sources, water catchment systems, or other resource conservation measures. One point will be awarded for each conservation element, up to a maximum of five points, based on significance of conservation activities, diversity, and/or cost.

(G) the project demonstrates commitments for funds or resources from the private sector or non-profit groups (maximum of five points, based on the number of commitments).

(H) the project supports the department's Land and Water Conservation Plan. Sponsor must specifically describe how the project meets the goals of the Land and Water Conservation Plan (up to 10 points).

§61.138. Outdoor Urban Park Grants Program.

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

(c) Points will be awarded based on the compatibility of project elements with the scoring criteria in this subsection.

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

(6) Underserved Populations. Project provides for one or more of the following:

(A) (No change.)

(B) improved park or recreation opportunities for low-income citizens (for the purposes of this section, low income is defined as median income or lower according to the most recent U.S. census (Median Household Income by State). Project proposal must include an economic analysis of the relevant population demographics of the service area - (2 points);

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

(7) - (13) (No change.)

§61.139. Indoor Urban Park Grants Program.

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

(c) Points will be awarded based on the compatibility of project elements with the scoring criteria in this subsection.

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

(3) Underserved populations. Project provides for one or more of the following:

(A) (No change.)

(B) improved park or recreation opportunities for low-income citizens (for the purposes of this section, low income is defined as median income or lower according to the most recent U.S. census (Median Household Income by State). Project proposal must include an economic analysis of the relevant population demographics of the service area - (2 points);

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

(4) - (10) (No change.)

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

Filed with the Office of the Secretary of State on September 19, 2008.

TRD-200805094
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: November 2, 2008
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 63. BOARD OF TRUSTEES

34 TAC §63.4

The Employees Retirement System of Texas ("ERS") proposes amendments to §63.4, concerning the Election of Trustees (Ballot). The amendments will allow ERS to obtain needed information earlier in the process from candidates seeking election to serve on the ERS Board of Trustees and to simplify the election/balloting process.

The proposed amendment to subsection (b) of this section changes the first word in the subsection from "Qualified" to "All." In order to timely prepare ballots, newsletters, and other election materials, information is needed from the candidates earlier in the process. A candidate is typically not considered "qualified" until after the close of the petition process and the system has verified the validity of the petitions. This change allows ERS to request this needed information from the candidates earlier in the process.

The proposed amendments to subsection (e) of this section inserts the phrase, "Upon request of the candidate" and removes the term "simultaneously." These changes are needed to ensure that "blank ballots" are sent only to those candidates appearing on the ballot who request them, thereby reducing the cost of the election.

Ms. Paula A. Jones, General Counsel, Employees Retirement System of Texas, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule, and, to her knowledge, small businesses should not be affected.

Ms. Jones also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be simplification and clarification of the rules regarding the trustee election process with the result of saving trust fund resources. There are no known anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or e-mail Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is Monday, November 3, 2008, at 10:00 a.m.

The amendments are proposed under Texas Government Code, §815.003, which provides authorization for the board of trustees ("Board") to adopt rules governing the election of trustees and §815.102, which provides authorization for the Board to adopt rules in carrying out its responsibilities for the administration and operation of the retirement system.

No other statutes are affected by these proposed amendments.

§63.4. Election of Trustees (Ballot).

(a) (No change.)

(b) All [~~Qualified~~] candidates must submit within the time frame established by the system the following information for presentation on the ballot:

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

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

(e) The system/election administrator will, at least 25 days in advance of the close of each election established by the election calendar, make ballots available to eligible voters. Upon request of the candidate, the [~~The~~] system/election administrator will [~~, simultaneously,~~] provide 500 ballots without preprinted names to each candidate.

(f) - (j) (No change.)

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

Filed with the Office of the Secretary of State on September 17, 2008.

TRD-200805080
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: November 2, 2008
For further information, please call: (512) 867-7288

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

The Texas Department of Public Safety proposes amendments to Chapter 4, Subchapter A, §4.1, concerning Transportation of Hazardous Materials.

Amendment to §4.1 is necessary in order to update the rule so that it reflects October 1, 2008 in subsection (a). This amendment is necessary to ensure that the Federal Hazardous Material Regulations, incorporated by reference in this section, reflect all amendments and interpretations issued through that particular date for the subchapter.

Oscar Ybarra, Chief of 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.

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

In addition, Mr. Ybarra 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 to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state.

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

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

The Texas Department of Public Safety, in accordance with the Administrative Procedures and Texas Register Act, Texas Government Code, Chapters 2001, et seq., and Texas Transporta-

tion Code, Chapter 644, will hold a public hearing on October 20, 2008, at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to 37 TAC §4.1, regarding Hazardous Material and Transportation Safety, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Mark Rogers, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Rogers at (512) 424-7509 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Mark Rogers, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-7509.

The amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.1. Transportation of Hazardous Materials.

(a) The director of the Texas Department of Public Safety incorporates, by reference, the Federal Hazardous Materials Regulations, Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, and 180, including all interpretations thereto, for commercial vehicles operated in intrastate, interstate, or foreign commerce, as amended through October 1, [~~April 1,~~] 2008. All other references in this section to the Code of Federal Regulations also refer to amendments and interpretations issued through October 1, [~~April 1,~~] 2008.

(b) (No change.)

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

Filed with the Office of the Secretary of State on September 17, 2008.

TRD-200805071
Stanley E. Clark
Director
Texas Department of Public Safety
Earliest possible date of adoption: November 2, 2008
For further information, please call: (512) 424-2135

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SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.11

The Texas Department of Public Safety proposes amendments to Chapter 4, Subchapter B, §4.11, concerning General Applicability and Definitions.

The first amendment proposed for §4.11 updates the rule so that it reflects October 1, 2008 in subsection (a). This amendment is necessary to ensure that the Federal Motor Carrier Safety Regulations, incorporated by reference in this section, reflect all amendments and interpretations issued through that particular date for the subchapter. A second amendment to §4.11 is necessary in order to implement the requirements of the Unified Carrier Registration Act. The Unified Carrier Registration Act was established by federal law in the highway reauthorization bill known as the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, which was enacted on August 10, 2005. Interstate motor carriers exempt from economic regulation are now required to comply with the Unified Carrier Registration Act so all references to these carriers are being removed from subsection (c)(2) of §4.11.

Oscar Ybarra, Chief of 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.

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

In addition, Mr. Ybarra 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 to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state.

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

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

The Texas Department of Public Safety, in accordance with the Administrative Procedures and Texas Register Act, Texas Government Code, Chapters 2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on October 20, 2008, at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North

Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to 37 TAC §4.11, regarding Hazardous Material and Transportation Safety, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Mark Rogers, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Rogers at (512) 424-7509 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Mark Rogers, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-7509.

The amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.11. General Applicability and Definitions.

(a) General. The director of the Texas Department of Public Safety incorporates, by reference, the Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385, 386, 387, 390 - 393, and 395 - 397 including all interpretations thereto, as amended through October 1, [~~April 1,~~] 2008. All other references in this subchapter to the Code of Federal Regulations also refer to amendments and interpretations issued through October 1, [~~April 1,~~] 2008. The rules adopted herein are to ensure that:

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

(b) (No change.)

(c) Applicability.

(1) (No change.)

(2) The regulations contained in Title 49, Code of Federal Regulations, Part 392.9a, and all interpretations thereto, are applicable to motor carriers operating exclusively in intrastate commerce and to the intrastate operations of interstate motor carriers that have not been federally preempted by the United Carrier Registration Act of 2005 [~~for-hire interstate motor carriers exempt from economic regulation~~]. The term "operating authority" as used in Title 49, Code of Federal Regulations, Part 392.9a, for the motor carriers described in this paragraph, shall mean compliance with the registration requirements found in Texas Transportation Code, Chapter 643[~~, for vehicles operating in intrastate commerce, or Texas Transportation Code, Chapters 643 or 645, for for-hire interstate motor carriers exempt from economic regulation~~]. For purposes of enforcement of this paragraph, peace officers certified to enforce this chapter, shall verify that a motor carrier is not registered, as required in Texas Transportation Code, Chapter [~~Chapters~~] 643 [~~or 645~~], before placing a motor carrier out-of-service. Motor carriers placed out-of-service under Title 49, Code of Federal Regulations, Part 392.9a may request a review under §4.18 of this chapter. All costs associated with the towing and storage of a vehicle and load declared out-of-service under subsection (c)(2) shall be the responsibility of the motor carrier and not the department or the State of Texas.

(3) - (5) (No change.)

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

Filed with the Office of the Secretary of State on September 17, 2008.

TRD-200805070
Stanley E. Clark
Director
Texas Department of Public Safety
Earliest possible date of adoption: November 2, 2008
For further information, please call: (512) 424-2135

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 7. TEXAS COUNCIL ON PURCHASING FROM PEOPLE WITH DISABILITIES

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

40 TAC §§189.2 - 189.4, 189.7, 189.8, 189.11

The Texas Council on Purchasing from People with Disabilities (council) proposes amendments to §§189.2 - 189.4, 189.7, 189.8, and 189.11.

The proposed amendments to §189.2, regarding definitions, remove the definition of Texas General Services Commission (commission) and replace it with Comptroller of Public Accounts (comptroller). This is due to House Bill 3560, 80th Legislature, 2007, which transferred the state procurement functions to the comptroller and renamed the commission the Texas Facilities Commission. The comptroller now provides the administrative assistance to the council that the commission used to provide. The proposed amendments also remove the word "price" from the definition of "exception" in order to clarify the rule in accordance with statute. State law does not provide an exception for price. Instead, the council is charged with ensuring that products and services sold through the council's programs are priced at a fair market price.

The proposed amendments to §189.3, regarding organization, remove the references to the commission and replace them with comptroller.

The proposed amendments to §189.4, regarding ethical standards, replace the executive director of the commission with the deputy comptroller.

The proposed amendments to §189.7, regarding contracting with central non-profit agencies, §189.8, regarding product specifications and exceptions, and §189.11, regarding records, remove the references to commission and replace them with the comptroller.

John Luna, Chairperson of the Council, has determined for the first five-year period the amendments will be in effect, there will be no fiscal implication for the state or local governments as a result of enforcing or administering these amended rules.

Mr. Luna has further determined that for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amendments will be a clearer, more consistent compliance with statutorily mandated purchase of products and services provided by the council and the clarification of existing rules. There is no anticipated effect on large, small or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments and there is no anticipated impact on local employment.

Comments on the proposals may be submitted in writing to Kelvin Moore, Program Administrator, Texas Council on Purchasing from People with Disabilities, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be submitted electronically to kelvin.moore@tcppd.state.tx.us or faxed to (512) 475-0950. Comments must be received no later than 30 days from the date of publication of these proposed amendments in the *Texas Register*.

The amendments are proposed under the authority of the Texas Human Resource Code §122.013.

The amendments affect the Texas Human Resource Code §122.014 and §122.016.

§189.2. Definitions.

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

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

~~[(4) Commission--The General Services Commission.]~~

(4) [~~(5)~~] Community rehabilitation program (CRP)--A government entity, private nonprofit unincorporated entity which has its own nonprofit status and federal tax identification number and has as its primary purpose the employment of persons with disabilities to produce products or perform services for compensation, or a private nonprofit incorporated entity with its own federal tax identification number, articles of incorporation and bylaws that establish its existence for the primary purpose of employing persons with disabilities to produce products or perform services for compensation.

(5) Comptroller--The Comptroller of Public Accounts.

(6) - (8) (No change.)

(9) Exception--Any product or service approved for the state use program purchased from a vendor other than a CRP because the state use product or service does not meet the applicable requirements as to quantity, quality, delivery, life cycle costs, [~~price,~~] and testing and inspection requirements pursuant to, §§2155.138 and 2155.069, Government Code or as described in §§122.014 and 122.016, Human Resources Code.

(10) - (11) (No change.)

§189.3. Organization.

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

(g) The council shall accept legal, and other necessary support from the comptroller [~~commission~~] in accordance with legislative appropriation.

(h) The council shall coordinate with the upper-level management employee appointed by the comptroller [~~commission~~] to enable the comptroller [~~commission~~] to meet its requirements of this chapter.

(i) The council shall coordinate with the comptroller [~~commission~~] to facilitate the inclusion of the programs administered under this chapter in the comptroller's [~~commission's~~] procurement policy manual(s).

§189.4. Ethical Standards.

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

(e) If the Deputy Comptroller [~~executive director of the commission~~] has knowledge that a potential ground for removal exists, the Deputy Comptroller [~~executive director~~] shall notify the presiding officer of the council of the potential ground. If the presiding officer is notified under this section, or if the presiding officer has knowledge that a potential ground for removal exists, the presiding officer shall notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the Deputy Comptroller [~~executive director~~] shall notify the next highest officer of the council, who shall notify the governor and the attorney general that a potential ground for removal exists.

§189.7. Contracting with Central Non-profit Agencies.

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

(d) A percentage of the management fee described in subsection (b) of this section shall be set by the council and paid to the council in an amount necessary to reimburse the general revenue fund for direct and reasonable costs incurred by the comptroller [~~commission~~] in administering its duties under Chapter 122.

(e) - (r) (No change.)

§189.8. Product Specifications and Exceptions.

(a) A product manufactured for sale through the comptroller [~~commission~~] to any office, department, institution or agency of the state shall be manufactured or produced according to specifications developed by the comptroller [~~commission~~]. If the comptroller [~~commission~~] has not developed specifications for a particular product, the production shall be based on commercial or federal specifications in current use by the industry.

(b) Requisitions for products and/or services required by state agencies are processed by the comptroller [~~commission~~] according to comptroller [~~commission~~] rules.

(c) An exception from subsection (a) of this section may be made in any case as follows:

(1) under the rules of the comptroller [~~commission~~], the product and/or service so produced or provided does not meet the reasonable requirements of the office, department, institution, or agency; or

(2) the requisitions made cannot be reasonably complied with through provision of products and/or services produced by persons with disabilities.

(d) An office, department, institution, or agency may not evade purchasing products and/or services produced or provided by persons with disabilities by requesting variations from standards adopted by the

comptroller [~~commission~~] when the products and/or services produced or provided by persons with disabilities, per established standards, are reasonably adapted to the actual needs of the office, department, institution, or agency and comply with Government Code §2155.138 and §2155.069.

(e) The comptroller [~~commission~~] shall provide the council with a list of items known to have been purchased under the exceptions provided in subsection (c) of this section monthly, in the format adopted by the council.

(f) The council, subcommittee, or staff shall review and process the exception reports received from state agencies, and the comptroller [~~commission~~] that purchase products or services available from a central non-profit agency or community rehabilitation program under this chapter, but purchased from another business that is not a central non-profit agency or community rehabilitation program under this chapter.

(g) - (h) (No change.)

§189.11. Records.

(a) The comptroller [~~commission~~] is the depository for all records of the council's operations and disclosure of records are subject to requirements of Chapter 552 of the Texas Government Code (the "Public Information Act").

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

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

Filed with the Office of the Secretary of State on September 22, 2008.

TRD-200805108
Ron Pigott
Legal Counsel
Texas Council on Purchasing from People with Disabilities
Earliest possible date of adoption: November 2, 2008
For further information, please call: (512) 463-3562

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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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 371. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY

SUBCHAPTER C. UTILIZATION REVIEW

The Health and Human Services Commission (HHSC) adopts the repeal of §371.212, relating to Case Mix Classification System; the repeal of §371.213, relating to Utilization Review and Control Activities Performed by Texas Health and Human Services Commission; and the repeal of §371.214, relating to Texas Index for Level of Effort Assessments, without changes to the proposal as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5131) and will not be republished. HHSC also adopts new §371.212, relating to Minimum Data Set Assessments, and new §371.214, relating to Resource Utilization Group Classification System, with changes to the proposed text as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5131). The text of the rules will be republished. Proposed §371.212 is adopted with one change. The change was made in response to a commenter and is less restrictive. The other change is a point of clarification to reconcile §371.214(i) with the rules adopted by Department of Aging and Disability Services (DADS) concerning other types of resident Minimum Data Set (MDS) assessments.

New §371.212 describes requirements nursing facilities must follow when completing the MDS Recipient Assessment Instrument (RAI), including time frames for completing certain assessments and documentation that must be included in the Medicaid recipient's clinical record to support items claimed on the MDS RAI. The requirements are consistent with the Long-Term Care Facility Resident Assessment Instrument User's Manual (MDS RAI User's Manual), Version 2.0, December 2002, published by the Centers for Medicare and Medicaid Services (CMS), which describes processes and clinical items required for MDS resident assessments.

New §371.214 describes the requirements for signatures on the MDS; documentation that must be included in the Medicaid recipient's clinical record to support an MDS assessment claim; training of nursing facility staff on the MDS; the procedure for making corrections to a submitted MDS assessment claim; the HHSC Office of Inspector General (OIG) process for conducting an onsite utilization review; clinical record access; record affidavit requirements; and the procedures a nursing facility must follow when requesting reconsideration and appeal of utilization review findings.

In addition, new §371.214 describes HHSC OIG's sampling methodology. A statistically valid random sample will be drawn from a population of the nursing facility's paid claims along with their related RUG classification and MDS assessment claim forms for a specific time period. The proposed new section also addresses the onsite utilization review process; the calculation of a facility's error rate based on assessment errors in which reclassifications occurred; the criteria for determining an administrative error; the recovery of any identified overpayment; and referrals to HHSC OIG Medicaid Provider Integrity for investigation.

An administrative error occurs when a required signature or paper form is missing or not made available during the onsite review period. An assessment error is a RUG reclassification identified during the utilization review process that results in an underpayment or overpayment associated with a given MDS assessment form. HHSC OIG will calculate a facility's error rate based on assessment errors in which reclassifications occurred. HHSC OIG will extrapolate a facility's net overpayment error rate to the population of dollars associated with any RUG classifications found in error. For the first year the rules are in effect, HHSC OIG will extrapolate when a facility's error rate exceeds 25%. For the first six months of the second year the rules are in effect, HHSC OIG will extrapolate when a facility's error rate exceeds 20%. For the second six months of the second year the rules are in effect, HHSC OIG will extrapolate when a facility's error rate exceeds 15%. For the third year and subsequent years the rules are in effect, HHSC OIG will extrapolate for any error rate identified. For all years the rules are in effect, HHSC OIG will refer a facility to Medicaid Program Integrity if the facility's error rate is greater than 25% or for a suspected program violation.

The new sections replace repealed §§371.212, 371.213, and 371.214 relating to nursing facilities' use of the TILE case mix classification system and assessments.

The public comment period on the proposed rules began July 4, 2008, and ended August 18, 2008. A public hearing was held on August 1, 2008 in the Texas Department of Aging and Disability Services Public Hearing Room at 701 West 51st Street, Austin, Texas. During the public comment period, HHSC OIG received comments from Alamo LTC Services, Bremond Nursing and Rehab, Brownfield Rehab and Care, Canyon Healthcare, Care Inn of Abilene, Care Inn of Edna, Care Inn of Llano, Care Inn of Seguin, Cleburne Health and Rehab, The Courtyards at Forth Worth, The Courtyards at Pasadena, Crosbyton Nursing and Rehabilitation Center, Floydada Rehabilitation and Care, Forest Lane Healthcare, Fundamental Administrative Services, LLC., Grace Care Center, Health Care & Rehab of Corsicana, Heritage Manor of Canton, Heritage Oaks, Iowa Park Healthcare, Kirkland Court Health and Rehab, Lakeside Rehabilitation and Care, Lockney Health and Rehab, Longmeadow Healthcare, Mead-

owbrook Care, Mt. Pleasant Assisted Living, Mimosa Manor, Mulberry Manor, Pleasant Springs Healthcare, Preferred Care Partners Management Group; Retama Manor of Del Rio, Retama Manor of Victoria South, Richland Hills Nursing and Rehab, River Valley Health & Rehabilitation Center, San Jacinto Manor, Senior Care Consultants, Inc., Stoneybrook Healthcare Center, Texas Health Care Association (THCA), Texas Specialty Nursing and Rehab, Texoma Healthcare, Texoma Specialty Care Center, Tulia Health and Rehab, and Winterhaven Healthcare. Generally, the commenters requested clarification and expressed concerns about how HHSC OIG will implement specific provisions of §371.214. THCA expressed support for HHSC OIG's efforts to develop "balanced rules" in conjunction with stakeholders. Based on the comments received, HHSC OIG made one change to §371.212(b) as proposed. The change was made based on a comment and is less restrictive. The change deleted the language "and the Long-Term Care Medicaid Information Section." The change eliminates confusion with the Resident Assessment Instrument (RAI) manual requirements. The other change is a point of clarification to reconcile §371.214(i) with the rules adopted by Department of Aging and Disability Services (DADS) concerning other types of resident Minimum Data Set (MDS) assessments. The change clarifies the assessments by adding the language "significant change in status assessment, annual assessment, significant correction to a prior quarterly assessment, or a significant correction to a prior annual assessment". HHSC OIG provided clarification on all provisions of concern in HHSC OIG's responses to comments in this preamble as follows:

Comment: Concerning §371.212(a)(2), the commenter expressed that "A resident's performance, behavior mood etc. are often inconsistent...the number of times a behavior or ADL support has to happen to code a certain item on the MDS is specific for each MDS item and is often not related to consistent performance or behavior but in some instances a single incidence of behavior or ADL support. If consistency here is trying to get the 60% rule to persist beyond the TILE system then it is contradictory to the RAI manual MDS scoring." The commenter stated that "Consistency as a term does not have any meaning in the RAI process and so must be further clarified if the term will be used to change completion if (sic) items on the MDS."

Response: The resident's MDS would be coded according to RAI User's Manual. The term "consistent" is used in CMS RAI Version 2.0 Manual Section 1.14, which states in relevant part "it is always expected information contained in the clinical record supports rather than conflict with the MDS....and it is expected that this documentation would chronicle, support and be consistent with findings of each MDS assessment....the MDS can still be verified by a review of the entire record to verify that the medical record supports and is consistent with the responses on the MDS."

Comment: Concerning §371.212(b), one commenter is concerned that the requirement for completion of the admission comprehensive assessment and the LTCMI section by day 14 conflicts with the RAI manual requirements.

Response: HHSC agrees; the change was made in response to the commenter and is less restrictive.

Comment: Concerning §371.214(m), some commenters asked for clarification on the meaning of the language, "statistically valid random sample generated at a minimum confidence level of 90% and a maximum precision of 10%." One of the commenters also asked for clarification regarding the meaning of the language, "Related extrapolations will be done at the lower limit of the applicable confidence interval," and its effect on a "facility with 80 Medicaid patients, 40 Medicaid patients, and 20 Medicaid patients."

Response: As stated in §371.214(m), HHSC OIG will identify the population of the nursing facility's paid claims along with their related RUG classification and MDS assessment claim forms from which a statistically valid random sample will be drawn for review. There will be a minimum 90% probability that the results of sampling will fall within a range of values equal to the error rate plus/minus (+/-) a margin of error of no more than 10%. For example, if a hypothetical facility's error rate is 20% plus/minus (+/-) a margin of error of 5%, the extrapolation will be done at the 15% (lower limit), which equals 20% less 5%.

All assertions of recovery will be based on the error rate calculation found in the formula described in §371.214(r)(2)(B) and extrapolations as provided in §371.214(r)(C)(ii)(I) - (IV). Consistent with existing HHSC OIG practice, CMS Payment Accuracy Measurement (PAM) and Payment Error Rate Measurement (PERM) studies, and the United States Department of Health and Human Services Office of Inspector General (USDHHS OIG), the general formula for extrapolation is ((error rate) +/- margin of error) x (dollars in population of RUGs in error). Note that the margin of error is a function of the sample size and changes as the sample size changes. Regarding the effect of extrapolation on differing numbers of Medicaid patients, other than raising or lowering the number of dollars available for sampling from a given facility, the number of patients, like the number of claims, has no direct effect on the calculation of the error rate.

Comment: Concerning §371.214(m) and §371.214(r), some commenters stated that the rules were not clear on how HHSC will apply the error rate only to the RUG levels found to be in error and asked how the subsequent random sample will be identified. A commenter further asked whether "RUGs levels found to be in error in the sample would only be extrapolated to the smaller specified population," where the population included "some specific selected RUG levels." A commenter stated that if, for a facility with a 15% error rate, "90% of the 15% error rate is due to errors in the RAD category and 10% of the 15% is due to SE3 category, will both categories get hit with a 15% error rate or will the RAD get hit with at 13.5% error rate (90% of the 15% error rate) and the SE3 will get hit with a 1.5% error rate (10% of the 15% error rate)?"

Response: The population is defined in §371.214(m). The statistically valid random sample will be generated from this population. As previously stated and as described in §371.214(r)(2)(C)(ii), extrapolations will be applied only to the RUG classifications found in error. HHSC OIG interprets subsection (r) to mean that any extrapolation will be applied proportionately to every RUG level that was found in error but will not be applied to RUG levels that were not found to be in error. Since the sample will be proportionately stratified on dollars in exactly the same way that the population is stratified, the calculated error rate applied will be uniform. The calculated error rate will not apply to RUGs in which no errors are found. Consistent with existing HHSC OIG practice, CMS PAM and PERM studies, and the USDHHS OIG, the general formula for extrapolation is ((error rate) +/- margin of error) x (dollars in population of RUGs in error). Therefore, using the commenter's hypothetical case, if the error rate (minus the margin of error) is 15%, the extrapolation would be 15% x (total dollars paid for

in RAD and SE3 combined). Additionally, HHSC OIG will credit the net dollars of adjusted claims to the extrapolated amount.

Comment: Concerning §371.214(m) and §371.214(r)(2), some commenters asked for clarification as to how the population and subsequent random sample will be identified and how extrapolation will be applied. Some commenters expressed confusion regarding HHSC OIG's determination of "population" which includes RUG classifications "that meet certain criteria such as dollar or claim volume." The commenter did not understand how a sample could be random if it must meet a certain dollar value, how "dollar or claim volume" would be determined, and how HHSC OIG would extrapolate to a "universe" of claims to determine a "penalty." The commenter was also concerned that if four claims were included in a review and two were in error, the result would be a 50% error rate and if this 50% error rate was extrapolated to a "universe" of 20 claims of which 18 were correct, the resulting "penalty" would be unfair and excessive.

Response: As stated in §371.214(m), HHSC OIG will identify a population of the nursing facility's paid claims along with their related RUG classification and MDS assessment claim forms from which a statistically valid random sample will be drawn for review. Regarding the commenter's concern about the generated sample being random, it is equally possible that HHSC OIG will select items of any dollar value in its random selection process. All assertions of recovery will be based on the calculation found in the formula described in §371.214(r)(2)(B) and extrapolations as provided in §371.214(r)(2)(C)(ii)(I) - (IV). Consistent with existing HHSC OIG practice, CMS PAM and PERM studies, and the USDHHS OIG, the general formula for extrapolation is ((error rate) +/- margin of error) x (dollars in population of RUGs in error). Regarding the commenter's concerns about the number of claims found in error, note that as stated in the error rate calculation found in §371.214(r)(2)(B), the number of dollars in error and not the number of claims in error is used in calculating the error rate. The rules do not include provisions for penalties.

Comment: Concerning §371.214(m), §371.214(n), and §371.214(r)(2)(C)(ii), some commenters indicated that the rules are not clear as to whether prior reviewed population/periods will be reviewed again. Some commenters expressed concern that error rate extrapolations would be applied to the same population more than once and offered suggestions to avoid this scenario and to allow a facility the opportunity to make changes based on errors found in an earlier review. A commenter suggested that "only assessments with R2b dates after the exit date of the previous review should be available for review." Another commenter suggested that only assessments that occur after the last utilization review exit date should be eligible for the next review, but not those occurring prior to that date. A commenter was concerned that if extrapolation were done more than once to the same population, the result would be "double-dipping."

Response: As indicated in §371.214(m), HHSC OIG will generate a statistically valid random sample from the population of paid claims, along with their related RUG classifications and MDS assessment claim forms. The population for a given review is determined by the date on which the claims associated with a given MDS assessment form were paid, not on the assessment completion (R2b) dates. Once a claim and the associated MDS assessment form has been part of a population or sample reviewed under these rules, it will not be included in a population or sample for a subsequent review conducted under these rules.

Comment: Concerning §371.214(m), a commenter asked how HHSC OIG will determine the source of the statistically valid random sample. The commenter stated that the proposed rule does not identify whether all claims submitted since the previous review will be included, or "only a selection of MDSs within particular RUGS level in order to perform a more focused review will occur." The commenter added that the rule is "unclear whether the error rate will be applied to the MDSs within the limited sample group."

Response: As stated in §371.214(m), HHSC OIG will identify the population of paid claims, along with their related RUG classifications and MDS assessment claim forms, from which a statistically valid random sample will be drawn for review. Once a claim and the associated MDS assessment claim form have been part of a population or sample reviewed under these rules, they will not be included in a population or sample for a subsequent review conducted under these rules. The derivation of the error rate is found at §371.214(r)(2)(B).

Comment: Concerning §371.214(n)(2)(B), a commenter asked for clarification regarding the notarized records affidavit. Specifically, the commenter asked whether the facility must provide the affidavit with each additional supporting document requested by HHSC OIG nurse reviewer, "not only just for error changes." The commenter described an example where the nurse reviewer identifies an error and the facility cannot find any additional documentation and asked whether the affidavit is required only at that time.

Response: Section 371.214(n)(2)(B), requires that a nursing facility submit a notarized records affidavit at the nurse reviewer's request. As described in §371.214(q)(4), if the nursing facility submits additional documentation to support a request for reconsideration of review findings, a separate notarized records affidavit must accompany this additional documentation.

Comment: Concerning §371.214(r), a commenter asked for verification that assessment errors, not administrative errors, will be considered when calculating error rates during an MDS review.

Response: The commenter is correct. Only assessment errors will be considered when calculating error rates.

Comment: Concerning §371.214(r), a commenter expressed concern that the proposed rules are not clear whether HHSC OIG will apply the error rate to only RUG levels found to be in error. The commenter provided an example of a facility with a 15% error rate and 90% of the 15% error rate is due to errors in the RAD category and 10% of the 15% is due to the SE3 category. Based on this example, the commenter asked whether the 15% error rate would apply to both categories or distributed proportionately between the two categories found to be in error.

Response: As previously stated and as described in §371.214(r)(2)(C)(ii), extrapolations will be applied only to the RUG classifications found in error. Extrapolations will be applied proportionately to every RUG classification that was found in error but will not be applied to RUG classifications that were not found to be in error. Since the sample will be proportionately stratified, the calculated error rate applied will be uniform. The calculated error rate will not apply to RUGs in which no errors are found. Consistent with existing HHSC OIG practice, CMS PAM and PERM studies, and federal USDHHS OIG, the general formula for extrapolation is ((error rate) +/- margin of error) x (dollars in population of RUGs in error). Therefore, using the commenter' hypothetical case, the extrapolation (minus the margin of error) would be 15% x (total dollars paid for in RAD and SE3 combined). Additionally, HHSC OIG will credit the net dollars of adjusted claims from the extrapolated amount.

Comment: Concerning §371.214(r)(2)(C), a commenter asked, "For Utilization Reviews after September 1, 2010, it refers back to subparagraph (ii) and continues on to (iii) referring to an error rate greater than 25%. Does this mean that 'all' reviews after September 1, 2010 cannot be greater than 25%, else it'll result in investigations? Or does it rotate through another year at 25% then 20% and 15% as previously stated in subparagraph (ii a-c) in which extrapolation occurs? It sounds to me, that any review after September 1, 2010 cannot exceed 25% and if it does it a) extrapolation occurs on the RUGS found in error and b) result in investigations."

Response: Section 371.214(r)(2)(C)(ii)(I) - (IV) applies only to HHSC OIG's use of extrapolation to calculate an overpayment associated with an MDS assessment claim. This requirement is separate from the requirement in §371.214(r)(2)(C)(iii). As provided in §371.214(r)(2)(C)(iii), if HHSC OIG finds an error rate exceeding 25% during an onsite review conducted after the effective date of the rule, HHSC OIG Utilization Review will refer the facility to HHSC OIG Medicaid Provider Integrity (MPI) for investigation. HHSC will extrapolate any error rate on or after September 1, 2010.

Comment: Concerning §371.214(r)(2)(C)(ii), a commenter asked whether extrapolation will affect the "current" population or "will it also affect everyone since the last review"; whether, for the "first three periods (25%, 20% and 15%)," the extrapolation will affect all Medicaid residents or "only just the RUG classifications found in error" as it states in §371.214(r)(2)(C)(ii)(IV); and whether extrapolation will affect only current Medicaid residents' RUGs during that specific review or will the extrapolation "retro-back" to the last review.

Response: All samples will be generated from a population to include only paid Medicaid claims and their related MDS assessment forms for a specified time period that meet certain criteria (see §371.214(m)). Extrapolations will be applied only to the RUG classifications associated with paid claims during the specified time period found in error and when the facility error rate exceeds the appropriate threshold described in §371.214(r)(2)(C)(ii)(I), (II), (III), or (IV).

Comment: Concerning §371.214(r)(2)(C)(ii), some commenters suggested that HHSC consider providing for a "minimum" error rate of 7%. The commenters suggested that this minimum error rate would not be extrapolated to the population even after the first two years the rules are in effect. One of the commenters stated that earlier draft language discussed in HHSC OIG meetings with stakeholders included a 5% minimum error rate and that the "rules basically state that any error rate starting with year three will be extrapolated to the population." This commenter also suggested that extrapolation should not occur unless the error rate is above the suggested minimum percentage of 7%.

Response: A "minimum" error rate was replaced by a phased, multi-year, graduated approach for implementing extrapolation.

Comment: Concerning §371.214(r)(2), some commenters expressed concern that the rules do not include "definitive language that states the error rate will be extrapolated to the population if the error rate is in the facility's favor." A commenter asked "Is the extrapolation going to occur for both the underpayment and overpayments or just the overpayments as it appears to state here? If it is just for the overpayments then what is the logic there, overpayments are a result of practices and therefore can be assumed to be population wide, but underpayments are individual mistakes? This policy does not appear to 'strike a balance' but rather to 'maintain cost effectiveness' by being punitive for human error."

Response: Section 371.214(r)(2)(C)(ii) only refers to extrapolation of overpayments. The rule expressly limits underpayments to reimbursement and does not allow for extrapolation of underpayments. Underpayments will offset overpayments when calculating the error rate. Only net overpayments will be extrapolated. Therefore, the error rate used for the extrapolation does take underpayments into account.

Comment: Concerning §371.214(r)(2)(C)(ii)(III), a commenter stated that the extrapolation proposed for reviews conducted after September 1, 2010 is punitive in nature. The commenter added that "it is unrealistic to have zero tolerance when there will be legitimate disagreements between the providers and the Office of Inspector General (OIG) in the interpretation of this rule." The commenter added that the time it takes to complete the appeal process would make unavailable to a provider a "large sum of the provider operating capital," and that many providers "may be financially unable to provide quality resident care and meet payroll and operating expenses during this prolonged period," having a "direct adverse impact" on the facility's residents.

Response: HHSC OIG established a phased, multi-year, graduated approach for implementing extrapolation as described in §371.214(r)(2)(C)(ii)(I) - (IV) to address similar stakeholder concerns. The rules are consistent with the Minimum Data Set, Resident Assessment Instrument User's Manual published by CMS and its use by nursing homes to provide quality care to their residents.

Comment: A commenter asked about §371.214(n)(2) and whether the facility will know the population that was identified and what criteria were used to choose that population.

Response: HHSC OIG assumes that the commenter is asking about §371.214(m), where the population is defined. The facility's population is represented in total dollars paid during a specified time period. The criteria for selecting a population will change on a case-by-case basis.

Comment: A commenter asked for clarification regarding the minimum of six business hours in which to provide requested information for an onsite review period that is more than one day. The scenario is that the reviewer asks for more information at 4:30 pm but leaves the nursing facility at 5:00 pm with the intention of returning the next day. The commenter asked if the facility is penalized for not getting her the information by 5:00 pm or does the NF have 5 1/2 hours the next day, starting from the time she re-enters to locate the documentation. The commenter also asked if the facility will still have the rest of the six business hours to provide the documentation if the reviewer asks for more information an hour or two before she exits. The commenter asked "What if it's late in the evening, do we go the next day and 'drive' the information to her? How does this work?"

Response: According to §371.214(n)(2)(D)(i), if the onsite review period is more than one day and the request for information is made at 4:30 pm, and the reviewer leaves at 5:00 pm, the nursing facility would have 5 1/2 business hours the next day to provide the requested information. If a reviewer asks for more information an hour or two before exiting, the facility will have the remainder of the six business hours to provide the requested information, but it is the facility's responsibility to deliver the information to the reviewer's place of business. Any changes after the exit conference may affect the findings but they will not affect the exit conference itself.

Comment: One commenter asked for clarification regarding the coding of therapy to receive a rehab RUG.

Response: HHSC OIG refers the commenter to the RAI Manual, Chapter 3, Section P, Special Treatment and Procedures for coding of therapies.

1 TAC §§371.212 - 371.214

The repeals are adopted pursuant to Texas Government Code §531.0055, which provides the HHSC executive commissioner the authority to adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §32.021, which authorizes HHSC's Executive Commissioner to adopt necessary rules for the proper and efficient operation of the Medicaid program; Texas Government Code §531.021(a), which provides HHSC with the authority to administer the Medicaid program in Texas; Texas Government Code §531.102, which provides HHSC OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; and Texas Government Code §531.102(e), which provides HHSC OIG the authority to set specific claims criteria that, when met, require the office to begin an investigation.

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

Filed with the Office of the Secretary of State on September 19, 2008.

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Texas Health and Human Services Commission
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1 TAC §371.212, §371.214

The new sections are adopted pursuant to Texas Government Code §531.0055, which provides the HHSC executive commissioner the authority to adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §32.021, which authorizes HHSC's Executive Commissioner to adopt necessary rules for the proper and efficient operation of the Medicaid program; Texas Government Code §531.021(a), which provides HHSC with the authority to administer the Medicaid program in Texas; Texas Government Code §531.102, which provides HHSC OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; and Texas Government Code §531.102(e), which provides HHSC OIG the authority to set specific claims criteria that, when met, require the office to begin an investigation.

§371.212. Minimum Data Set Assessments.

(a) Under 40 TAC §19.801 (relating to Resident Assessment), a nursing facility must conduct initially and periodically thereafter a comprehensive, accurate, standardized, reproducible assessment of each nursing facility recipient's functional capacity that describes the recipient's ability to perform daily life functions and significant impairments in functional capacity. The nursing facility must conduct the assessment using a Minimum Data Set (MDS) Resident Assessment Instrument (RAI) based on the MDS RAI Resource Utilization Group (RUG-III) 34-group case mix classification system selected by the state and established by the Centers for Medicare and Medicaid Services (CMS).

(1) Requirements for completing the MDS are derived from the RAI, including the MDS, specified by the Department of Aging and Disability Services (DADS). The nursing facility must adhere to any updates released by CMS in addition to the state specific mandates. To the extent such CMS updates conflict with DADS specific mandates, the CMS updates shall control.

(2) Completion of the MDS does not remove the nursing facility's responsibility to document in a clinical record a detailed assessment of all relevant issues that affect the recipient. All clinical record documentation must chronicle, support, and be consistent with the findings of, rather than conflict with, each MDS assessment. Documentation in the clinical record must contain pertinent facts, findings, and observations about an individual's health history including past and present illnesses, treatments, and outcomes to support the care the recipients are receiving. Inconsistent and unsupported findings will not be validated and may result in an adjustment in the RUG-III classification.

(3) All coded items on MDS assessments submitted for Medicaid reimbursement must be supported by documentation in the recipient's clinical record. Sources of information (e.g., other health care professionals, family members) utilized for the MDS assessment must be identified and must be supported by the clinical record.

(4) Nursing facility resident records must be maintained in accordance with:

(A) 40 TAC §19.1910 (relating to Clinical Records);

(B) 40 TAC §19.1912 (relating to Additional Clinical Record Service Requirements);

(C) 40 TAC §19.1210 (relating to Certification and Recertification Requirements in Medicaid-Certified Facilities);

(D) 40 TAC §19.1924 (relating to Financial Records), including supporting documents and other records necessary to fully document the services and supplies provided and delivered to the resident, the medical necessity of those services and supplies, and records or documents necessary to determine whether payment for those items or services was due and was properly made;

(E) Section 354.1004 of this title (relating to Retention of Records) which requires a facility to maintain all records necessary to fully disclose the services provided and to retain these records for a period of five years from the date of the service, or until all audit questions are resolved, whichever is longer;

(F) the Health Insurance and Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 United States Code §§1320d-1320d-8;

(G) 45 Code of Federal Regulations Parts 160 and 164 (relating to Health Insurance Reform: Security Standards); and

(H) accepted professional health information management standards and practices.

(5) Documentation must have the recipient's name, and the signatures, dates of signatures, and titles of individuals providing care for the recipient. Documents, such as grids and flow sheets that include entries by multiple staff members at different times must include complete dates with initials or signatures to clearly identify who provided the care. For purposes of this subchapter, a signature may be an original

handwritten, electronic, photocopier, or facsimile transmitted signature or an electronic signature submitted in compliance with HHSC policy unless the authenticity of the signature is in doubt.

(b) An admission comprehensive assessment must be completed by day 14 and include the Basic Assessment Tracking form and MDS Sections AA, AB-AD, A-R, Sections V and W. The annual assessment must be completed no later than the 366th day from the last comprehensive assessment and no later than 92 days from the previous assessment.

(1) The MDS Long-Term Care Medicaid Information Section and Section W must be completed on all MDS assessments submitted for Medicaid.

(2) An admission assessment or quarterly assessment will establish RUG-III classification. Medical necessity is evaluated each time an MDS assessment is completed, until permanent medical necessity (PMN) is established by the Texas Medicaid claims administrator (MCA), as set out in 40 TAC §19.2403 (relating to Medical Necessity Determination).

(3) A significant-change assessment must be completed as soon as needed to provide appropriate care to the resident, but in no case later than 14 calendar days after the determination was made that a significant change occurred. The nursing facility must document the significant change in condition. The documentation must include a completed comprehensive MDS assessment with Resident Assessment Protocols (RAPS). A significant change assessment resets the schedule for the next annual assessment.

(4) A quarterly assessment following an admission assessment, an annual assessment, or a significant change-in-status assessment must be completed within 92 days of the previous assessment.

(5) An MDS assessment is considered complete on the date the registered nurse (RN) assessment coordinator signs and dates the MDS assessment as complete. That date may not be prior to dates for all sections completed.

(6) The MDS assessment is considered timely if it is submitted in accordance with the federal MDS submission schedule and is received by the state MCA within 31 days after the completion date.

(7) Each MDS assessment submitted must indicate the reason for the assessment.

(8) Assessment time frames are based on the assessment reference date (ARD), which is the specific end-point for a common observation period (look back period) in the MDS assessment process.

(c) All MDS items shall be coded in accordance with 42 Code of Federal Regulations §483.20 (relating to Resident Assessment); the Centers for Medicare and Medicaid Services Long-Term Care Facility Resident Assessment Instrument User's Manual (RAI User's Manual); and state specific requirements. Coding for items described in this subsection must be based on observations over the look back period specified. If the observation did not occur during the look back period, it is not coded on the MDS.

(1) Cognitive Patterns. The look back period for items described in this paragraph is seven days.

(A) Comatose Code One is claimed only when the recipient's clinical record includes a documented neurological diagnosis of coma or persistent vegetative state. The clinical record must include physician documentation of a diagnosis of coma or persistent vegetative state.

(B) Short-Term Memory Code One is claimed when it is determined that the recipient lacks the functional capacity to recall recent events. Documentation in the clinical record must support the resident's capacity to remember short-term events.

(C) For Cognitive Skills for Daily Decision Making, code the correct response between zero and three that supports the recipient's level of ability based on the clinical record. The recipient's clinical record must include documentation describing the recipient's actual performance in making everyday decisions about tasks or activities of daily living.

(2) Communication/Hearing Patterns. For Making Self Understood, code the correct response between zero and three that supports the recipient's level of ability to make himself or herself understood. The recipient's clinical record must support the resident's level of ability to express or communicate requests, needs, opinions, urgent problems, and social conversation, whether in speech, writing, sign language, or a combination of these. The look back period is seven days.

(3) Mood and Behavior Patterns.

(A) For Indicators of Depression, Anxiety and Sad mood, code between zero and two based on documented interactions and observations of the recipient. The recipient's clinical record must support the frequency of the indicators of depression, anxiety, and/or sad mood. The look back period is 30 days.

(B) For Behavioral Symptoms, code between zero and three the frequency of behavioral symptoms manifested by the resident across all three shifts as it occurred during the look back period. The look back period is seven days. Record the frequency of behavioral symptoms manifested by the resident across all three shifts.

(4) Physical Functioning and Structural Problems. The look back period for items described in this paragraph is seven days.

(A) For Self Performance, code between zero and four or eight for self performance by the recipient in bed mobility, transfer, eating, and toilet use during the look back period. The clinical record must capture the total picture of the recipient's actual self care performance for each activity of daily living (ADL) over the seven day period, 24 hours a day.

(B) For ADL Support Provided, code from zero and three or eight to support assistance provided by staff in bed mobility, transfer, and toilet use. The clinical record must reflect the support provided by staff, for each ADL, over a 24-hour period, during the look back period.

(5) Continence Appliances and Programs. The look back period for items described in this paragraph is 14 days.

(A) For Scheduled Toileting Plan, check if recipient is on any scheduled toileting program. The documentation must include a plan for bowel and/or bladder elimination whereby staff members at scheduled times each day either take the recipient to the toilet, give the recipient a urinal, or remind the recipient to go to the toilet. This includes bowel habit training and/or prompted voiding, but does not include changing wet garments. A "program" refers to a specific approach that is organized, planned, documented, monitored and evaluated. The recipient's toileting schedule must be in a place where it is clearly communicated, available to and easily accessible to all staff. The care plan must indicate the recipient is on a routine toileting schedule.

(B) For Bladder Retraining Program, check if recipient is on any bladder retraining program that is a retraining program to teach the recipient to consciously delay urinating or to resist the urge to urinate. The care plan must include individualized goals and ap-

proaches that is organized, planned, documented, monitored, and evaluated.

(6) Disease Diagnosis. The disease conditions described in this paragraph require a physician-documented diagnosis in the clinical record. The look back period is seven days.

(A) For Diseases, code diabetes, aphasia, cerebral palsy, hemiplegia/hemiparesis, multiple sclerosis and/or quadriplegia if there is a documented physician diagnosis in the clinical record. Include active diagnoses only; do not include conditions that have been resolved or have not affected the recipient's functioning, medical treatment, or care plan.

(B) For Infections, code pneumonia and/or septicemia, if the infection was present with a documented relationship to the recipient's current functioning, medical treatment, or care plan. A physician documented diagnosis in the clinical record is required to code this item.

(7) Health Conditions. The look back period for items described in this paragraph is seven days. As applicable, review the clinical records (including the current nursing care plan) and consult with facility staff members and resident's family if the resident is unable to respond.

(A) For Problem Conditions, code documented problems or symptoms that affect or could affect the recipient's health or functional status and to identify risk factors for illness, accident, and functional decline, as they occurred during the look back period.

(B) For Dehydrated; Output Exceeds Intake Code only if the recipient has at least two of the following indicators:

(i) Receives less than 1500ml fluids daily;

(ii) One or more clinical signs or symptoms of dehydration; or

(iii) Fluid loss exceeds daily intake.

(C) For Delusions, the recipient's clinical record must support that the recipient holds fixed, false beliefs not shared by others based on observation during the look back period.

(D) For Fever, include documentation that the recorded temperature of 2.4 degrees Fahrenheit or greater than the documented established baseline for that recipient was observed during the look back period.

(E) For Hallucinations, the recipient's clinical record must support the recipient's false sensory perceptions that occur in the absence of any real stimuli as observed and documented during the look back period.

(F) For Internal bleeding, the clinical record must support frank or occult bleeding in the clinical record based on observations during the look back period, excluding simple nosebleeds that are easily controlled.

(G) For Vomiting, the clinical record must support that regurgitation of stomach contents occurred during the look back period.

(8) Oral/Nutritional Status. For Weight Change, code zero or one for weight loss. Code one if there is documented evidence of weight loss of 5% as observed during a 30-day look back period, or 10% or more as observed during a 180-day look back period. Do not round the actual weight. If a recipient cannot be weighed, the facility must use the standard no-information code.

(9) Nutritional Approaches. The look back period for items described in this paragraph is seven days.

(A) For Parenteral/Intravenous, check if there is documentation that the recipient received parenteral and/or intravenous fluids administered for nutrition or hydration during the look back period. This item can only be coded if there is supporting documentation that reflects an identified need for additional fluid intake for nutrition and/or hydration.

(B) For Feeding Tube, check if there is documentation that supports the presence of any type of tube that can deliver food, nutritional substances, fluids, and/or medications directly into the gastrointestinal system.

(C) Parenteral or Enteral Intake. The look back period for items described in this paragraph is seven days.

(i) For Total Calories, code between zero and four for the documented proportion of total calories actually received by the recipient via parenteral or tube feeding as observed during the look back period.

(ii) Average Fluid Intake: Code between zero and five for the average documented fluid intake by intravenous or tube feeding received by the recipient each day as observed in the look back period. The actual amount of fluid the recipient received each day by this mode must be recorded.

(10) Skin Condition. The look back period for items described in this paragraph is seven days.

(A) For Ulcers, code between zero and nine, corresponding to the number of skin ulcers at each stage, due to circulatory problems or pressure, as observed during the look back period. A description of the wound must be documented in the clinical record during the look back period.

(B) For Type of Ulcer, code between zero and four to indicate the highest staged pressure ulcer present as observed during the look back period. The staging of the pressure ulcer(s) must be coded as assessed, described and documented during the look back period.

(11) Other Skin Problems or Lesions present. The look back period for items described in this paragraph is seven days.

(A) For Burns (Second or Third Degree), check for the presence of burns, from any cause (e.g., heat, chemicals) and document in the clinical record. This category does not include first-degree burns.

(B) For Open Lesions/Sores, check if documentation supports the presence of open skin lesion(s) that are not coded elsewhere. Do not code skin tears or cuts. A description of the lesions/sores must be documented in the clinical record during the look back period.

(C) For Surgical Wounds, check if documentation supports the presence of healing and non-healing, open or closed surgical incisions, skin grafts or drainage sites, on any part of the body. This category does not include healed surgical sites, stomas, or lacerations that required suturing or butterfly closure. Peripherally inserted central venous catheters (PICC) sites, central line sites, and peripheral intravenous sites are not coded as surgical wounds. A description of the wound must be documented in the clinical record during the look back period.

(12) Skin Treatments. Check all of the following provided and documented as observed during a look back period of seven days.

(A) Pressure relieving device(s) for chair, to include pressure relieving, pressure reducing, and pressure redistributing devices utilized in the recipient's chair or wheelchair, excluding egg crate cushions;

(B) Pressure relieving device(s) for bed, to include pressure relieving, pressure reducing and pressure redistributing devices, utilized in the recipient's bed, excluding egg crate mattresses;

(C) Turning/repositioning program, to include a continuous, consistent program for changing the recipient's position and realigning the body. There must be a specific approach that is organized, planned, documented, monitored, and evaluated;

(D) Nutrition or hydration intervention to manage skin problems, to include dietary measures received by the recipient and ordered for the purpose of preventing or treating specific skin conditions;

(E) Ulcer care, to include any intervention for treating ulcers due to circulatory problems and/or pressure and/or open lesions;

(F) Surgical wound care, to include any intervention for treating or protecting any type of surgical wound;

(G) Application of dressings (with or without topical medications) other than to feet; and

(H) Applications of ointments/medications (other than to feet), to include ointments or medications used to treat a skin condition.

(13) Foot Problems and Care. Check for the presence of foot problems and care to the feet supported by documentation in the clinical record. The foot problem(s) and the care provided, including signs and symptoms of infection, description of the open lesion(s), and application of dressing, must be documented as observed during a seven-day look back period.

(14) Activity Pursuit Patterns. Check all appropriate periods when recipient was awake all or most of the time with no more than a total of a one-hour nap during any such period. The clinical record must support the period(s) of a typical day when the recipient was awake all or most of the time as observed during a seven-day look back period.

(15) Medications. For injections, code from zero to seven the number of days that the recipient received any type of medication, antigen, or vaccine, by subcutaneous, intramuscular or intradermal injection. Do not include medications ordered but not given. This category does not include intravenous (IV) fluids or IV medications. The look back period for this item is seven days.

(16) Special Treatments and Procedures.

(A) For Special Treatments, check any treatments provided during the look back period. The clinical record must have documentation of administration of any treatment(s) the recipient received during the look back period, as it occurred. Do not code services that were provided solely in conjunction with a surgical or diagnostic procedure and the immediate post-operative or post-procedure recovery period. If the treatment was administered outside the facility during the look back period, documentation of the treatment administered must be documented and included in the clinical record. The look back period is 14 days.

(B) For Therapies, code the total number of days and the total number of minutes (for at least 15 minutes a day) that therapy was administered to a resident during the look back period. Code the total number of actual minutes the particular therapy was provided. Record therapies that occurred after admission/readmission to the nursing facility, were ordered by a physician, and were performed by a qualified therapist, who meets state credentialing requirements (i.e., qualified therapists or their assistants as contemplated by RAI Chapter P.3.b) or, in some instances, under such person's direct supervision. Include only medically necessary therapies furnished after admission to the nursing facility. The time should include the actual treatment time, not the time waiting or writing reports. The therapist's initial evaluation time may not be counted, but subsequent evaluations conducted as part of the treatment process may be counted. Therapy evaluations, treatments, sessions, and minutes must be documented in the clinical record, each day, as they occur. The look back period is seven days.

(C) For Nursing Rehabilitation/Restorative Care, code between zero and seven the number of days on which the technique, procedure, or activity was practiced for a total of at least 15 minutes during each 24-hour period during the look back period. This includes nursing interventions that assist or promote the recipient's ability to attain his or her maximum functional potential, but does not include procedures or techniques carried out by or under the direction of a qualified therapist(s), as identified in the Special Treatments, Procedures, and Programs section of the MDS. The nursing rehabilitation and/or restorative care must meet all of the following additional criteria. The look back period for items described in this subparagraph is seven days.

(i) Measurable objectives and interventions must be documented in the care plan and in the clinical record as observed during the look back period.

(ii) Evidence of periodic evaluation by licensed nurse must be present in the clinical record.

(iii) Nurse assistants/aides must be trained in the techniques that promote recipient involvement in the activity.

(iv) The activities must be carried out or supervised by identified members of the nursing staff. There must be documentation, including minutes, in the clinical record for the nursing rehabilitation and/or restorative care program as observed during the look back period. This does not include groups with more than four recipients per identified supervising helper or caregiver. There must be documented evidence that services provided in a group setting were provided to a group of four or less.

(D) For Physician visits, code the number of days the physician examined the recipient over a 14-day look back period (or since admission if less than 14 days ago). Documentation of the physician's evaluation must be included in the clinical record.

(E) For Physician Orders, code the numbers of days on which physician orders were changed. Include written, telephone, fax, or consultation orders for new or altered treatment. Do not include order renewals without change. If no order changes exist, code zero.

§371.214. Resource Utilization Group Classification System.

(a) The Resource Utilization Group (RUG-III) 34-group classification system has seven major classification groups. The groups represent the recipient's relative direct care resource requirements.

(b) The Activities of Daily Living (ADL) score is based on the recipient's care needs that are provided by the nursing facility staff. The ADL score is used to determine a recipient's placement in a RUG-III category and is based on the recipient's care needs provided by the nursing facility staff. The score is incorporated into acuity measurements established under the RUG-III recipient classification methodology. The clinical record must support items claimed for Medicaid reimbursement on the Minimum Data Set (MDS).

(c) The state-specific Long-Term Care Medicaid Information Section is a part of the MDS assessment Resident Assessment Instrument (RAI) in Texas and must be completed for Medicaid reimbursement. The Long-Term Care Medicaid Information Section must include the last name and license number of the registered nurse (RN) assessment coordinator.

(d) The Basic Tracking Form must include:

(1) The signature and title of each licensed nurse or health care professional completing any section of the MDS assessment for Medicaid reimbursement; and

(2) The section(s) and completion date(s) corresponding to the signature of the nurse or health care professional.

(e) Each individual signing the signature section on the Basic Tracking Form is certifying that the information entered on the MDS assessment is accurate. A facility that submits false or inaccurate information is subject to sanctions under §371.1643 of this title (relating to Use of Sanctions).

(f) If the nursing facility recipient is a hospice recipient, the nursing facility must comply with the requirements of 40 TAC §19.1926 (relating to Medicaid Hospice Services) and maintain in the recipient's clinical record, copies of the completed Texas Medicaid Hospice Program Recipient Election/Cancellation/Discharge Notice (Form 3071), and the DADS Medicaid/Medicare Hospice Program Physician Certification of Terminal Illness (Form 3074).

(1) The nursing facility must acknowledge a recipient's admission to hospice services on the Special Treatments, Procedures, and Programs section when completing an MDS full, comprehensive, or quarterly assessment.

(2) An MDS assessment indicating that a recipient has elected hospice services will not be processed until the Texas Medicaid Hospice Program Recipient Election/Cancellation/Discharge Notice (Form 3071), and the DADS Medicaid/Medicare Hospice Program Physician Certification of Terminal Illness (Form 3074) are received by the Texas Medicaid Claims Administrator (MCA).

(3) When a recipient is admitted to hospice and there has not been a significant change in condition, a significant change in status assessment does not have to be completed. The recipient's next scheduled assessment may be used.

(g) Each nurse's license number submitted on the MDS assessment, Long-Term Care Medicaid Information Section, will be validated with the Texas Board of Nursing or will be validated as applicable as a nurse compact license with the licensing state. An MDS assessment will be rejected for Medicaid reimbursement if an invalid or delinquent license number is submitted on the MDS assessment, Long-Term Care Medicaid Information Section.

(h) Nursing facility staff must complete the HHSC-approved MDS training in accordance with this subsection.

(1) The nursing facility RN Assessment Coordinator must complete the HHSC-approved online MDS training course prior to completing an MDS assessment for Medicaid payment. All other staff completing the MDS assessment for Medicaid payment are encouraged to take the MDS Training prior to completing the MDS assessment.

(2) The nursing facility RN Assessment Coordinator must repeat the MDS online training every two years. A certificate of completion will be issued at the conclusion of the training.

(3) If the nursing facility RN Assessment Coordinator does not complete the MDS training every two years as required by HHSC, the license number of the RN Assessment Coordinator will not be accepted into the state database and the MDS assessment will be rejected by the Medicaid claims administrator.

(i) An admission assessment, a quarterly assessment, significant change in status assessment, annual assessment, significant correction to a prior quarterly assessment, or a significant correction to a prior annual assessment establishes a RUG-III group.

(1) A significant change in status assessment, which requires a comprehensive MDS with Resident Assessment Protocols (RAPs), must be completed by the end of the 14th calendar day following determination that a significant change has occurred.

(2) A significant change in status assessment resets the schedule for the next annual assessment.

(j) Permanent medical necessity is determined by the Texas Department of Aging and Disability Services (DADS) in accordance with 40 TAC §19.2403 (relating to Medical Necessity Determination).

(k) When correcting errors in an MDS assessment, the nursing facility staff must use the MDS Correction Policy in Chapter 5 of the Minimum Data Set, Resident Assessment Instrument User's Manual, published by the Centers for Medicare and Medicaid Services (CMS).

(1) Documentation must be maintained in the clinical record to support the corrected MDS assessment form and be available for review by HHSC-OIG staff during MDS utilization reviews.

(2) The Correction Request Form attestation of accuracy of signatures must contain the RN assessment coordinator's and DON's signatures, and the date the correction was completed.

(3) A correction to a RUG reclassification error identified during an onsite review is considered an assessment error as described in subsection (r)(2) of this section. This does not negate the facility's responsibility to make quality of care corrections pursuant to the CMS MDS Correction Policy referenced in this section.

(l) The MDS assessment establishes the rate(s) at which the Texas Medicaid program pays a nursing facility, or hospice provider for the facility's hospice residents, to support the care the nursing facility's residents receive and any information on the MDS RAI shall be considered part of each corresponding claim for Medicaid reimbursement.

(m) Prior to entering a nursing facility for review, HHSC-OIG identifies a population of paid claims from which a sample will be drawn.

(1) The population is defined as claims associated with RUG classifications:

(A) paid to the nursing facility, or hospice provider for the facility's hospice residents, for a specified time period; and

(B) that meet certain criteria, such as dollar or claim volume, as determined by HHSC-OIG.

(2) HHSC-OIG will identify the population of paid claims, along with their related RUG classifications and MDS assessment claim forms, from which a statistically valid random sample will be drawn for review. The sample generated will be a statistically valid random sample generated at a minimum confidence level of 90% and a maximum precision of 10%. Related extrapolations will be done at the lower limit of the applicable confidence interval.

(n) Utilization reviews will be conducted in accordance with this subsection.

(1) An HHSC-OIG nurse reviewer will conduct an unannounced onsite MDS utilization review of a nursing facility at least every 15 months. The frequency of onsite reviews will be determined by the accuracy of the MDS assessment(s) and the facility's error rate.

(2) The onsite review period begins when an HHSC-OIG nurse reviewer presents an entrance letter to the facility, and ends when the HHSC-OIG nurse reviewer informs the facility that the onsite review is completed. The onsite review period is subject to the provisions in subparagraphs (A) - (D) of this paragraph. The onsite review period

does not include the exit conference, which is described in paragraph (3) of this subsection.

(A) The nursing facility shall provide the HHSC-OIG nurse reviewer initial access to clinical records and resources the HHSC-OIG nurse reviewer determines are necessary to initiate the onsite review process within two hours of entrance to the nursing facility. Although the facility is not required to produce all records within two hours, documentation to be reviewed must continue to be made available to the HHSC-OIG nurse reviewer during the onsite review period. If the facility indicates that necessary records or resources are located off-site or otherwise unavailable for immediate retrieval, and the facility can substantiate this fact, HHSC-OIG will grant an extension to the two-hour initial production of records requirement.

(B) The nursing facility, upon HHSC-OIG nurse reviewer request, must provide the signed and notarized Records Affidavit described in subsection (q)(4) of this section for each MDS assessment for which copies of clinical record documentation are provided to the nurse reviewer, attesting that the facility used its best efforts to obtain all relevant records, and that the documentation provided to the HHSC-OIG nurse reviewer is as complete a compilation as was possible during the onsite review period. If the nursing facility refuses to provide the required Records Affidavit, the nursing facility must state the refusal in writing and attach the statement to the records provided to the nurse reviewer.

(C) The nursing facility must ensure an assigned staff member knowledgeable of the MDS and clinical record is available at the facility to the HHSC-OIG nurse reviewer during the entire onsite review.

(D) When the HHSC-OIG nurse reviewer identifies an item coded on the assessment that can not be substantiated or does not accurately reflect the recipient's status during the applicable look back period, the HHSC-OIG nurse reviewer will notify the assigned nursing facility staff and request supporting documentation.

(i) The nursing facility must provide the requested supporting documentation to validate the coded items to the HHSC-OIG during the onsite review period and prior to the exit conference.

(I) If the onsite review period is more than one day, the nursing facility must provide the requested information during regular business hours to the HHSC-OIG reviewer by the end of the day the documentation was requested. Provided, however, that the facility shall be allowed a minimum of six business hours in which to provide requested information.

(II) Nothing in this provision shall be construed to affect the timing of an exit conference or require the reviewer to incorporate an overnight stay near the facility. It shall be the facility's responsibility to submit the supplemental records to the reviewer's place of business. The reviewer's exit conference conclusions and error rates may change after reviewing the supplemental records. Any such changes will be communicated to the provider within one business day.

(III) If a facility cannot produce or make available the requested information, the facility must provide a written statement explaining why the information cannot be provided as requested. The submission of a written statement does not negate HHSC-OIG's authority to take enforcement action under Subchapter G of this chapter (relating to Legal Action Relating to Providers of Medical Assistance).

(ii) Lack of documentation to validate the items claimed on the MDS as described in this paragraph may be the basis for an error and RUG III group reclassification.

(iii) Lack of documentation, inconsistent documentation that misrepresents the patient's actual condition at the time it is documented, or altered documentation, which does not follow generally accepted error correction guidelines such as the MDS Correction Policy in Chapter 5 of the Minimum Data Set, may be the basis for an error and adjustment in the RUG-III group. The error or adjustment will be made based on a review of the clinical record documentation provided for the look-back period of the MDS assessment.

(3) The HHSC-OIG nurse reviewer will hold an exit conference with nursing facility staff.

(A) The exit conference will be held with the nursing facility staff at the conclusion of the onsite review period. Hospice staff is encouraged to attend to discuss the review findings of the MDS assessments for hospice recipients for whom the representative provided hospice services.

(B) The HHSC-OIG nurse reviewer will provide the nursing facility representative(s) in a leadership position(s) (e.g., the administrator, DON, charge nurse) formal written notification of all MDS validation findings during the exit process.

(i) If a hospice representative is present at the exit conference, written notification will be provided only on recipients to whom they provided services.

(ii) If the hospice representative is not present during the exit conference, HHSC-OIG will provide formal written notification of all RUG-III changes within 15 calendar days of the exit conference.

(iii) If the nursing facility disagrees with the HHSC RUG-III determination or assessment of errors, the nursing facility may submit a request for reconsideration as provided in subsection (q) of this section.

(o) The HHSC-(OIG) may sanction any provider or person as defined in §371.1601 of this title (relating to Definitions), including a managed care organization or subcontractor, pursuant to Subchapter G of this chapter that:

(1) fails to grant immediate access upon reasonable request to:

(A) the HHSC-OIG;

(B) the Attorney General's Medicaid Fraud Control Unit or Civil Fraud Division;

(C) any state or federal agency authorized to conduct compliance, regulatory, or program integrity functions on the provider, person, or the services rendered by the provider or person; or

(D) any agent or consultant of any agency or division within an agency described in subparagraph (A) of this paragraph;

(2) fails to allow the HHSC-OIG or any other federal or state agency, division, agent, or consultant, as described in paragraph (1) of this subsection to conduct any duties that are necessary to the performance of their statutory functions; or

(3) fails to provide to the HHSC-OIG or any other federal or state agency, division, agent, or consultant, as described in paragraph (1) of this subsection, upon request and as requested, for the purpose of reviewing, examining, and securing custody of records, access to, disclosure of, and custody of:

(A) copies or originals of any records, documents, or other requested items, as determined necessary by the HHSC-OIG or those specified in paragraph (1) of this subsection to perform statutory functions;

(B) any records the provider or person is required to maintain;

(C) any records necessary to verify items or services furnished and delivered under Medicaid, any other health and human services program, or any state health care program to determine whether payment for those items or services is due or was properly made; or

(D) information that includes, without limitation:

(i) clinical patient records;

(ii) other records pertaining to the patient;

(iii) any other records of services provided to Medicaid or other health and human services program recipients and payments made for those services;

(iv) documents related to diagnosis, treatment, service, lab results, charting, billing records, invoices, documentation of delivery of items, equipment, or supplies, and radiographs, and all requirements of §371.1617(a)(2) of this title (relating to Program Violations);

(v) business and accounting records with backup support documentation, statistical documentation, computer records and data, patient sign-in sheets, and schedules; or

(vi) any records necessary to fulfill its duty under the Improper Payments Information Act of 2002, Public Law 107-300, 116 Stat. 2350 (November 26, 2002) requiring state agencies take action to reduce improper payments. The term "improper payment" means any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements, including any payment to an ineligible recipient, any payment for an ineligible service, any duplicate payment, any payment for services not received, or any payment that does not account for credit for applicable discounts.

(p) A facility that uses an electronic clinical record system and electronic submissions shall comply with this subsection.

(1) A nursing facility that elects to submit electronic or digital signatures on MDS assessments is required to have a policy in effect on the date of transmission that ensures they have proper security measures to protect against the use of an electronic or digital signature by anyone other than the individual to whom the electronic or digital signature belongs. The policy must also ensure that clinical records are made available to the HHSC-OIG and others who are authorized by law.

(2) In order to receive Medicaid reimbursement, a nursing facility that utilizes a clinical record system which is entirely electronic must maintain a hard copy of all MDS assessments in the recipient's clinical record. The hard copy of an MDS assessment must include the signatures, title, and date of all individuals completing the MDS.

(q) The HHSC-OIG will conduct a reconsideration review upon receipt of a written request for reconsideration.

(1) The reconsideration request must be sent in the form of a letter. The letter must describe in detail the reason a reconsideration review is requested for each specified assessment error. A copy of each signed affidavit executed during the onsite review for which reconsideration is requested must be attached to the letter. The reconsideration request must be submitted in the order outlined in the reconsideration request requirements provided to the nursing facility staff during the exit conference, and must include all of the information required for a reconsideration request.

(2) The reconsideration request must be mailed to the HHSC-OIG Utilization Review (UR) unit at the address indicated on the exit documentation provided to facility staff at the exit conference.

(A) The reconsideration request must be postmarked on or before the 15th calendar day after the date of the exit conference, provided, however, that if the 15th calendar day falls on a Sunday or national holiday as defined in Texas Government Code Annotated §662.003(a), the request must be postmarked on the next following business day.

(B) A reconsideration request that does not meet the requirements of this paragraph will not be granted.

(3) An MDS assessment error that is not identified in the request will not be reconsidered.

(4) A nursing facility may submit additional clinical records along with a timely request for reconsideration review. Any such additional records must be accompanied by a notarized Fact and Records Affidavit that properly authenticates the documents as true and correct duplicates of business records pursuant to TEX. R. EVID. 803(6) and TEX. R. EVID, 902(10). Additionally, the Fact Affidavit must specify: why the records were not produced during the onsite review, when the records were obtained, where the records were located, who located the records, and the circumstances under which the records were obtained. If recipient medical record documentation that was not provided during the onsite review is submitted for reconsideration, the weight to be given any supplemental documentation shall remain within the discretion of the reviewer.

(5) If the reconsideration review establishes that the HHSC-OIG has changed an MDS RUG-III group in error, HHSC-OIG will direct the Texas Medicaid claims administrator to correct the error retroactively.

(6) If the provider disagrees with the reconsideration determination, the provider may request a formal appeal as described in Chapter 357, Subchapter I of this title (relating to Hearings Under the Administrative Procedure Act).

(7) The RUG-III group and the associated per diem rate specified in the reconsideration determination remain in effect during the formal appeal process.

(r) The HHSC-OIG will recover overpayments based on onsite review findings associated with an administrative or assessment error in accordance with this subsection.

(1) An administrative error occurs if a requirement in subsections (c) and (d) of this section are not met, or the Long-Term Care Medicaid Information Section or Basic Tracking Form is not made available to the HHSC-OIG during regular business hours of the onsite review period and prior to the exit conference.

(A) If the onsite review period is more than one day, the nursing facility must provide the requested information to the HHSC-OIG reviewer by the end of the day information is requested, during regular business hours.

(B) If a facility cannot produce or make available the requested information, the facility must provide a written statement explaining why the information cannot be provided as requested. The submission of a written statement does not negate HHSC-OIG's authority to take enforcement action under Subchapter G of this chapter.

(C) An administrative error may be reconsidered as described in subsection (q) of this section.

(2) An assessment error is a RUG reclassification resulting in an overpayment or underpayment of an MDS assessment claim(s) identified during a utilization review of a facility.

(A) During the MDS assessment utilization review of a facility, HHSC-OIG will identify each assessment error (e.g. overpayment amount or underpayment amount of an MDS assessment claim) from the population as that term is described in subsection (m) of this section.

(B) Following the onsite review of the sampled MDS assessment claim forms, an assessment error rate will be calculated as follows:
Figure: 1 TAC §371.214(r)(2)(B)

(C) The HHSC-OIG will process all RUG reclassifications identified as a result of the onsite utilization review.

(i) The HHSC-OIG will recover from the facility any overpayment(s) associated with an MDS assessment claim. The recovered amount is a debt owed by the facility to the Texas Medicaid program. The facility will be reimbursed for any underpayment(s) identified.

(ii) To calculate any overpayment, HHSC-OIG will extrapolate to the population and the extrapolation will be applied only to the RUG classifications found in error. An adjustment equal to the net value of the identified overpayment(s) and underpayment(s) will be made. Any net overpayments will constitute a debt owed by the facility/provider, as applicable, to the Texas Medicaid program. Net underpayments will be reimbursed to the facility/provider, as applicable.

(I) For Utilization Reviews conducted on September 1, 2008 through August 31, 2009, HHSC-OIG Utilization Review will extrapolate to the population only when the error rate exceeds 25%.

(II) For Utilization Reviews conducted on September 1, 2009 through February 28, 2010, HHSC-OIG Utilization Review will extrapolate to the population only when the error rate exceeds 20%.

(III) For Utilization Reviews conducted on March 1, 2010 through August 31, 2010, HHSC-OIG Utilization Review will extrapolate to the population only when the error rate exceeds 15%.

(IV) For Utilization Reviews conducted on or after September 1, 2010, HHSC-OIG Utilization Review will extrapolate to the population in all cases of overpayment as set forth in clause (ii) of this subparagraph and the extrapolation will be applied only to the RUG classifications found in error.

(iii) An error rate greater than 25% or suspected program violation described in §371.1617 of this chapter (relating to Program Violations), will result in a referral for investigation to the HHSC-OIG Medicaid Program Integrity (MPI) Division. This referral will be made part of the state's method for identification, investigation and referral for fraud under Chapter 357, Subchapter M, of this title (relating to Fraud or Abuse Involving Medical Providers) and Chapter 371, Subchapter G of this title (relating to Legal Action Relating to Providers of Medical Assistance).

(D) An assessment error is subject to reconsideration in accordance with subsection (q) of this section.

(i) If the facility timely requests reconsideration of the onsite review results, the assessment error rate will be based on the results of the reconsideration.

(ii) If the facility does not timely request reconsideration of the onsite review, the assessment error rate will be based on the results of the onsite review.

(s) Suspected fraudulent documentation, such as medical or clinical records that appear to have been altered, falsified, or fabricated, will result in a referral for investigation to the HHSC-OIG Medicaid Program Integrity (MPI) Division. This referral will be made part of the state's method for identification, investigation and referral for fraud under Chapter 357, Subchapter M, of this title.

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

Filed with the Office of the Secretary of State on September 19, 2008.

TRD-200805096
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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Proposal publication date: July 4, 2008
For further information, please call: (512) 424-6900

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §26.403

The Public Utility Commission of Texas (commission) adopts an amendment to §26.403, relating to the Texas High Cost Universal Service Program (THCUSP) with changes to the proposed text as published in the June 20, 2008, issue of the *Texas Register* (33 TexReg 4773). The amended rule addresses reporting requirements for eligible telecommunications providers (ETPs) in accordance with the final order adopting the parties' Unanimous Settlement Agreement in Docket Number 34723, *Petition for Review of Monthly Per Line Support Amounts from the Texas High Cost Universal Service Plan and the Small and Rural Incumbent Local Exchange Company Universal Service Plan Pursuant to PURA §56.031*. Project Number 35632 is assigned to this proceeding.

On July 10, 2008, the commission received written comments from the following entities: Office of Public Utility Counsel (OPC); Verizon Southwest (Verizon); Sprint Communications Company, LP, SprintCom, Inc., Sprint Spectrum, LP, Nextel of Texas, Inc., NPCR, Inc., tw telecom of texas, llc, Time Warner Cable Information Services (Texas), LLC, and TWC Digital Phone, LLC (collectively, the "USF Reform Coalition" or "URC"); XO Communications Services, Inc. (XO); McLeodUSA Telecommunications Services, Inc., (McLeodUSA); and Southwestern Bell Tele-

phone, LP, d/b/a AT&T Texas (AT&T Texas). A public hearing was not held.

Although reply comments were not elicited in this proceeding, AT&T Texas provided an additional comment on July 23, 2008.

General Comments

OPC was supportive of the rule, saying that it met requirements for public access to information and openness and transparency regarding disbursement of THCUSP funds.

Subsection (f)(2)

AT&T Texas recommended that the term "receipt" be used rather than "disbursement," as the former better describes the funds with respect to the reporting entities.

Commission Response

The commission concurs and modifies the rule language accordingly.

Verizon stated that it was more practical to have the period for the initial report begin on May 1, 2008 rather than April 25, 2008, citing the fact that Verizon tracks this information on a monthly basis and that inclusion of a single week's data from April would not be of use in comparing future month-to-month submissions. As a second alternative, they proposed consideration of April 1, 2008 as a start date for the initial report.

Commission Response

The commission agrees that reporting a partial month serves no purpose and adopts Verizon's second alternative recommendation. Because paragraph 12 of the settlement in Docket Number 34723 stipulates that reporting be made retroactive to the date of the commission's final order in the settlement, the commission finds that a beginning date of April 1, 2008 meets this requirement while avoiding the issues identified in Verizon's comments.

AT&T Texas stated that the requirement that reports be due on the twentieth business day after the end of the reporting period would create potential ambiguity because of differences in holiday schedules and would sometimes too closely coincide with the due date for filing of the Texas Universal Service Fund Remittance and Support Worksheet. As an alternative, AT&T Texas proposed that the due date be changed to the thirtieth calendar day.

Commission Response

The commission concurs and modifies the rule language accordingly.

URC, XO, and McLeodUSA stated that, while staff's description of the proposed amendment indicated that filed THCUSP reports would be public, the rule does not make that explicit, opening the possibility of claims that the filed information is proprietary or confidential by later THCUSP recipients who were not signatories to the settlement. They further expressed concern that companies might seek to aggregate disbursements received by multiple ETPs into single reports. In its July 23, 2008 comments, AT&T Texas stated that they and URC agreed that to avoid confusion, the reports to be made public should be more clearly identified.

Commission Response

The commission concurs and adopts language prohibiting the aggregation of data from multiple ETPs into single reports and making explicit the public availability of all reports filed pursuant to subsection (f)(2) of the rule.

URC, XO, and McLeodUSA stated that the commission should consider initiating rulemaking proceedings to examine means and standards for reporting to provide accountability as to how moneys disbursed from the THCUSP are used.

Commission Response

The commission may consider in the future opening a new proceeding to add reporting requirements.

All comments, including any not specifically referenced herein, were fully considered by the commission.

This amendment is adopted under the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §§12.001 and 14.002 (Vernon 2007 and Supp. 2008), which provide the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §51.001, which gives the commission the authority to make and enforce rules necessary to protect customers consistent with the public interest; PURA §52.051(1)(A), which provides the commission the authority to preserve universal service; PURA §52.002, which authorizes the commission to regulate rates, operations, and services so that the rates are just, fair, and reasonable and the services are adequate and efficient; PURA §§56.021(1) and 56.021(5), which provide the commission with the authority to assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas and reimburse the providers for providing lifeline service; and PURA §56.023 which, among other things, requires the commission to assure reasonable rates for basic local telecommunications service and approve procedures for the collection and disbursal of revenue from the universal service fund.

Cross Reference to Statutes: Public Utility Regulatory Act, Texas Utilities Code Annotated §§12.001, 14.002, 51.001, 51.008, 52.051, 52.002, 56.021, and 56.023 (Vernon 2007 and Supp. 2008).

§26.403. Texas High Cost Universal Service Plan (THCUSP).

(a) Purpose. This section establishes guidelines for financial assistance to eligible telecommunications providers (ETPs) that serve the high cost rural areas of the state, other than study areas of small and rural incumbent local exchange companies (ILECs), so that basic local telecommunications service may be provided at reasonable rates in a competitively neutral manner.

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

(1) Benchmark--The per-line amount above which THCUSP support will be provided.

(2) Business line--The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply.

(3) Eligible line--A residential line and a single-line business line over which an ETP provides the service supported by the THCUSP through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs.

(4) Eligible telecommunications provider (ETP)--A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(5) Residential line--The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply.

(c) Application. This section applies to telecommunications providers that have been designated ETPs by the commission pursuant to §26.417 of this title.

(d) Service to be supported by the THCUSP. The THCUSP shall support basic local telecommunications services provided by an ETP in high cost rural areas of the state. Local measured residential service, if chosen by the customer and offered by the ETP, shall also be supported.

(1) Initial determination of the definition of basic local telecommunications service. Basic local telecommunications service shall consist of the following:

(A) flat rate, single party residential and business local exchange telephone service, including primary directory listings;

(B) tone dialing service;

(C) access to operator services;

(D) access to directory assistance services;

(E) access to 911 service where provided by a local authority;

(F) telecommunications relay service;

(G) the ability to report service problems seven days a week;

(H) availability of an annual local directory;

(I) access to toll services; and

(J) lifeline service.

(2) Subsequent determinations.

(A) Timing of subsequent determinations.

(i) The definition of the services to be supported by the THCUSP shall be reviewed by the commission every three years from September 1, 1999.

(ii) The commission may initiate a review of the definition of the services to be supported on its own motion at any time.

(B) Criteria to be considered in subsequent determinations. In evaluating whether services should be added to or deleted from the list of supported services, the commission may consider the following criteria:

(i) the service is essential for participation in society;

(ii) a substantial majority, 75% of residential customers, subscribe to the service;

(iii) the benefits of adding the service outweigh the costs; and

(iv) the availability of the service, or subscription levels, would not increase without universal service support.

(e) Criteria for determining amount of support under THCUSP. The TUSF administrator shall disburse monthly support payments to ETPs qualified to receive support pursuant to this section. The amount of support available to each ETP shall be calculated using the base support amount available as provided under paragraph (1) of this subsection and as adjusted by the requirements of paragraph (3) of this subsection.

(1) Determining base support amount available to ETPs. The monthly per-line support amount available to each ETP shall be determined by comparing the forward-looking economic cost, computed pursuant to subparagraph (A) of this paragraph, to the applicable benchmark as determined pursuant to subparagraph (B) of this paragraph. The monthly base support amount is the sum of the monthly per-line support amounts for each eligible line served by the ETP, as required by subparagraph (C) of this paragraph.

(A) Calculating the forward-looking economic cost of service. The monthly cost per-line of providing the basic local telecommunications services and other services included in the benchmark shall be calculated using a forward-looking economic cost methodology.

(B) Determination of the benchmark. After notice and opportunity for hearing, the commission shall establish an appropriate benchmark or benchmarks.

(C) Support available under the THCUSP.

(i) After notice and opportunity for hearing, the commission shall determine which eligible lines shall receive support.

(ii) Support under the THCUSP is portable with the consumer.

(2) Proceedings to determine THCUSP base support.

(A) Timing of determinations.

(i) The commission shall review the forward-looking cost methodology, the benchmark levels, and/or the base support amounts every three years from September 1, 1999.

(ii) The commission may initiate a review of the forward-looking cost methodology, the benchmark levels, and/or the base support amounts on its own motion at any time.

(B) Criteria to be considered in determinations. In considering the need to make appropriate adjustments to the forward-looking cost methodology, the benchmark levels, and/or the base support amount, the commission may consider current retail rates and revenues for basic local service, growth patterns, and income levels in low-density areas.

(3) Calculating amount of THCUSP support payments to individual ETPs. After the monthly base support amount is determined, the TUSF administrator shall make the following adjustments each month in order to determine the actual support payment that each ETP may receive each month.

(A) Access revenues adjustment. If an ETP is an ILEC that has not reduced its rates pursuant to §26.417 of this title, the base support amount that such ETP is eligible to receive shall be decreased by such ETP's carrier common line (CCL), residual interconnection charge (RIC), and toll revenues for the month.

(B) Adjustment for federal USF support. The base support amount an ETP is eligible to receive shall be decreased by the amount of federal universal service high cost support received by the ETP.

(C) Adjustment for service provided solely or partially through the purchase of unbundled network elements (UNEs). If an ETP provides supported services over an eligible line solely or partially through the purchase of UNEs, the THCUSP support for such eligible line may be allocated between the ETP providing service to the end user and the ETP providing the UNEs according to the methods outlined below.

(i) Solely through UNEs.

(I) USF cost > (UNE rate + retail cost additive (R)) > revenue benchmark (RB). USF support should be explicitly shared between the ETP serving the end user and the ILEC selling the UNEs in the instance in which the area-specific USF cost/line exceeds the sum of (combined UNE rate/line + R), and the latter exceeds the RB. Specifically, the ILEC would receive the difference between USF cost and (UNE rate + R), while the ETP would receive the difference between (UNE rate + R) and RB. Splitting the USF support payment in this way allows both the ILEC and the ETP to recover, on average, the costs of serving the subscriber at rates consistent with the benchmark. Moreover, this solution is competitively neutral in an additional respect: the ILEC, as the carrier of last resort (COLR), is indifferent between directly serving the average end user and indirectly doing so through the sale of UNEs to a competing ETP. Also, facilities-based competition is encouraged only if it is economic, *i.e.*, reflective of real cost advantages in serving the customer; or

(II) USF cost > RB > (UNE rate + R). The ILEC would receive the difference between USF cost and RB. In this case, where USF cost > RB > (UNE rate + R), giving (USF cost - RB) to the ILEC is necessary to diminish the undue incentive for the ETP to provide service through UNE resale, and to lessen the harm done to the ILEC in such a situation. Allowing the ILEC to recover (USF cost - RB) would minimize financial harm to the ILEC; or

(III) (UNE rate + R) > USF cost > RB. The ETP would receive the difference between USF cost and RB. Where (UNE rate + R) > USF cost > RB, giving (USF cost - RB) to the ETP is necessary to diminish the undue incentive for the ETP not to serve the end user by means of UNE resale. Allowing the ETP to recover (USF cost - RB) would minimize financial harm to the ETP.

(ii) Partially through UNEs. For the partial-provision scenario, THCUSP support shall be shared between the ETP and the ILEC based on the percentage of total per-line cost that is self-provisioned by the ETP. Cost-category percentages for each wire center shall be derived by adding a retail cost additive and the model costs for five UNEs (loop, line port, end-office usage, signaling, and transport). The ETP's retail cost additive shall be derived by multiplying the ILEC-specific wholesale discount percentage by the appropriate benchmark.

(f) Reporting requirements. An ETP eligible to receive support pursuant to this section shall report the following information to the commission or the TUSF administrator.

(1) Monthly reporting requirements. An ETP shall report the following to the TUSF administrator on a monthly basis:

(A) information regarding the access lines on the ETP's network including:

(i) the total number of access lines on the ETP's network,

(ii) the total number of access lines sold as UNEs,

(iii) the total number of access lines sold for total service resale,

(iv) the total number of access lines serving end use customers, and

(v) the total number of eligible lines for which the ETP seeks TUSF support;

(B) the rate that the ETP is charging for residential and single-line business customers for the services described in subsection (d) of this section; and

(C) a calculation of the base support computed in accordance with the requirements of subsection (e)(1) of this section showing the effects of the adjustments required by subsection (e)(3) of this section.

(2) Quarterly reporting requirements. An ETP shall file quarterly reports with the commission showing actual THCUSP receipts by study area.

(A) The initial report shall cover the period of April 1, 2008, through June 30, 2008.

(B) Subsequent reports shall cover each calendar quarter, beginning July 1, 2008.

(C) Reports for quarters which end prior to this rule's effective date shall be due within 90 days of that date. Reports for subsequent quarters shall be filed no later than 3:00 p.m. on the 30th calendar day after the end of the reporting period.

(D) Reports shall be filed electronically in the project number assigned by the commission's central records office no later than 3:00 p.m. on the 30th calendar day after the end of the reporting period.

(E) Each ETP's reports shall be filed on an individual company basis; reports that aggregate the disbursements received by two or more ETPs will not be accepted as complying with the requirements of this subsection.

(F) All reports filed pursuant to paragraph (2) of this subsection shall be publicly available.

(3) Annual reporting requirements. An ETP shall report annually to the TUSF administrator that it is qualified to participate in the THCUSP.

(4) Other reporting requirements. An ETP shall report any other information that is required by the commission or the TUSF administrator, including any information necessary to assess contributions to and disbursements from the TUSF.

(g) Review of THCUSP after implementation of federal universal service support. The commission shall initiate a project to review the THCUSP within 90 days of the Federal Communications Commission's adoption of an order implementing new or amended federal universal service support rules for rural, insular, and high cost areas.

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

Filed with the Office of the Secretary of State on September 15, 2008.

TRD-200805038

Adriana A. Gonzales
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Public Utility Commission of Texas
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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 75. RULES OF PRACTICE

22 TAC §75.19

The Texas Board of Chiropractic Examiners (Board) adopts as a new rule §75.19, related to cease and desist orders. This new rule delegates to the Board's Enforcement Committee the authority to issue a cease and desist order and describes the procedures for doing so as authorized by Texas Occupations Code §201.6015, relating to cease and desist orders.

The rule is adopted without change as proposed in the June 27, 2008 issue of the *Texas Register* (33 TexReg 4964).

No comments were received in response to the proposed rule.

This new rule is adopted under Texas Occupations Code §201.152, relating to rules, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic, §201.506, relating to the Enforcement Committee, which authorizes the Board to direct the enforcement duties of the committee, and §201.6015, relating to cease and desist orders, which authorizes the Board to issue such orders.

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

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

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TRD-200805088
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Effective date: October 9, 2008
Proposal publication date: June 27, 2008
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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 289. RADIATION CONTROL

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts the amendment of §289.204, concerning fees for certificates of registration, radioactive material licenses, emergency planning and implementation, and other regulatory services, the amendment of §289.226, concerning registration of radiation machine use and services, the amendment of §289.232, concerning radiation control regulations for dental radiation machines, the amendment of §289.233, concerning radiation control regulations for radiation machines used in veterinary medicine, and amendment of §289.301, concerning registration and radiation safety requirements for lasers and intense-pulsed light devices. The amendments to §§289.204, 289.226, 289.232, 289.233, and 289.301 are adopted with changes to the proposed text as published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2489).

BACKGROUND AND PURPOSE

The amendment of §289.204 is necessary to clarify that although House Bill (HB) 2285 (80th Legislature, 2007) amending Health and Safety Code, §12.0112(b)(2), removed the two-year term for radiation permits, the fees will continue to be paid every two years. As a result of Senate Bill (SB) 1604 (80th Legislature, 2007) amending Health and Safety Code, §401.011, the section is revised to delete the applicable fees, definition, rule requirements, and rule citations related to the licensing and inspection of low-level waste processing and uranium recovery and disposal since the regulatory authority for these items has been transferred from the department to the Texas Commission on Environmental Quality (TCEQ). In addition, the fee amounts for the industrial radiographer certification and examinations that were previously revised in §289.255 of this title (relating to Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography) are being updated in this revised section to be consistent with §289.255 of this title. As a result of HB 2285 amending Health and Safety Code, §401.301(f), the department is prohibited from assessing fees on local law enforcement agencies for the registration of x-ray machines used for security screening, thereby resulting in a loss of revenue to the state. The department has determined that it is able to absorb the lost revenues and will not attempt to recoup the loss by increasing fees for the remaining industrial x-ray machine registrants. Other minor grammatical changes are also made.

Section 289.226 is being amended as a result of HB 2285 to remove the administrative review and two-year term requirements of radiation permits and reinstate the previous requirements for renewal of certificates of registration for radiation machines. In addition, the section is revised to update the names of several Texas medical and professional boards, update the titles of a few referenced sections, and correct referenced citations. Other minor grammatical changes are also made.

Due to HB 2285, the amendment of §289.232 is necessary to remove the administrative review and two-year term requirements of radiation permits and reinstate the previous requirements for renewal of certificates of registration for radiation machines used in dentistry. This revised section also updates the department name and the names of several Texas medical and professional boards and corrects referenced citations. Several definitions, requirements concerning enforcement and hearings procedures, and a form are also revised to be consistent with language used throughout this chapter. Additionally, the fee amounts for certificates of registration for radiation machines used in dentistry that were previously revised in §289.204 of this title in 2006, are being updated in this revised section to be consistent with §289.204 of

this title. The table concerning the half-value layer for selected kilovolt peaks is revised to state the correct values and other minor grammatical corrections are also made.

Due to HB 2285, §289.233 is revised to remove the administrative review and two-year term requirements of radiation permits and reinstate the previous requirements for renewal of certificates of registration for radiation machines used in veterinary medicine. Section 289.233 updates the department name and the names of several Texas medical and professional boards, clarifies a couple of radiation machine requirements, and corrects referenced citations. Several definitions, requirements concerning enforcement and hearings procedures, and a form are also revised to be consistent with language used throughout this chapter. Additionally, the fee amounts for certificates of registration for radiation machines used in veterinary medicine that were previously revised in §289.204 of this title in 2006, are being updated in this revised section to be consistent with §289.204 of this title. Other minor grammatical changes are also made.

The amendment of §289.301 is necessary to remove the administrative review and two-year term requirements of radiation permits and reinstate the previous requirements for renewal of certificates of registration for laser machines, due to HB 2285. Section 289.301 is also revised to update the names of several Texas medical and professional boards, clarify requirements for protection against radiation from Class 3b or 4 lasers and intense-pulsed light devices, and correct reference citations and a few minor grammatical inconsistencies.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 289.204, 289.226, 289.232, 289.233, and 289.301 have been reviewed and the department has determined that the reasons for adopting these sections continue to exist because rules on these subjects are needed.

SECTION-BY-SECTION SUMMARY

Due to SB 1604 amending Health and Safety Code, §401.011, the regulatory authority for the applicable licensing and inspection of low-level waste processing and uranium recovery and disposal responsibilities have been transferred from the department to the TCEQ and as a result, the following changes have been made: §289.204(b)(1)(A) deletes reference to §289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities) and §289.260 of this title (relating to Licensing of Uranium Recovery and Byproduct Material Disposal Facilities); the definition of "post closure" in §289.204(c)(6) is deleted; §289.204(d)(1) and (2) delete references to "subsection (m)" and current §289.204(m) regarding the schedule of fees for uranium recovery and byproduct material disposal facility licenses, §289.204(n) regarding adjustments to fees for uranium recovery and byproduct material disposal facility licenses, and §289.204(o) regarding one-time fee adjustments for uranium recovery and byproduct material disposal facility licenses are deleted, resulting in renumbering of the subsequent subsection.

Although HB 2285 removed the two-year term for radiation permits, the fees for radiation permits will continue to be paid every two years and therefore, the following changes have been made: Section 289.204(d)(2) revises the second and third sentences to read "The fee shall be paid every two years based on the month listed as the expiration month on the license or general license acknowledgement and shall be paid in full on or before the last day of the expiration month;" in §289.204(d)(3), the second and third sentences are revised to read "The fee shall be paid every two years based on the month listed as the expiration month on the certificate of registration and shall be paid in full on or before the last day of the expiration month;" and §289.204(l)(2) is changed to read "In any case where the agency finds that a licensee or registrant has failed to pay a fee prescribed by this section by the due date, the agency may implement compliance procedures as provided in §289.205 of this title (relating to Hearing and Enforcement Procedures)."

In §289.204(h)(2) relating to fees for accreditation of mammography facilities, current subparagraph (G) is deleted because the department no longer incurs a cost for replacement of thermoluminescent dosimeters. Subsequent subparagraphs are renumbered.

In §289.204(i), the fee amounts for the industrial radiographer certification and examinations that were previously revised in §289.255 of this title in 2007, are being updated in this revised section to be consistent with §289.255 of this title. In §289.204(j), the sentence "As of the effective date of this section, the fees for the dental radiographic only category and the veterinary category, as specified in the following schedule, are the applicable fees for those categories." is deleted because the fees addressed in this sentence are now included specifically in §289.232 and §289.233.

In §289.226(b)(3) and (5), the titles of several referenced sections are updated to state the correct titles. The following subsections are revised to update the names of several Texas medical and professional boards: §289.226(b)(11), (f)(7), and (t)(1)(B)(i)(II)(-g-)(-1-) and (-3-). Section 289.226(i)(4) updates the rule citation to be consistent with the recently revised §289.255 of this title. The words "that results in a change in inventory as specified in subsection (m)(1)(C) of this section" are added to §289.226(n)(2) to clarify the notification requirements to the department for persons who sell, lease, lend, dispose, assemble, install, or otherwise transfer radiation machines in the state.

Due to HB 2285, §289.226(o) and (q) are revised and renumbered to reflect the deletion of all requirements relevant to the administrative review and two-year term requirements of radiation permits and, therefore, reinstate the previous requirements for renewal of certificates of registration for radiation machines.

Section 289.232(b)(3) changes the referenced rule citations to state the correct citations. The following subsections and definitions are revised and/or deleted to change the department name from "Texas Department of Health" to "Department of State Health Services" and/or to change the Radiation Control Program name from "Bureau of Radiation Control" to "Radiation Control" as a result of the 2004 department and Radiation Control Program name changes and reorganization: §289.232(c)(7); current (c)(15); new (c)(19) and (27); §289.232(e)(1); §289.232(g)(1)(D); figure for §289.232(i)(5)(B)(iii); figure for §289.232(j)(1)(L)(i)(II). Subsequent definitions are renumbered. In addition, the following subsections of this section are deleted and/or changed to be consistent with language used in other sections of this chapter: current §289.232(c)(31); new §289.232(c)(48); renumbered §289.232(c)(71); language and figure for §289.232(i)(5)(B)(iii); §289.232(j)(2)(C)(iii); §289.232(k)(2)(C)(i), (v), and (vi); §289.232(k)(2)(D)(iii)(III) and (IV); §289.232(k)(2)(E)(ii)(I)(-d-)

and (-f-); §289.232(k)(2)(E)(ii)(II)(-a-) through (-c-); and §289.232(k)(2)(G)(iv).

In §289.232(g)(1)(A) - (C), the fee amounts for certificates of registration for radiation machines used in dentistry that were previously revised in §289.204 of this title in 2006, are being updated in this revised section to be consistent with §289.204 of this title. Section 289.232(g)(1)(B)(ii) and (C), (h)(1)(D) and (i)(6)(L) update the referenced citations to state the correct citations.

Although HB 2285 removed the two-year term for radiation permits, the fees for radiation permits will continue to be paid every two years and therefore, the following changes have been made: §289.232(g)(1)(B) revises the second and third sentences to read "The fee shall be paid every two years based on the month listed as the expiration month on the certificate of registration and shall be paid in full on or before the last day of the expiration month" and §289.232(g)(2)(B) is changed to read "In any case where the agency finds that a registrant has failed to pay a fee prescribed by this section by the due date, the agency may implement compliance procedures as provided in subsection (k)(2)(C) of this section."

Due to HB 2285, §289.232(h)(6) and new (8) are revised and renumbered to reflect the deletion of all requirements relevant to the administrative review and two-year term requirements of radiation permits and reinstate the previous requirements for renewal of certificates of registration for radiation machines used in dentistry. Subsequent paragraphs are renumbered.

Current §289.232(i)(5)(C) is deleted as this information is redundant with language in §289.232(i)(5)(B)(iii) of the section. Subsequent subparagraphs are renumbered. The table for §289.232(i)(6)(E)(i)(I) concerning the half-value layer for selected kilovolt peaks is revised to state the correct values. Additionally, §289.232(i)(6)(I) deletes the word "interval" and replaces it with "output" before "reproducibility" to be technically correct. Section 289.232(j)(2)(C)(i)(II)(-e-) adds the words "certificate of" before the word "registration" to be consistent with language used throughout this section.

Section 289.233(c) adds language to be consistent with other sections of this chapter. The following subsections and definitions are revised and/or deleted to change the department name from "Texas Department of Health" to "Department of State Health Services" and/or to change the Radiation Control Program name from "Bureau of Radiation Control" to "Radiation Control" as a result of the 2004 department and Radiation Control Program name changes and reorganization: §289.233(c)(7); current (c)(17); new (c)(20); §289.233(e)(1); §289.233(g)(1)(D); figure for §289.233(i)(3)(F)(vii); figure for §289.232(i)(4)(B)(iii); figure for §289.233(j)(1)(K)(i)(II). Subsequent definitions are renumbered. In addition, the following subsections are deleted and/or changed to be consistent with language used in other sections of this chapter: current §289.233(c)(34); new §289.233(c)(52); renumbered §289.233(c)(68); §289.233(g)(1)(A); language and figure for §289.233((i)(4)(B)(iii); §289.233(j)(3)(C)(iii); §289.233(k)(2)(C)(i), (v), (vi), and (vii); §289.233(k)(2)(D)(iii)(III) and (IV); §289.233(k)(2)(E)(ii)(I)(-d-) and (-f-); and §289.233(k)(2)(E)(ii)(II)(-a-) through (-c-).

In §289.233(g)(1)(A) - (C), the fee amounts for certificates of registration for radiation machines used in veterinary medicine that were previously revised in §289.204 of this title in 2006, are being updated in this revised section to be consistent with §289.204 of this title. Section §289.233(g)(1)(C) updates the referenced citation to state the correct citations.

Although HB 2285 removed the two-year term for radiation permits, the fees for radiation permits will continue to be paid every two years and therefore, the following changes have been made: §289.233(g)(1)(B) revises the second and third sentences to read "The fee shall be paid every two years based on the month listed as the expiration month on the certificate of registration and shall be paid in full on or before the last day of the expiration month", and §289.233(g)(2)(B) is changed to read "In any case where the agency finds that a registrant has failed to pay a fee prescribed by this section by the due date, the agency may implement compliance procedures as provided in subsection (k)(2) of this section."

Due to HB 2285, §289.233(h)(6) and new (8) are revised and renumbered to reflect the deletion of all requirements relevant to the administrative review and two-year term requirements of radiation permits and reinstate the previous requirements for renewal of certificates of registration for radiation machines used in veterinary medicine. Subsequent paragraphs are renumbered.

Section §289.233(i)(5)(H)(iv)(II) deletes the words "for circular image receptors" after the words "image receptor" to be technically correct. Language is added as new §289.233(i)(5)(N)(v) to clarify that fluoroscopic x-ray systems shall comply with the additional requirements stated in §289.233(i)(6). Section 289.233(j)(3)(C)(i)(II)(-e-) adds the words "certificate of" before the word "registration" to be consistent with language used throughout this section.

In §289.301(a)(2), the word "laser" is replaced with the word "lasers" to be grammatically correct. The definition for "continuous wave" in §289.301(d)(14) replaces ">=" with "≥" to correctly represent the mathematical symbol. The definition for §289.301(d)(36) updates the names of two Texas medical and professional boards. Section 289.301(j)(3) adds "Class 3B and 4" before the word "lasers" to clarify the type of lasers that should be inventoried. Section 289.301(j)(3)(E) and (4)(B) replaces "in accordance with subsection (d)(35)" with "as defined in subsection (d)(38)" to be grammatically correct and to state the correct rule citation.

Due to HB 2285, §289.301(k) and (m) are revised and renumbered to reflect the deletion of all requirements relevant to the administrative review and two-year term requirements of radiation permits and therefore reinstate the previous requirements for renewal of certificates of registration for laser machines.

Section 289.301(r)(2) adds the words "presently being used or listed on the registrant's current inventory," before the words "shall be provided" to clarify for which lasers the registrant needs to provide written instructions for safe use. The sentence "The instructions to personnel shall be maintained in accordance with subsection (ee) of this section for inspection by the agency." is added at the end of this paragraph to direct the registrant to maintain records of the written instructions for safe use for inspection by the agency.

Section 289.301(t)(1)(E) and (w) add language to inform the registrant of where in the section recordkeeping intervals are listed for the maintenance of records required in this section. Section 289.301(x) adds language to clarify that the registrant shall maintain current records/documents required by this subsection for inspection by the agency. In addition, the figure for §289.301(ee) is revised to add language to clarify which lasers the registrant needs to provide written instructions for safe use.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared a response to the comment received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenter was an individual. The commenter was not against the rules in their entirety; however, the commenter suggested a recommendation for change as discussed in the summary of comments.

Comment: Concerning §289.301(d)(36), the commenter stated that "Texas Board of Pediatric" should be "Texas Board of Podiatric."

Response: The commission agrees and made the suggested change to reference the correct board name.

The department staff on behalf of the commission provided comments and the commission has reviewed and agrees to the following changes that correct rule reference citations, department mailing addresses, and clarify that certificates of registration for radiation machines used in dentistry and veterinary medicine have no expiration date and therefore do not have to be renewed.

Concerning §289.204(d)(3), the department added the words "For certificates of registration with no specified expiration date, payment shall be paid in full on or before the due date stated on the invoice" for clarification.

Concerning §289.204(d)(8), although this paragraph was designated as "(No change.)" during the proposed comment period, the department replaced the old mailing address with the new post office box, mail code, and zip code to be compliant with department policy. Also, the new mailing address was corrected in §289.232(e)(1), (g)(1)(D), and §289.233(e)(1) and (g)(1)(D) to be consistent throughout rules.

Concerning §289.226(n)(2), the department deleted the new proposed words "that results in a change in inventory as specified in subsection (m)(1)(C) of this section" to remove the incorrect requirement.

Concerning §289.232(g)(1)(B), the department deleted the proposed second sentence and replaced with a new sentence to read "The fee shall be paid every two years and shall be paid in full on or before the due date stated on the invoice." to clarify the form of fee payment for certificates of registration for radiation machines used in dentistry.

Concerning §289.232(g)(1)(C), the department replaced subsection "(h)(10)" with "(h)(8)" to correct a reference change that resulted from a subsequent renumbered paragraph of another subsection.

Concerning §289.232(h)(1)(D), the department replaced paragraph "(11)" with "(9)" and paragraph "(12)" with "(10)" to correct a reference change that resulted from a subsequent renumbered paragraph of this subsection.

Concerning proposed §289.232(h)(6) and (8), the department deleted these paragraphs to clarify that certificates of radiation machines used in dentistry have no expiration date and do not have to be renewed due to the change that occurred as a result of HB 2285. Subsequent paragraphs were renumbered as reflected in new paragraphs (6) - (10).

Concerning the figure referenced in §289.232(i)(5)(B)(iii), the department revised the "Notice to Employees" form to add the new post office box and zip code to be compliant with department policy. In addition, "upon termination of your employment" was added for "Reports on your Radiation Exposure History" paragraph (2)(b); replaced "my set forth" with "must state" under "Inspections;" and changed "posting" to "posted" within the "Posting Requirements" to be consistent with language used in equivalent forms throughout this chapter.

Concerning §289.233(g)(1)(B), the department deleted the proposed second sentence and replaced with a new sentence to read "The fee shall be paid every two years and shall be paid in full on or before the due date stated on the invoice." to clarify the form of fee payment for certificates of registration for radiation machines used in dentistry.

Concerning §289.233(g)(1)(C), the department replaced subsection "(h)(10)" with "(h)(8)" to correct a reference change that resulted from a subsequent renumbered paragraph of another subsection.

Concerning proposed §289.233(h)(6) and (8), the department deleted these paragraphs to clarify that certificates of registration for radiation machines used in veterinary medicine have no expiration date and do not have to be renewed due to the change that occurred as a result of HB 2285. Subsequent paragraphs were renumbered as reflected in new paragraphs (6) - (8).

Concerning the figure referenced in §289.233(i)(4)(B)(iii), the department revised the "Notice to Employees" form to add the new post office box and zip code to be compliant with department policy. In addition, "set forth" was replaced with "state" under "Inspections" to be consistent with language used in equivalent forms throughout this chapter.

LEGAL CERTIFICATION

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

SUBCHAPTER D. GENERAL

25 TAC §289.204

STATUTORY AUTHORITY

The amendment is adopted under Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; Health and Safety Code, §401.301, which allows the department to collect fees for radiation control licenses and registrations that it issues; Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rule implements Government Code, §2001.039.

§289.204. Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services.

(a) Purpose. The requirements in this section establish fees for licensing, registration, emergency planning and implementation, and other regulatory services, and provide for their payment.

(b) Scope. Except as otherwise specifically provided, the requirements in this section apply to any person who is the following:

(1) an applicant for, or holder of:

(A) a radioactive material license issued in accordance with §289.252 of this title (relating to Licensing of Radioactive Material), or §289.259 of this title (relating to Licensing of Naturally Occurring Radioactive Material (NORM)); or

(B) a general license acknowledgment issued in accordance with §289.251 of this title (relating to Exemptions, General Licenses, and General License Acknowledgments); or

(C) a certificate of registration for radiation machines and/or services, or sources of laser radiation, issued in accordance with §289.226 of this title (relating to Registration of Radiation Machine Use and Services), §289.230 of this title (relating to Certification of Mammography Systems and Mammography Machines Used for Interventional Breast Radiography), a certificate of registration for dental radiation machines in accordance with §289.232 of this title (relating to Radiation Control Regulations for Dental Radiation Machines), a certificate of registration for radiation machines used in veterinary medicine in accordance with §289.233 of this title (relating to Radiation Control Regulations for Radiation Machines Used in Veterinary Medicine), §289.234 of this title (relating to Mammography Accreditation), or §289.301 of this title (relating to Registration and Radiation Safety Requirements for Lasers and Intense-Pulsed Light Devices); or

(2) the holder of a fixed nuclear facility construction permit or operating license issued by the United States Nuclear Regulatory Commission (NRC) in accordance with Title 10, Code of Federal Regulations, Part 50; or

(3) the operator of any other fixed nuclear facility.

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

(1) Contiguous properties--Those locations adjacent to an existing licensed or permitted area.

(2) Decontamination services--Providing deliberate operations to reduce or remove residual radioactivity from equipment, facilities, and land owned, possessed, or controlled by other persons to a level that permits release of equipment, facilities, and land for unrestricted use and/or termination of a license.

(3) Emergency planning and implementation--The development and application of those capabilities necessary for the protection of the public and the environment from the effects of an accidental or uncontrolled release of radioactive materials, including the equipping, training and periodic retraining of response personnel.

(4) Fixed nuclear facility--The following are considered fixed nuclear facilities:

(A) any nuclear reactor(s) at a single site;

(B) any facility designed or used for the assembly or disassembly of nuclear weapons; or

(C) any other facility using special nuclear material for which the agency conducts off-site environmental surveillance and/or emergency planning and implementation to protect the public health and safety or the environment.

(5) Limited manufacturer--A manufacturer/distributor of radioactive material that is not required to submit a decommissioning funding plan or an emergency plan in accordance with §289.252 of this title.

(6) Processor of radioactive material--A manufacturer/distributor who converts normal form radioactive material into special form or a manufacturer/distributor of radioactive sealed sources.

(d) Payment of fees.

(1) Each application for a specific license, general license acknowledgement, or certificate of registration for which a fee is prescribed in subsections (e), (g), or (j) of this section shall be accompanied by a nonrefundable fee equal to the appropriate fee. Each request for evaluation of a sealed source and/or device shall be accompanied by a nonrefundable fee prescribed in subsection (f) of this section. Each application for accreditation of a mammography facility shall be accompanied by a nonrefundable fee prescribed in subsection (h) of this section. Each application for an industrial radiographer certification and an industrial radiographer examination shall be accompanied by a nonrefundable and non-transferable fee prescribed in subsection (i) of this section.

(A) An application for a license covering more than one category of specific license shall be accompanied by the prescribed fee for the highest category and 25% of the applicable prescribed fee for each additional requested category.

(B) An application for a certificate of registration covering more than one category shall be accompanied by the prescribed fee for the highest category.

(C) No application will be accepted for filing or processed prior to payment of the full amount specified.

(2) A nonrefundable fee, in accordance with subsection (e) of this section shall be paid for each radioactive material license and/or for each general license acknowledgement. The fee shall be paid every two years based on the month listed as the expiration month on the license or general license acknowledgement and shall be paid in full on or before the last day of the expiration month. In the case of a single license that authorizes more than one category of use, the fee shall be the prescribed fee for the highest license category plus 25% of the applicable prescribed fee for each additional license category authorized.

(3) A nonrefundable fee, in accordance with subsection (j) of this section, shall be paid for each certificate of registration for radiation machines and/or services, or sources of laser radiation. The fee shall be paid every two years based on the month listed as the expiration month on the certificate of registration and shall be paid in full on or before the last day of the expiration month. For certificates of registration with no specified expiration date, payment shall be paid in full on or before the due date stated on the invoice.

(4) In the case of a single certificate of registration that authorizes more than one category of machine/type of use, the category listed in subsection (j) of this section and assigned the higher fee will be used.

(5) An additional nonrefundable fee equal to five percent of the total fee for each specific license shall be paid with the specified fee by each holder of a specific license, excluding diagnostic nuclear medicine licensees.

(A) The fees collected by the agency in accordance with this paragraph shall be deposited to the credit of the Radiation and Perpetual Care Account, until the fees collectively total $500,000.

(B) If the balance of fees collected in accordance with this paragraph is subsequently reduced to $350,000 or less, the agency shall reinstitute assessment of the fee until the balance reaches $500,000.

(6) Each application for reciprocal recognition of an out-of-state license in accordance with §289.252(s) of this title, an out-of-state registration in accordance with §289.226 of this title, or an out-of-state laser registration in accordance with §289.301 of this title, shall be accompanied by the applicable fee, provided that no such fee has been submitted within 24 months of the date of commencement of the proposed activity.

(7) Each holder of a fixed nuclear facility construction permit or operating license or an operator of any other fixed nuclear facility shall submit an annual fee for services received. This fee shall recover for the State of Texas the actual expenses arising from environmental surveillance and emergency planning and implementation activities. Payment shall be made within 90 days following the date of invoice.

(8) Fee payments shall be in cash or by check or money order made payable to the Department of State Health Services. The payments may be made by personal delivery to the central office, Radiation Control, Department of State Health Services, 1100 West 49th Street, Austin, Texas, or mailed to Radiation Control, Department of State Health Services, P.O. Box 149347, MC 2003, Austin, Texas, 78714-9347.

(9) Any applicant requesting authorization for any of the categories in subsection (e) of this section for veterinary use will be assessed the fee for the corresponding category.

(e) Schedule of fees for radioactive material licenses. The following schedule contains the fees for radioactive material licenses:
Figure: 25 TAC §289.204(e) (No change.)

(f) Fee for evaluation of a sealed source and/or device.

(1) Each time a manufacturer submits a request for evaluation of a unique sealed source, one of the following fees shall be paid:

(A) for an initial evaluation, a fee of $4,626; or

(B) for an amendment requiring re-evaluation, a fee of $2,309.

(2) Each time a manufacturer submits a request for evaluation of a unique device, one of the following fees shall be paid:

(A) for an initial evaluation, a fee of $9,258; or

(B) for an amendment requiring re-evaluation, a fee of $4,632.

(3) No request for evaluation will be processed prior to payment of the full amount specified.

(g) Fees for certification of mammography systems and mammography machines used for interventional breast radiography. No application will be accepted for filing or processed prior to payment of the full amount specified in paragraph (1) of this subsection.

(1) An application for certification of mammography systems shall be accompanied by a nonrefundable fee of $1,745. Additional mammography systems that have not been assigned a separate United States Food and Drug Administration (FDA) identification number shall be authorized on the same certification. A nonrefundable fee of $204 for each additional mammography system on the same certification shall be included in the nonrefundable application fee.

(2) The annual fee for mammography systems is $1,745. A fee of $204 for each additional mammography system on the same certification shall be included in the annual fee.

(3) Fees for mammography machines used for interventional breast radiography shall be as follows:

(A) An application for certification of machines used for interventional breast radiography shall be accompanied by a nonrefundable fee of $422. A nonrefundable fee of $204 for each additional machine used for interventional breast radiography on the same certification shall be included in the nonrefundable application fee.

(B) The annual fee for machines used for interventional breast radiography is $422. A fee of $204 for each additional machine used for interventional breast radiography on the same certification shall be included in the annual fee.

(h) Fees for accreditation of mammography facilities.

(1) Each application for accreditation or re-accreditation of a mammography facility shall be accompanied by a nonrefundable fee. No application will be accepted for filing or processed prior to payment of the full amount specified in paragraph (2) of this subsection.

(2) Fees for accreditation of mammography facilities are as follows.

(A) The accreditation fee for the first mammography machine is $980.

(B) The accreditation fee for each additional mammography machine is $585.

(C) The fee for re-evaluation of clinical images due to failure during the accreditation process is $305 per mammography machine.

(D) The fee for re-evaluation of phantom images due to failure during the accreditation process is $340 per machine.

(E) The fee for an additional mammography review will be based on the number of clinical image sets reviewed and the type of review.

(F) The fee for reinstatement of a mammography machine is $585.

(G) Each facility for which a targeted clinical image review is required will be charged for actual expenses to the agency arising from the visit.

(H) Each facility for which an on-site visit due to three denials of accreditation is required will be charged for actual expenses to the agency arising from such visit.

(I) Payment of the fees in subparagraphs (G) and (H) of this paragraph shall be made within 60 days following the date of invoice.

(i) Fees for industrial radiographer certification and for radiographer certification examinations.

(1) The nonrefundable and non-transferable application fee for examination shall be $120 and shall be submitted to the agency with the application for examination.

(2) The nonrefundable application fee for radiographer certification shall be $110 and shall be submitted to the agency with the application for radiographer certification.

(j) Schedule of fees for certificates of registration for radiation machines, lasers, and services. The following schedule contains the fees for certificates of registration for radiation machines, lasers, and services.
Figure: 25 TAC §289.204(j) (No change.)

(k) Annual fees for environmental surveillance and emergency planning and implementation. Fees shall be set annually by the agency for each facility. Fees for fixed nuclear facilities shall be the actual

expenses for environmental surveillance and emergency planning and implementation activities. Costs of activities benefiting more than one facility shall be prorated.

(l) Failure to pay prescribed fees.

(1) In any case where the agency finds that an applicant for a license or certificate of registration has failed to pay the fee prescribed in this section, the agency will not process that application until such fee is paid.

(2) In any case where the agency finds that a licensee or registrant has failed to pay a fee prescribed by this section by the due date, the agency may implement compliance procedures as provided in §289.205 of this title (relating to Hearing and Enforcement Procedures).

(3) In any case where the agency finds that a fixed nuclear facility has failed to pay fees for environmental surveillance or emergency planning and implementation within 90 days following date of invoice, the agency may issue an order to show cause why those services should not be terminated.

(m) Fees for Texas Online participation. For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

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

Filed with the Office of the Secretary of State on September 22, 2008.

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER E. REGISTRATION REGULATIONS

25 TAC §§289.226, 289.232, 289.233

STATUTORY AUTHORITY

The amendments are adopted under Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; Health and Safety Code, §401.301, which allows the department to collect fees for radiation control licenses and registrations that it issues; Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

§289.226. Registration of Radiation Machine Use and Services.

(a) Purpose. This section provides for the registration of persons using radiation machines and persons who are in the business of providing radiation machine installation or radiation services. No person shall use radiation machines or perform radiation services except as authorized in a certificate of registration issued by the agency in accordance with the requirements of this section. A person who receives, possesses, uses, owns, or acquires radiation machines prior to receiving a certificate of registration is subject to the requirements of this chapter.

(b) Scope.

(1) In addition to the requirements of this section, all registrants are subject to the requirements of §289.203 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.205 of this title (relating to Hearing and Enforcement Procedures), and §289.231 of this title (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation).

(2) Registrants using radiation machines in the healing arts are also subject to the requirements of §289.227 of this title (relating to Use of Radiation Machines in the Healing Arts). Morgues and educational facilities utilizing radiation machines for non-human use are subject to the specific requirements of §289.227 of this title.

(3) Registrants using analytical and other industrial radiation machines, such as x-ray equipment used for cathodoluminescence, ion implantation, gauging, or electron beam welding, are subject to the requirements of §289.228 of this title (relating to Radiation Safety Requirements for Industrial Radiation Machines).

(4) Registrants using accelerators, therapeutic radiation machines, and simulators are also subject to the requirements of §289.229 of this title (relating to Radiation Safety Requirements for Accelerators, Therapeutic Radiation Machines, and Simulators).

(5) Registrants using mammography radiation machines are also subject to the requirements of §289.230 of this title (relating to Certification of Mammography Systems and Mammography Machines Used for Interventional Breast Radiography) and §289.234 of this title (relating to Mammography Accreditation).

(6) Registrants using radiation machines in industrial radiographic operations are also subject to the requirements of §289.255 of this title (relating to Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography).

(7) Registrants using dental radiation machines are subject to the requirements of §289.232 of this title (relating to Radiation Control Regulations for Dental Radiation Machines).

(8) Registrants using veterinary radiation machines are subject to the requirements of §289.233 of this title (relating to Radiation Control Regulations for Veterinary Radiation Machines).

(9) For radiation machines for human use, performance of exposure rate or dose measurements to determine compliance with exposure rate or dose measurement requirements of diagnostic radiation machines in this chapter must be performed by a licensed medical physicist with a specialty in diagnostic radiological physics.

(10) For the purposes of this section, radiation services shall include, but may not be limited to the following:

(A) for radiation machines that are not for human use, performance of exposure rate or dose measurements;

(B) for radiation machines for human use, gathering of radiation machine output measurements under the direction of a licensed medical physicist;

(C) for radiation machines for human use, performance of services specified in paragraph (9) of this subsection or services requiring a licensed medical physicist as specified in §289.229 of this title;

(D) presentation of agency-accepted training courses that are specifically required by this chapter;

(E) calibration of survey and radiation measurement instruments;

(F) demonstration and sales of radiation machines that require the individual to operate or cause a radiation machine to be operated in order to demonstrate or sell;

(G) assembly, installation or repair to ensure a radiation machine is operating according to manufacturer's specifications;

(H) completion of equipment performance evaluations on dental radiation machines;

(I) provision of radiation machines on a routine basis to a facility for limited time periods. For purposes of this section, a person providing the services described in this subparagraph is a provider of equipment. For healing arts facilities, the use of radiation machines shall be directed by a practitioner associated with the contracting facility.

(11) For purposes of this section, a practitioner of the healing arts is a person licensed to practice healing arts by either the Texas Medical Board as a physician, the Texas Board of Chiropractic Examiners, or the Texas State Board of Podiatric Medicine.

(c) Prohibition. Exposure of an individual for training, demonstration, or other non-healing arts purposes is prohibited.

(d) Exemptions.

(1) Electronic equipment that produces radiation incidental to its operation for other purposes is exempt from the registration and notification requirements of this section, provided that the dose equivalent rate averaged over an area of 10 square centimeters (cm^2) does not exceed 0.5 millirem per hour (mrem/hr) at 5 centimeters (cm) from any accessible surface of such equipment. The production, testing, or factory servicing of such equipment shall not be exempt.

(2) Radiation machines in transit or in storage incident to transit are exempt from the requirements of this section. This exemption does not apply to the providers of radiation machines for mobile services. Facilities that have placed all radiation machines in storage, including on-site storage, and have notified the agency in writing, are exempt from the requirements of this section. This exemption is void if any radiation machine is energized resulting in the production of radiation.

(3) Domestic television receivers, video display terminals, and electron microscopes, including the servicing of such devices, are exempt from the requirements of this section.

(4) Inoperable radiation machines are exempt from the requirements of this section. For the purposes of this section, an inoperable radiation machine means a radiation machine that cannot be energized when connected to a power supply without repair or modification.

(5) Financial institutions that take possession of radiation machines as the result of foreclosure, bankruptcy, or other default of payment are exempt from the requirements in this section to the extent that they demonstrate that the unit is operable for the sole purpose of selling, leasing, or transferring.

(6) Facilities, including academic institutions and research or development facilities, registered for the use of radiation machines are exempt from the registration requirements of subsection (j) of this section, regarding radiation services, to the extent that their personnel perform radiation services only for the registrant by whom they are employed.

(e) General requirements for application for registration.

(1) Application for registration shall be completed on forms prescribed by the agency and shall contain all the information required by the form and accompanying instructions.

(2) A radiation safety officer (RSO) shall be designated on each application form. The qualifications of that individual shall be submitted to the agency with the application. The RSO shall meet the applicable requirements of subsection (t)(1) of this section and carry out the responsibilities of subsection (t)(2) of this section.

(3) The agency may at any time after the filing of the original application, require further statements in order to enable the agency to determine whether the certificate of registration should be issued or denied.

(4) An application for a certificate of registration may include a request for a certificate of registration authorizing one or more activities. Applications for certification of mammography systems shall be made separately.

(5) Applications and documents submitted to the agency may be made available for public inspection except that the agency may withhold any document or part thereof from public inspection in accordance with §289.231(aa) of this title.

(6) Each application for a certificate of registration shall be accompanied by the fee prescribed in §289.204 of this title.

(7) Each application shall be accompanied by a completed BRC Form 226-1 (Business Information Form).

(f) Application for registration for human use of radiation machines. In addition to the requirements of subsection (e) of this section, each applicant shall comply with the following.

(1) Each person having a radiation machine used in the healing arts shall apply for registration with the agency within 30 days after beginning use of the radiation machine, except for mobile services that shall be registered in accordance with subsection (g) of this section, and healing arts screening and medical research programs that shall be approved in accordance with subsection (h) of this section.

(2) Each person having an accelerator or therapeutic radiation machine at or above 1 million electron volts (MeV) for human use shall apply for and receive a certificate of registration from the agency before energizing the accelerator, including performing acceptance testing.

(3) Each person having a simulator and/or therapeutic radiation machine below 1 MeV for human use shall apply for registration with the agency within 30 days of energizing the equipment.

(4) The applicant shall be qualified by reason of training and experience to use the radiation machine for the purpose requested in accordance with this section in such a manner as to minimize danger to occupational and public health and safety.

(5) The applicant's proposed equipment, facilities, and operating and safety procedures shall be adequate to minimize danger to occupational and public health and safety.

(6) An application for healing arts shall be signed by a licensed practitioner. The signature of the administrator, president, or chief executive officer will be accepted in lieu of a licensed practitioner's signature if the facility has more than one licensed practitioner who may direct the operation of radiation machines. The application shall also be signed by the RSO if the RSO is someone other than the licensed practitioner.

(7) An application for accelerators or therapeutic radiation machines for human use shall be signed by a practitioner licensed by the Texas Medical Board. The signature of the administrator, president, or chief executive officer will be accepted in lieu of a licensed practitioner's signature if the facility has more than one licensed practitioner who may direct the operation of radiation machines. The application shall also be signed by the RSO if the RSO is someone other than the licensed practitioner. Each applicant shall submit operating and safety procedures as described in §289.229(h)(1)(D) of this title and a description of the proposed facilities in accordance with the following:

(A) §289.229(h)(2)(B) and (C) of this title for equipment with energies below 1 MeV; and

(B) §289.229(h)(3)(B) of this title for equipment with energies above 1 MeV.

(g) Application for registration of mobile service operation. In addition to the requirements of subsections (e) and (f) of this section or §289.230 of this title, as applicable, each applicant shall apply for and receive authorization for mobile service operation before beginning mobile service operation. The following shall be submitted:

(1) an established main location where the machine(s), records, etc. will be maintained for inspection. This shall be a street address, not a post office box number;

(2) a sketch or description of the normal configuration of each radiation machine's use, including the operator's position and any ancillary personnel's location during exposures. If a mobile van is used with a fixed unit inside, furnish the floor plan indicating protective shielding and the operator's location; and

(3) a current copy of the applicant's operating and safety procedures regarding radiological practices for protection of patients, operators, employees, and the general public.

(h) Application for registration of healing arts screening and medical research.

(1) In addition to the requirements of subsections (e) and (f) of this section, each applicant shall apply for and receive authorization for healing arts screening before initiating a screening program. The information and evaluation in subsection (t)(4) of this section shall be submitted with the application.

(2) In addition to the requirements of subsections (e) and (f) of this section, any research using radiation machines on humans shall be approved by an Institutional Review Board (IRB) as required by Title 45, Code of Federal Regulations (CFR), Part 46 and Title 21, CFR, Part 56. The IRB shall include at least one practitioner of the healing arts to direct any use of radiation in accordance with §289.231(b)(1) of this title.

(i) Application for registration of radiation machines for non-human use, including use in morgues. In addition to the requirements of subsection (e) of this section, each applicant shall comply with the following.

(1) Each person having an accelerator for non-human use shall apply for and receive a certificate of registration from the agency before beginning use of the accelerator.

(2) Each person having an accelerator for non-human use shall submit the following:

(A) operating and safety procedures as described in §289.229(f)(3)(B) of this title; and

(B) a description of the applicant's proposed facilities in accordance with §289.229(f)(2) and (f)(3)(A), (D) and (E) of this title.

(3) Each person having a radiation machine for non-human use, other than those specified in paragraph (1) of this subsection and those used for industrial radiographic operations, shall apply for registration with the agency within 30 days after beginning use of the machine.

(4) Each applicant for use of radiation machines in industrial radiographic operations shall submit the information required in §289.255(t)(1) of this title before beginning use of the machine(s).

(5) An application for the uses specified in this subsection shall be signed by the applicant or registrant or a person duly authorized to act for and on the applicant's or registrant's behalf. The application shall also be signed by the RSO if the RSO is someone other than the applicant or registrant.

(j) Application for registration of radiation machine services. In addition to the requirements of subsection (e) of this section, each applicant shall comply with the following.

(1) Each person who intends to provide radiation services described in subsection (b)(10) of this section shall apply for and receive a certificate of registration from the agency before providing such service.

(2) An application for radiation services shall be signed by the applicant or registrant or a person duly authorized to act for and on the applicant's or registrant's behalf. The application shall also be signed by the RSO if the RSO is someone other than the applicant or registrant.

(3) The applicant shall submit written documentation to the agency of the specific training and experience that qualifies each individual to discharge the duties of this service. As a minimum, each applicant shall submit the following:

(A) for individuals performing assembly, installation, or repair of radiation machines in subsection (b)(10)(G) of this section, the qualifications listed in subsection (t)(3) of this section;

(B) for individuals performing the services specified in subsection (b)(9) and (10)(C) of this section, a copy of the individual's license from the Texas Board of Licensure for Professional Medical Physicists;

(C) for all other services, the qualifications listed in subsection (t)(1)(A)(i)-(iii) of this section.

(4) No person shall perform services specified in subsection (b)(9) and (10) of this section that are not specifically authorized by the agency.

(5) No person shall perform radiation machine services, other than initial installation of the first machine(s) on the premises, for an individual who cannot produce evidence of registration with the agency authorizing the possession and use of the machines in question.

(6) Each applicant for providers of equipment shall also submit the following:

(A) an established main location where the machines, records, etc., will be maintained for inspection. This shall be a street address, not a post office box number;

(B) evidence that the healing arts facility responsible for administering or supervising the administering of radiation is registered in accordance with the requirements in this section; and

(C) a current copy of the applicant's operating and safety procedures. A current copy of the applicant's operating and safety procedures is required when personnel are provided in addition to equipment.

(7) Each applicant for calibration of survey and radiation measurement instruments shall also submit the following:

(A) procedures for calibration;

(B) qualifications of personnel performing the calibration;

(C) a copy of the calibration certificate to be used; and

(D) a copy of the expiration sticker to be used.

(8) Each applicant for agency-accepted training courses specifically required by §289.253 (relating to Radiation Safety Requirements for Well Logging Service Operation and Tracer Studies), and §289.255 of this title shall also submit the following:

(A) a course syllabus;

(B) the number of instructional hours for each subject;

(C) a list of training resources, for example, reference books, texts, workbooks, physical facilities, etc.;

(D) all test questions and corresponding answers; and

(E) the radiation safety training, education, and experience of each instructor.

(k) Issuance of certificate of registration.

(1) A certificate of registration application will be approved if the agency determines that an application meets the requirements of the Texas Radiation Control Act (Act) and the requirements of this chapter. The certificate of registration authorizes the proposed activity in such form and contains such conditions and limitations as the agency deems appropriate or necessary.

(2) The agency may incorporate in the certificate of registration at the time of issuance, or thereafter by amendment, such additional requirements and conditions with respect to the registrant's possession, use, and transfer of radiation machines subject to this chapter as it deems appropriate or necessary in order to:

(A) minimize danger to occupational and public health and safety;

(B) require additional reports and the keeping of additional records as may be appropriate or necessary; and

(C) prevent loss or theft of radiation machines subject to this section.

(3) The agency may request, and the registrant shall provide, additional information after the certificate of registration has been issued to enable the agency to determine whether the certificate of registration should be modified in accordance with subsection (r) of this section.

(l) Specific terms and conditions of certificates of registration.

(1) Each certificate of registration issued in accordance with this section shall be subject to the applicable provisions of the Act, now or hereafter in effect, and to the applicable rules and orders of the agency.

(2) No certificate of registration issued or granted under this section shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, to any person unless the agency authorizes the transfer in writing.

(3) Each person registered by the agency for radiation machine use in accordance with this section shall confine use and possession of the radiation machine registered to the locations and purposes authorized in the certificate of registration.

(4) In making a determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a certificate of registration, the agency may consider the technical competence and compliance history of an applicant or holder of a certificate of registration. After an opportunity for a hearing, the agency shall deny an application for a certificate of registration, an amendment to a certificate of registration, or renewal of a certificate of registration if the applicant's compliance history reveals that at least three agency actions have been issued against the applicant, within the previous six years, that assess administrative or civil penalties against the applicant, or that revoke or suspend the certificate of registration.

(m) Responsibilities of registrant.

(1) The registrant shall notify the agency in writing of any changes that would render the information contained in the application for registration and/or the certificate of registration inaccurate.

(A) Notification is required within 30 days of the following changes:

(i) name and mailing address;

(ii) street address where machine will be used;

(iii) RSO; or

(iv) type of servicing and/or services provided.

(B) Each registrant shall inventory all radiation machines in its possession at an interval not to exceed one year. The inventory record shall be maintained for three years for inspection by the agency and shall include:

(i) manufacturer's name;

(ii) model and serial number of the control panel; and

(iii) location of radiation machine(s) (for example, room number).

(C) Notification to the agency concerning radiation machine inventory is required within 30 days of either of the following:

(i) any change in the category(ies) of machine type or type of use as specified in §289.231(ll) of this title and as authorized in the certificate of registration; or

(ii) any increase in the number of machines authorized by the certificate of registration in any machine type or type of use category.

(D) Each registrant shall maintain records of receipt, transfer, and disposal of radiation machines for inspection by the agency. The records shall include the following information and shall be kept until termination of the certificate of registration.

(i) manufacturer's name;

(ii) model and serial number from the control panel;

(iii) date of the receipt, transfer, and disposal;

(iv) name and address of person machine(s) received from, transferred to, or disposed of; and

(v) name of the individual recording the information.

(2) The following criteria applies to radiation machines used for clinical trial evaluations and loaner or demonstration radiation machines. For persons having a valid certificate of registration, radiation machines used for clinical trial evaluations and loaner or demonstration radiation machines may be used for up to 60 days. After 60 days, the registrant shall notify the agency of the following:

(A) a change in the category(ies) of machine type or type of use as specified in §289.231(ll) of this title and as authorized in the certificate of registration; or

(B) any increase in the number of machines authorized by the certificate of registration in any machine type or type of use category.

(3) No registrant shall engage any person for services described in subsection (j) of this section until such person provides to the registrant evidence of registration with the agency.

(4) Records of training and experience required by this section shall be maintained for inspection by the agency until disposal is authorized by the agency.

(5) The following applies to voluntary or involuntary petitions for bankruptcy.

(A) Each registrant shall notify the agency, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy by the registrant or its parent company. This notification shall include:

(i) the bankruptcy court in which the petition for bankruptcy was filed; and

(ii) the date of the filing of the petition.

(B) A copy of the "petition for bankruptcy" shall be submitted to the agency along with the written notification.

(6) The registrant is responsible for complying with this chapter and the conditions of the certificate of registration.

(7) No person shall use radiation machines or perform services that are not authorized in the certificate of registration issued by the agency.

(8) Providers of equipment shall keep a log of radiation machines provided in Texas. The record shall be maintained for five years for inspection by the agency and shall list the following current information:

(A) date machine is provided; and

(B) name of customer and customer's certificate of registration number.

(n) Sale, lease, loan, installation, assembly, disposal, and transfer of radiation machines.

(1) No person shall transfer a radiation machine to or install for, other than initial installation of the first machine on the premises, any person who does not possess a current certificate of registration issued by the agency in accordance with this section.

(2) Any person who sells, leases, lends, disposes, assembles, installs, or otherwise transfers radiation machines in the state shall notify the agency of the following information within 30 days of such action:

(A) the name, address, and certificate of registration number, except in the case of initial machine installation, of persons who have received such machines;

(B) the type of radiation machine, the manufacturer's name, model number, and control panel serial number of each radiation machine; and

(C) the date of transfer or disposal of each radiation machine.

(3) No person shall make, assemble, or install radiation machines or the components of such machines unless such machines and equipment, when properly placed in operation and used, meet the applicable requirements of this chapter.

(o) Expiration of certificates of registration.

(1) Except as provided by subsection (q) of this section, each certificate of registration expires at the end of the day, in the month and year stated in the certificate of registration.

(2) If a registrant does not submit an application for renewal of the certificate of registration in accordance with subsection (q) of this section, as applicable, the registrant shall on or before the expiration date specified in the certificate of registration:

(A) terminate use of all radiation machines and/or terminate radiation machine servicing or radiation services;

(B) submit to the agency a record of the disposition of the radiation machines, if applicable, and if transferred, to whom it was transferred, within 30 days following the expiration date; and

(C) pay any outstanding fees in accordance with §289.204 of this title.

(3) Expiration of the certificate of registration does not relieve the registrant of the requirements of this chapter.

(p) Termination of certificates of registration. When a registrant decides to terminate all activities involving radiation machines or services authorized under the certificate of registration, the registrant shall immediately do the following:

(1) request termination of the certificate of registration in writing;

(2) submit to the agency a record of the disposition of the radiation machines, if applicable; and if transferred, to whom it was transferred; and

(3) pay any outstanding fees in accordance with §289.204 of this title.

(q) Renewal of certificate of registration.

(1) An application for renewal of a certificate of registration shall be filed in accordance with subsection (e) of this section and applicable paragraphs of subsections (f) - (j) of this section.

(2) If a registrant files an application for a renewal in proper form before the existing certificate of registration expires, such existing certificate of registration shall not expire until the application status has been determined by the agency.

(r) Modification, suspension, and revocation of certificates of registration.

(1) The terms and conditions of all certificates of registration shall be subject to revision or modification. A certificate of registration may be suspended or revoked by reason of amendments to the Act, by reason of rules in this chapter or orders issued by the agency.

(2) Any certificate of registration may be revoked, suspended, or modified, in whole or in part, for any of the following:

(A) any material false statement in the application or any statement of fact required under provisions of the Act;

(B) conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a certificate of registration on an original application;

(C) violation of, or failure to observe any of the terms and conditions of the Act, this chapter, the certificate of registration, or order of the agency; or

(D) existing conditions that constitute a substantial threat to the public health or safety or the environment.

(3) Each certificate of registration revoked by the agency ends at the end of the day on the date of the agency's final determination to revoke the certificate of registration, or on the revocation date stated in the determination, or as otherwise provided by the agency order.

(4) Except in cases in which the occupational and public health or safety requires otherwise, no certificate of registration shall be suspended or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the registrant in writing and the registrant shall have been afforded an opportunity to demonstrate compliance with all lawful requirements.

(s) Reciprocal recognition of out-of-state certificates of registration.

(1) Whenever any radiation machine is to be brought into the state for any temporary use, the person proposing to bring the machine into the state shall apply for and receive a notice from the agency granting reciprocal recognition prior to beginning operations. The request for reciprocity shall include the following:

(A) completed BRC Form 226-1 (Business Information Form);

(B) completed BRC Form 252-3 (Notice of Intent to Work in Texas Under Reciprocity);

(C) completed qualification forms (BRC Forms 255-E, 255-T and/or 255-OS) for each radiographer who will be working in Texas if the reciprocity request is for industrial radiography;

(D) name and Texas licensing board number of the practitioner if the machines are used to irradiate humans;

(E) copy of the applicant's current certificate of registration or equivalent document;

(F) copy of the applicant's current operating and safety procedures pertinent to the proposed use;

(G) fee as specified in §289.204(e) of this title; and

(H) qualifications of personnel who will be operating the machines.

(2) Upon a determination that the request for reciprocity meets the requirements of the agency, the agency may issue a notice granting reciprocal recognition authorizing the proposed use.

(3) Once reciprocity is granted, the out-of-state registrant shall file a BRC Form 252-3 with the agency prior to each entry into the state. This form shall be filed at least three working days before the radiation machine is to be used in the state. If, for a specific case, the three-day period would impose an undue hardship, the out-of-state registrant may, at the determination of the agency, obtain permission to proceed sooner.

(4) When radiation machines are used as authorized under reciprocity, the out-of-state registrant shall have the following in its possession at all times for inspection by the agency:

(A) completed BRC Form 252-3;

(B) copy of the notice from the agency granting reciprocity;

(C) copy of the out-of-state registrant's operating and safety procedures; and

(D) copy of the applicable rules as specified in the notice granting reciprocity.

(5) If the state from which the radiation machine is proposed to be brought does not issue certificates of registration or equivalent documents, a certificate of registration shall be obtained from the agency in accordance with the requirements of this section.

(6) The agency may withdraw, limit, or qualify its acceptance of any certificate of registration or equivalent document issued by another agency upon determining that such action is necessary in order to prevent undue hazard to occupational and public health and safety or property.

(7) Reciprocal recognition will expire one year from the date it is granted. A new request for reciprocity shall be submitted to the agency each year. Reciprocity requests made after the initial request shall include only the following:

(A) completed BRC Form 226-1 (Business Information Form);

(B) completed BRC Form 252-3 (Notice of Intent to Work in Texas Under Reciprocity);

(C) completed qualification forms (BRC Forms 255-E, 255-T and/or 255-OS) for each radiographer who will be working in Texas if the reciprocity request is for industrial radiography;

(D) name and Texas licensing board number of the practitioner if the machines are used to irradiate humans;

(E) copy of the applicant's current certificate of registration or equivalent document;

(F) copy of the applicant's current operating and safety procedures pertinent to the proposed use;

(G) fee as specified in §289.204(e) of this title; and

(H) qualifications of personnel who will be operating the machines.

(8) Radiation services provided by a person from out-of-state will not be granted reciprocity. Whenever radiation services are to be provided by a person from out-of-state, that person shall apply for and receive a certificate of registration from the agency before providing radiation services. The application shall be filed in accordance with subsections (e), (j), and (i) of this section, as applicable.

(t) Appendices.

(1) Requirements for RSOs for registrants.

(A) All RSOs shall meet the following general requirements in addition to requirements in specific categories, except for industrial radiography RSOs:

(i) knowledge of potential radiation hazards and emergency precautions; and

(ii) completed educational courses related to ionizing radiation safety or a radiation safety officer course; or

(iii) experience in the use and familiarity of the type of equipment used.

(B) Specific requirements for RSOs by facility are as follows.

(i) Healing arts facilities shall have:

(I) licensed practitioner RSOs with documentation of licensing board number; or

(II) non-practitioner RSOs with the following:

(-a-) evidence of a valid general certificate issued under the Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601, and at least two years of supervised use of radiation machines;

(-b-) evidence of a valid limited general certificate issued under the Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601, and at least four years of supervised use of radiation machines;

(-c-) evidence of registry by the American Registry of Radiologic Technologists (ARRT) or the American Registry of Clinical Radiologic Technologists (ARCRT) and at least two years of supervised use of radiation machines;

(-d-) evidence of associate degree in radiologic technology, health physics, or nuclear technology, and at least two years of supervised use of radiation machines;

(-e-) evidence of registration with the Board of Nurse Examiners as a Registered Nurse or a Registered Nurse with an extended scope of practice (Nurse Practitioner) performing radiologic procedures, and at least two years of supervised use of radiation machines in the respective practitioners' specialty;

(-f-) evidence of registration with the Texas State Board of Physician Assistant Examiners, and at least two years of supervised use of radiation machines in the respective practitioners' specialty;

(-g-) evidence of:

(-1-) registration with the Texas Medical Board performing radiologic procedures under a physician's instruction and direction;

(-2-) registration with the Texas State Board of Chiropractic Examiners performing radiologic procedures under a chiropractor's instruction and direction; or

(-3-) registration with the Texas State Board of Podiatric Medicine performing radiologic procedures under a podiatrist's instruction and direction; and

(-4-) at least four years of supervised use of radiation machines in the respective practitioners' specialty;

(-h-) for radiotherapy facilities, evidence of registry by the ARRT or ARCRT and at least four years of supervised experience in radiotherapy;

(-i-) evidence of bachelor's (or higher) degree in a natural or physical science, health physics, radiological science, nuclear medicine, or nuclear engineering; or

(-j-) evidence of a current Texas license under the Medical Physics Practice Act, Texas Occupations Code, Chapter 602, in one or more of the following appropriate specialties:

(-1-) medical health physics, diagnostic radiological physics, or medical nuclear physics for diagnostic x-ray facilities; or

(-2-) medical health physics or therapeutic radiological physics for radiotherapy facilities.

(ii) Academic institutions and/or research and development facilities shall have RSOs who are faculty or staff members in radiation protection, radiation engineering, or related disciplines. (This individual may also serve as the RSO over the healing arts section of the facility.)

(iii) Industrial radiography operations shall have RSOs who meet the requirements of §289.255(m)(4)(B) of this title.

(C) Exemptions. The RSO identified on a certificate of registration issued before September 1, 1993, need not comply with the training requirements in this subsection.

(2) Responsibilities of RSOs. Specific duties of the RSO include, but are not limited to, the following:

(A) establishing and overseeing operating and safety procedures that maintain radiation exposures as low as reasonably achievable (ALARA), and to review them regularly to ensure that the procedures are current and conform with this chapter;

(B) ensuring that individual monitoring devices are properly used by occupationally-exposed personnel, that records are kept of the monitoring results, and that timely notifications are made as required by §289.203 of this title;

(C) investigating and reporting to the agency each known or suspected case of radiation exposure to an individual or radiation level detected in excess of limits established by this chapter and each theft or loss of source(s) of radiation, determining the cause, and taking steps to prevent its recurrence;

(D) having a thorough knowledge of management policies and administrative procedures of the registrant and keeping management informed on a periodic basis of the performance of the registrant's radiation protection program, if applicable;

(E) assuming control and having the authority to institute corrective actions including shut-down of operations when necessary in emergency situations or unsafe conditions;

(F) maintaining records as required by this chapter; and

(G) ensuring that personnel are adequately trained and complying with this chapter, the conditions of the certificate of registration, and the operating and safety procedures of the registrant.

(3) Minimum education and training for persons performing radiation machine assembly, installation or repair. All persons performing radiation machine assembly, installation or repair shall meet the general requirements in subparagraph (A) of this paragraph and one or more of the specialized requirements in subparagraph (B) of this paragraph.

(A) General requirements include:

(i) experience or education providing familiarity with the type(s) of equipment to be serviced, to include radiation safety;

(ii) knowledge of protective measures to reduce potentially hazardous conditions; and

(iii) six months of supervised assembly and repair of the type(s) of equipment to be serviced.

(B) Specialized requirements include:

(i) one year of formal training (may be satisfied by factory school, military technical training school, or other courses in radiation machine assembly, installation or repair techniques) or an associate's degree in biomedical equipment repair;

(ii) a bachelor's degree in electrical engineering with specialized training in radiation producing devices; or

(iii) a combination of training and experience equal to clause (i) of this subparagraph.

(C) Exemptions. A registrant holding a valid certificate of registration who has hired individuals to perform services before September 1, 1993, need not comply with the education and training requirements in this paragraph. Individuals hired after September 1, 1993, shall comply with the education and training requirements in this paragraph.

(4) Information to be submitted by persons proposing to conduct healing arts screening. Persons requesting that the agency approve a healing arts screening program shall submit the following information and evaluation.

(A) Administrative controls to include the following:

(i) the name and address of the applicant and, where applicable, the names and addresses of agents within Texas;

(ii) the diseases or conditions for which the x-ray examinations are to be used in diagnoses;

(iii) a detailed description of the x-ray examinations proposed in the screening program;

(iv) a description of the population to be examined in the screening program, for example, age, sex, physical condition, and other appropriate information;

(v) an evaluation of any known alternate methods not involving ionizing radiation that could achieve the goals of the screening program and why these methods are not used instead of the x-ray examination; and

(vi) for mobile screening operations, location(s) where radiation machines are used and maintained.

(B) Operating procedures for all x-ray systems (except bone densitometers) to include the following:

(i) an evaluation of the x-ray systems to be used in the screening program. The evaluation shall be performed by a licensed medical physicist with a specialty in diagnostic radiological physics. The evaluation shall show that such systems do satisfy all requirements of this section;

(ii) a description of the diagnostic imaging quality control program; and

(iii) a copy of the technique chart for the x-ray examination procedures to be used.

(C) Operating procedures for bone densitometers to include the manufacturer's evaluation of the system to be used in the screening program. The evaluation shall show that such systems satisfy all requirements of this section.

(D) Training data to include the following:

(i) the qualifications of each individual who will be operating the x-ray systems;

(ii) the qualifications of the individual who will be supervising the operators of the x-ray systems. The extent of supervision and the method of work performance evaluation shall be specified; and

(iii) the name and address of the practitioner licensed in Texas who will interpret the radiographs.

(E) Records to include the following:

(i) a description of the procedures to be used in advising the individuals screened, and their private practitioners of the healing arts, of the results of the screening procedure and any further medical needs indicated; and

(ii) a description of the procedures for the retention or disposition of the radiographs and other records pertaining to the x-ray examinations.

§289.232. Radiation Control Regulations for Dental Radiation Machines.

(a) Purpose. This section establishes the following.

(1) Fees for certificates of registration for dental facilities and provisions for their payment.

(2) Requirements for the registration of persons using radiation machines. No person shall use radiation machines except as authorized in a certificate of registration issued by the agency in accordance with the requirements of this section. A person who receives, possesses, uses, owns, or acquires radiation machines prior to receiving a certificate of registration is subject to the requirements of this chapter.

(3) Requirements intended to control the receipt, possession, use, and transfer of radiation machines by any person so the total dose to an individual, including doses resulting from all sources of radiation other than background radiation, does not exceed the standards for protection against radiation prescribed in this section. However, nothing in this section shall be construed as limiting actions that may be necessary to protect health and safety in an emergency.

(4) Requirements for the use of dental radiation machines. The registrant shall assure that the requirements of this section are met in the operation of such radiation machines.

(5) Specific record keeping requirements and general provisions for records and reports.

(6) Requirements for providing notices to employees and instructions and options available to such individuals in connection with agency inspections of registrants to ascertain compliance with the provisions of the Texas Radiation Control Act, Health and Safety Code, Chapter 401, and requirements of this chapter, orders, and certificates of registration issued thereunder regarding radiological working conditions.

(7) Governing of the following in accordance with the Texas Radiation Control Act, the Texas Administrative Procedure Act, Health and Safety Code, Chapter 401; Texas Government Code, Chapter 2001; Title 1 Texas Administrative Code (TAC), Chapter 155; and the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title:

(A) proceedings for the granting, denying, renewing, transferring, amending, suspending, revoking, or annulling of a certificate of registration;

(B) determining compliance with or granting of exemptions from agency rule, order, or condition of certificate of registration;

(C) assessing administrative penalties; and

(D) determining propriety of other agency orders.

(b) Scope.

(1) Except as specifically provided in other sections of this chapter, this section applies to persons who receive, possess, use, or transfer dental radiation machines. The dose limits in this section do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of dental diagnosis, to exposure from individuals administered radioactive material and released in accordance with this chapter, or to voluntary participation in medical research programs. No radiation may be deliberately applied to human beings except by or under the supervision of a dentist licensed by the Texas State Board of Dental Examiners.

(2) Persons who are also registered by the agency to receive, possess, acquire, transfer, or use class IIIb and class IV lasers in dentistry shall also comply with the requirements of §289.301 of this title (relating to Registration and Radiation Safety Requirements for Lasers).

(3) Dental radiation machines located in a facility that also has other healing arts radiation machines will be inspected at the intervals specified in §289.231(ll)(2) of this title (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation) and equipment performance evaluations shall be performed at the interval specified for a medical facility in §289.227(o)(1) of this title (relating to Use of Radiation Machines in the Healing Arts).

(4) The agency may, by requirements in this chapter, an order, or a condition of certificate of registration, impose upon any registrant such requirements in addition to those established in this chapter as it deems appropriate or necessary to minimize danger to public health and safety or the environment.

(5) Registrants who are also licensed by the agency to receive, possess, use, and transfer radioactive materials must also comply with the applicable requirements of §289.201 of this title (relating to General Provisions for Radioactive Material), §289.202 of this title (relating to Standards for Protection Against Radiation from Radioactive Materials), §289.252 of this title (relating to Licensing of Radioactive Material), §289.256 of this title (relating to Medical and Veterinary Use of Radioactive Material), and §289.257 of this title (relating to Packaging and Transportation of Radioactive Material).

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

(1) Absorbed dose--The energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

(2) Accessible surface--The external surface of the enclosure or housing provided by the manufacturer.

(3) Act--Texas Radiation Control Act, Health and Safety Code, Chapter 401.

(4) Administrative law judge (ALJ)--A judge employed by the State Office of Administrative Hearings.

(5) Administrative penalty--A monetary penalty assessed by the agency in accordance with the Texas Radiation Control Act, Health and Safety Code, §401.384, to emphasize the need for lasting remedial action and to deter future violations.

(6) Adult--An individual 18 or more years of age.

(7) Agency--The Department of State Health Services or its successor.

(8) Agreement State--Any state with which the United States Nuclear Regulatory Commission (NRC) has entered into an effective agreement under §274b. of the Atomic Energy Act of 1954 (42 United States Code et seq.), as amended (73 Stat. 689).

(9) As low as is reasonably achievable (ALARA)--Making every reasonable effort to maintain exposures to radiation as far below the dose limits in this section as is practical, consistent with the purpose for which the registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of ionizing radiation and radiation machines in the public interest.

(10) Automatic exposure control--A device that automatically controls one or more technique factors in order to obtain a required quantity of radiation at preselected locations (See definition for phototimer).

(11) Background radiation--Radiation from cosmic sources; non-technologically enhanced naturally occurring radioactive material, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents, such as Chernobyl, that contribute to background radiation and are not under the control of the registrant. "Background radiation" does not include radiation from sources of radiation regulated by the agency.

(12) Barrier--(See definition for protective barrier.)

(13) Beam-limiting device--A device that provides a means to restrict the dimensions of the x-ray field.

(14) Beam quality (diagnostic x-ray)--A term that describes the penetrating power of the x-ray beam. This is identified numerically by half-value layer and is influenced by kilovolt peak (kVp) and filtration.

(15) Certificate of registration--A form of permission given by the agency to an applicant who has met the requirements for registration set out in the Texas Radiation Control Act and this section.

(16) Certified equipment--Equipment that has been certified in accordance with Title 21, Code of Federal Regulations.

(17) Coefficient of variation or C--The ratio of the standard deviation to the mean value of a population of observations. It is estimated using the following equation:
Figure: 25 TAC §289.232(c)(17)

(18) Collective dose--The sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(19) Commissioner--The Commissioner of the Department of State Health Services.

(20) Contested case--A proceeding in which the agency determines the legal rights, duties, or privileges of a party after an opportunity for adjudicative hearing.

(21) Continuous pressure type switch--A switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

(22) Control panel--The part of the radiation machine control upon which are mounted the switches, knobs, push buttons, and other hardware necessary for manually setting the technique factors.

(23) Declared pregnant woman--A woman who has voluntarily informed the registrant, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman voluntarily withdraws the declaration in writing or is no longer pregnant.

(24) Deep dose equivalent, that applies to external whole body exposure--The dose equivalent at a tissue depth of 1 centimeter (1000 milligrams per square centimeter).

(25) Dentist--An individual licensed by the Texas State Board of Dental Examiners.

(26) Diagnostic source assembly--The tube housing assembly with a beam-limiting device attached.

(27) Director--The director of the radiation control program under the agency's jurisdiction.

(28) Dose--For external exposure to x-ray radiation from radiation machines, a generic term that means absorbed dose, dose equivalent, or total effective dose equivalent. For purposes of this section, "radiation dose" is an equivalent term.

(29) Dose equivalent--The product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

(30) Dose limits--The permissible upper bounds of radiation doses established in accordance with this chapter. For purposes of this chapter, "limits" is an equivalent term.

(31) Embryo/fetus--The developing human organism from conception until the time of birth.

(32) Entrance exposure--The exposure expressed in roentgens (R), measured in air with the specified technique, calculated or adjusted to represent the exposure at the point where the center of the useful beam enters the patient.

(33) Exposure--The quotient of dQ by dm where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass "dm" are completely stopped in air. The International System of Units (SI) unit of exposure is the coulomb per kilogram. For purposes of this section, this term is used as a noun.

(34) Exposure rate--The exposure per unit of time.

(35) External dose--That portion of the dose equivalent received from any source of radiation outside the body.

(36) Extremity--Hand, elbow, arm below the elbow, foot, knee, and leg below the knee. The arm above the elbow and the leg above the knee are considered part of the whole body.

(37) Field emission equipment--Equipment that uses an x-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

(38) Filter--Material placed in the useful beam to preferentially absorb selected radiations.

(39) Gray--The SI unit of absorbed dose. One gray is equal to an absorbed dose of 1 joule per kilogram or 100 rad.

(40) Half-value layer--The thickness of a specified material that attenuates the beam of radiation to an extent such that the exposure rate is reduced to one-half of its original value.

(41) Healing arts--Any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, injury, or unhealthy or abnormal physical or mental condition.

(42) Hearing--A proceeding to examine an application or other matter before the agency in order to adjudicate rights, duties, or privileges.

(43) Human use--For exposure to x-ray radiation from radiation machines, the external administration of radiation to human beings for healing arts purposes or research and/or development specifically authorized by the agency.

(44) Image receptor--Any device, such as a fluorescent screen or radiographic film, that transforms incident x-ray photons either into a visible image or into another form that can be made into a visible image by further transformations.

(45) Individual--Any human being.

(46) Individual monitoring--The assessment of dose equivalent to an individual by the use of:

(A) individual monitoring devices; or

(B) survey data.

(47) Individual monitoring devices--Devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of this section, "personnel dosimeter" and "dosimeter" are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescence dosimeters, optically stimulated luminescence dosimeters, pocket ionization chambers (pocket dosimeters), and electronic personal dosimeters.

(48) Informal conference--A meeting held by the agency with a person to discuss the following:

(A) safety, safeguards, or environmental problems;

(B) compliance with regulatory or registration condition requirements;

(C) proposed corrective measures including, but not limited to, schedules for implementation; and

(D) enforcement options available to the agency.

(49) Inspection--An official examination and/or observation including, but not limited to, records, tests, surveys, and monitoring to determine compliance with the Texas Radiation Control Act and agency rules, orders, requirements, and conditions of the certificate of registration.

(50) Institutional Review Board--Any board, committee, or other group formally designated by an institution to review, approve the initiation of, and conduct periodic review of biomedical research involving human subjects.

(51) Ionizing radiation--Any electromagnetic or particulate radiation capable of producing ions, directly or indirectly, in its passage through matter. Ionizing radiation includes gamma rays and x rays, alpha and beta particles, high speed electrons, neutrons, and other nuclear particles.

(52) kV--Kilovolt.

(53) kVp--Kilovolt peak (See definition for peak tube potential).

(54) kWs--Kilowatt-second. It is equivalent to 10 E 3 watt-second, where 1 watt-second =1 kilovolt x 1 milliampere x 1 second.

(55) Lead equivalent--The thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(56) Leakage radiation--Radiation emanating from the diagnostic assembly except for the useful beam and radiation produced when the exposure switch or timer is not activated.

(57) Lens dose equivalent--The external dose equivalent to the lens of the eye at a tissue depth of 0.3 centimeters (300 milligrams per square centimeter).

(58) License--A form of permission given by the agency to an applicant who has met the requirements for licensing set out in the Texas Radiation Control Act and this chapter.

(59) Licensed material--Radioactive material received, possessed, used, or transferred under a general or specific license issued by the agency.

(60) Licensed medical physicist--An individual holding a current Texas license under the Medical Physics Practice Act, Texas Occupations Code, Chapter 602.

(61) Licensee--Any person who is licensed by the agency in accordance with the Texas Radiation Control Act and this chapter.

(62) Licensing state--Any state with rules equivalent to the Suggested State Regulations for Control of Radiation relating to, and having an effective program for, the regulatory control of naturally occurring or accelerator-produced radioactive material (NARM) and has been designated as such by the Conference of Radiation Control Program Directors, Inc.

(63) mA--Milliampere.

(64) mAs--Milliampere-second.

(65) Medical research--The investigation of various health risks and diseases.

(66) Member of the public--Any individual, except when that individual is receiving an occupational dose.

(67) Minor--An individual less than 18 years of age.

(68) Mobile service operation--The provision of radiation machines and personnel at temporary sites for limited time periods. The radiation machines may be fixed inside a motorized vehicle or may be a portable radiation machine that may be removed from the vehicle and taken into a facility for use.

(69) Monitoring--The measurement of radiation and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of this chapter, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

(70) Non-certified equipment--Equipment manufactured and assembled prior to certification requirements of Title 21, Code of Federal Regulations (CFR), effective as specified in Title 21, CFR, §1020.30(a).

(71) Notice of violation--A written statement prepared by the agency of one or more alleged infringements of a legally binding requirement.

(72) Occupational dose--The dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation from licensed/registered and unlicensed/unregistered sources of radiation, whether in the possession of the licensee/registrant or other person. Occupational dose does not include dose received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with this chapter or from voluntary participation in medical research programs, or as a member of the public.

(73) Order--A specific directive contained in a legal document issued by the agency.

(74) Party--A person designated as such by the ALJ. A party may consist of the following:

(A) the agency; and

(B) an applicant, licensee, registrant, accredited mammography facility, or certified industrial radiographer.

(75) Patient--An individual subjected to dental examination, diagnosis, or treatment.

(76) Peak tube potential--The maximum value of the potential difference in kilovolts across the x-ray tube during an exposure.

(77) Person--Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, local government, any other state or political subdivision or agency thereof, or any other legal entity, and any legal successor, representative, agent, or agency of the foregoing, other than the United States Nuclear Regulatory Commission, and other than federal government agencies licensed or exempted by the United States Nuclear Regulatory Commission.

(78) Personnel monitoring equipment--(See definition for individual monitoring devices).

(79) Phototimer--A method for controlling radiation exposures to image receptors by the amount of radiation that reaches a radiation monitoring device. The radiation monitoring device is part of an electronic circuit that controls the duration of time the tube is activated (See definition for automatic exposure control).

(80) Portable x-ray equipment--(See definition for x-ray equipment).

(81) Primary protective barrier--(See definition for protective barrier).

(82) Protective barrier--A barrier of radiation absorbing materials used to reduce radiation exposure. The types of protective barriers are as follows:

(A) Primary protective barrier--A barrier sufficient to attenuate the useful beam to the required degree; or

(B) Secondary protective barrier--A barrier sufficient to attenuate the stray radiation to the required degree.

(83) Public dose--The dose received by a member of the public from exposure to radiation from licensed/registered and unlicensed/unregistered sources of radiation, whether in the possession of the licensee/registrant or other person. It does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with this chapter or from voluntary participation in medical research programs, or as a member of the public.

(84) Rad--The special unit of absorbed dose. One rad is equal to an absorbed dose of 100 ergs per gram or 0.01 joule per kilogram (0.01 gray).

(85) Radiation--One or more of the following:

(A) gamma and x rays; alpha and beta particles and other atomic or nuclear particles or rays;

(B) radiation emitted to energy density levels that could reasonably cause bodily harm from an electronic device; or

(C) sonic, ultrasonic, or infrasonic waves from any electronic device or resulting from the operation of an electronic circuit in an electronic device in the energy range to reasonably cause detectable bodily harm.

(86) Radiation area--Any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 millisievert) in one hour at 30 centimeters from the radiation machine or from any surface that the radiation penetrates.

(87) Radiation machine--Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(88) Radiation safety officer--An individual who has a knowledge of and the authority and responsibility to apply appropriate radiation protection rules, standards, and practices, who shall be specifically authorized on a certificate of registration, and who is the primary contact with the agency.

(89) Radiograph--An image receptor on which the image is created directly or indirectly by an x-ray exposure and results in a permanent record.

(90) Registrant--Any person issued a certificate of registration by the agency in accordance with the Texas Radiation Control Act and this chapter.

(91) Regulation--(See definition for rule).

(92) Rem--The special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor (1 rem = 0.01 sievert).

(93) Remote inspection--An examination by the agency of information submitted by the registrant on a form provided by the agency.

(94) Research and development--Research and development is defined as:

(A) theoretical analysis, exploration, or experimentation; or

(B) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(95) Restricted area--An area, access to which is limited by the registrant for the purpose of protecting individuals against undue risks from exposure to radiation. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

(96) Roentgen (R)--The special unit of exposure. One roentgen (R) equals 2.58×10^{-4} coulombs per kilogram of air. (See definition for exposure.)

(97) Rule--Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior section but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures. The word "rule" was formerly referred to as "regulation."

(98) Scattered radiation--Radiation that has been deviated in direction during passage through matter.

(99) Secondary protective barrier--(See definition for protective barrier).

(100) Severity level--A classification of violations based on relative seriousness of each violation and the significance of the effect of the violation on the occupational or public health or safety.

(101) Shallow dose equivalent--The dose equivalent at a tissue depth of 0.007 centimeters (7 milligrams per square centimeter) that applies to the external exposure of the skin of the whole body or the skin of an extremity.

(102) SI--The abbreviation for the International System of Units.

(103) Sievert--The SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 sievert = 100 rem).

(104) Source of radiation--Any radioactive material, or any device or equipment emitting or capable of producing radiation.

(105) Source-to-image receptor distance--The distance from the source to the center of the input surface of the image receptor.

(106) Source-to-skin distance--The distance from the source to the skin of the patient.

(107) Special units--The conventional units historically used by registrants, i.e., rad (absorbed dose), and rem (dose equivalent).

(108) Stationary x-ray equipment--(See definition for x-ray equipment).

(109) Stray radiation--The sum of leakage and scattered radiation.

(110) Supervision--The delegating of the task of applying radiation in accordance with this section to persons not licensed in dentistry, who perform tasks under the dentist's control. The dentist assumes full responsibility for these tasks and shall assure that the tasks will be administered correctly.

(111) Survey--An evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, and/or disposal of radiation machines. When appropriate, such survey includes, but is not limited to, tests, physical examination of location of equipment or radiation machines, and measurements of levels of radiation present, and evaluation of administrative and/or engineered controls.

(112) Technique chart--A chart that provides all necessary generator control settings and geometry needed to make clinical radiographs when the radiation machine is in manual mode.

(113) Technique factors--The conditions of operation that are specified as follows:

(A) for capacitor energy storage equipment, peak tube potential in kilovolt and quantity of charge in milliampere-second;

(B) for field emission equipment rated for pulsed operation, peak tube potential in kilovolt and number of x-ray pulses; and

(C) for all other equipment, peak tube potential in kilovolt and either tube current in milliamperes and exposure time in seconds or the product of tube current and exposure time in milliampere-second.

(114) Termination--A release by the agency of the obligations and authorizations of the registrant under the terms of the certificate of registration. It does not relieve a person of duties and responsibilities imposed by law or rule.

(115) Texas Regulations for Control of Radiation (TRCR)--All sections of Title 25 Texas Administrative Code, Chapter 289.

(116) Total effective dose equivalent--For external exposures only to x-ray radiation from radiation machines, the total effective dose equivalent is equal to the deep dose equivalent.

(117) Traceable to a national standard--This indicates that a quantity or a measurement has been compared to a national standard, for example, the National Institute of Standards and Technology, directly or indirectly through one or more intermediate steps and that all comparisons have been documented.

(118) Tube--An x-ray tube, unless otherwise specified.

(119) Tube housing assembly--The tube housing with tube installed. It includes high-voltage and/or filament transformers and other appropriate elements when such are contained within the tube housing.

(120) Unrestricted area (uncontrolled area)--An area, access to which is neither limited nor controlled by the registrant. For purposes of this section, "uncontrolled area" is an equivalent term.

(121) Useful beam--Radiation that passes through the window, aperture, core, or other collimating device of the source housing. Also referred to as the primary beam.

(122) Violation--An infringement of any rule, license or registration condition, order of the agency, or any provision of the Texas Radiation Control Act.

(123) X-ray control--A device that controls input power to the x-ray high-voltage generator and/or the x-ray tube. It includes components such as timers, phototimers, automatic brightness stabilizers, and similar devices that control the technique factors of an x-ray exposure.

(124) X-ray equipment--An x-ray system, subsystem, or component thereof. For the purposes of this rule, types of x-ray equipment are as follows:

(A) portable x-ray equipment--x-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled or equipment designed to be hand-carried; or

(B) stationary x-ray equipment--x-ray equipment that is installed in a fixed location.

(125) X-ray field--That area of the intersection of the useful beam and any one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth of the maximum in the intersection.

(126) X-ray high-voltage generator--A device that transforms electrical energy from the potential supplied by the x-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tubes, high-voltage switches, electrical protective devices, and other appropriate elements.

(127) X-ray system--An assemblage of components for the controlled production of x rays. It includes minimally an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components that function with the system are considered integral parts of the system.

(128) X-ray subsystem--Any combination of two or more components of an x-ray system.

(129) X-ray tube--Any electron tube that is designed to be used primarily for the production of x rays.

(130) Whole body--For purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(131) Worker--An individual engaged in work under a certificate of registration issued by the agency and controlled by a registrant, but does not include the registrant.

(132) Year--The period of time beginning in January used to determine compliance with the provisions of this chapter. The registrant may change the starting date of the year used to determine compliance by the registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

(d) Exemptions.

(1) The agency may, upon application therefor or upon its own initiative, exempt a source of radiation or a kind of use or user from the requirements of this section if the agency determines that the exemption is not prohibited by law and will not result in a significant risk to public health and safety. In determining such exemptions, the agency will consider:

(A) state of technology;

(B) economic considerations in relation to benefits to the public health and safety; and

(C) other societal, socioeconomic, or public health and safety considerations.

(2) Electronic equipment that produces radiation incidental to its operation for other purposes is exempt from the registration and notification requirements of this section, provided that the dose equivalent rate averaged over an area of 10 square centimeters does not exceed 0.5 millirem per hour at 5 centimeters from any accessible surface of such equipment. The production, testing, or factory servicing of such equipment shall not be exempt.

(3) Radiation machines in transit or in storage incident to transit are exempt from the requirements of this section. This exemption does not apply to the providers of radiation machines for mobile services. Facilities that have placed all radiation machines in storage, including storage in place, and have notified the agency in writing, are exempt from the requirements of this section. This exemption is void if any radiation machine is energized resulting in the production of radiation.

(4) Inoperable radiation machines are exempt from the requirements of this section. For the purposes of this section, an inoperable radiation machine means a radiation machine that cannot be energized when connected to a power supply without repair or modification.

(5) Financial institutions that take possession of radiation machines as the result of foreclosure, bankruptcy, or other default of payment are exempt from the requirements in this section to the extent

that they demonstrate that the radiation machine is operable for the sole purpose of selling, leasing, or transferring.

(6) No individual monitoring shall be required for personnel operating only dental radiation machines for dental diagnostic purposes.

(7) Portable radiation machines designed to be hand-held are exempt from the requirements of subsection (i)(6)(C) of this section. The portable radiation machines shall be held by the tube housing support or handle.

(8) Individuals who are sole practitioners and sole operators and the only occupationally exposed individual are exempt from the following requirements:

(A) subsection (i)(3) of this section;

(B) subsection (i)(4)(D) of this section; and

(C) subsection (i)(5)(B) and (C) of this section.

(9) In accordance with the Dental Practice Act, Texas Occupations Code, §258.054, dental practices are exempt from the Medical Physics Practice Act, Texas Occupations Code, Chapter 602. Registrants required to have tests performed in accordance with subsection (i)(7)(A) of this section may select any qualified person authorized by registration through the Bureau of Radiation Control.

(e) Communications.

(1) Except where otherwise specified, all communications and reports concerning this chapter and applications filed under them should be mailed by postal service to Radiation Control, Department of State Health Services, P.O. Box 149347, Austin, Texas, 78714-9347. Communications, reports, and applications may be delivered in person to the agency's office located at 8407 Wall Street, Austin, Texas.

(2) Documents received by the agency will be deemed to have been received on the date of the postmark, telegram, telefacsimile, or electronic media transmission.

(f) Interpretations. Except as specifically authorized by the agency in writing, no interpretation of the meaning of this chapter by any officer or employee of the agency other than a written legal interpretation by the agency, will be considered binding upon the agency.

(g) Fees for Certificates of Registration for Dental Facilities.

(1) Payment of fees.

(A) Each application for a certificate of registration shall be accompanied by a nonrefundable fee of $330. No application will be accepted for filing or processed prior to payment of the full amount specified.

(B) A nonrefundable fee of $330 shall be paid for each certificate of registration for radiation machines used in dentistry. The fee shall be paid every two years and shall be paid in full on or before the due date stated on the invoice.

(i) For each additional use location authorized on a single certificate of registration, the registrant will pay an additional $90.

(ii) In the case of a single certificate of registration that authorizes more than one category of use, the category listed in §289.204(j) of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services) and assigned the higher fee will be used. If this certificate of registration also has additional authorized use sites, the registrant shall pay an additional 30% of the highest fee category.

(C) Each application for reciprocal recognition of an out-of-state registration in accordance with subsection (h)(8) of this section shall be accompanied by the $330 fee, provided that no such fee has been submitted within 24 months of the date of commencement of the proposed activity.

(D) Fee payments shall be in cash or by check or money order made payable to the Department of State Health Services. The payments may be made by personal delivery to the central office, Radiation Control, Department of State Health Services, 1100 West 49th Street, Austin, Texas, or mailed to Radiation Control, Department of State Health Services, P.O. Box 149347, MC 2003, Austin, Texas, 78714-9347.

(2) Failure to pay prescribed fees.

(A) In any case where the agency finds that an applicant for a certificate of registration has failed to pay the fee prescribed in this section, the agency will not process that application until such fee is paid.

(B) In any case where the agency finds that a registrant has failed to pay a fee prescribed by this section by the due date, the agency may implement compliance procedures as provided in subsection (k)(2)(C) of this section.

(3) Fees for Texas Online participation. For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(h) Registration of Radiation Machine Use.

(1) Application for registration.

(A) Each person having a radiation machine used in dentistry shall apply for registration with the agency within 30 days after beginning use of the radiation machine, except for mobile services that shall be registered in accordance with paragraph (2) of this subsection and clinical trial evaluations that shall be registered in accordance with paragraph (5)(B) of this subsection.

(B) Application for registration shall be completed on forms prescribed by the agency and shall contain all the information required by the form and accompanying instructions.

(C) The applicant shall be qualified by reason of training and experience to use the radiation machines for the purpose requested in accordance with this section in such a manner as to minimize danger to public health and safety.

(D) A radiation safety officer shall be designated on each application form. The qualifications of that individual shall be submitted to the agency with the application. The radiation safety officer shall meet the applicable requirements of paragraph (9) of this subsection and carry out the responsibilities of paragraph (10) of this subsection.

(E) An application for use of a dental radiation machine shall be signed by a licensed dentist. The signature of the administrator, president, or chief executive officer will be accepted in lieu of a licensed dentist's signature if the facility has more than one licensed dentist who may direct the operation of radiation machines. The application shall also be signed by the radiation safety officer if the radiation safety officer is someone other than the licensed dentist.

(F) The agency may at any time after the filing of the original application require further statements in order to enable the agency to determine whether the certificate of registration should be issued or denied.

(G) An application for a certificate of registration may include a request for a certificate of registration authorizing one or more activities. If an application includes a request for an additional authorization other than use of a dental radiation machine, compliance with other applicable sections of this chapter will be required.

(H) Applications and documents submitted to the agency may be made available for public inspection except that the agency may withhold any document or part thereof from public inspection in accordance with subsection (j)(1)(K) and (L) of this section.

(I) Each application for a certificate of registration shall be accompanied by the fee prescribed in subsection (g) of this section.

(J) Each application shall be accompanied by a completed BRC Form 226-1, Business Information Form.

(K) The applicant's proposed radiation machines, facilities, and operating and safety procedures shall be adequate to minimize danger to occupational and public health and safety.

(2) Application for registration of mobile service operation used in dentistry. In addition to the requirements of paragraph (1) of this subsection, each applicant shall apply for and receive authorization for mobile service operation before beginning mobile service operation. The following shall be submitted.

(A) An established main location where the machine(s), records, etc. will be maintained for inspection. This shall be a street address, not a post office box number.

(B) A sketch or description of the normal configuration of each radiation machine's use, including the operator's position and any ancillary personnel's location during exposures. If a mobile van is used with a fixed radiation machine inside, furnish the floor plan indicating protective shielding and the operator's location.

(C) A current copy of the applicant's operating and safety procedures regarding radiological practices for protection of patients, operators, employees, and the general public.

(3) Issuance of certificate of registration.

(A) Upon a determination that an application meets the requirements of the Texas Radiation Control Act and the requirements of this chapter, the agency may issue a certificate of registration authorizing the proposed activity in such form and containing such conditions and limitations as the agency deems appropriate or necessary.

(B) The agency may incorporate in the certificate of registration at the time of issuance, or thereafter by amendment, such additional requirements and conditions with respect to the registrant's possession, use, and transfer of radiation machines subject to this section as it deems appropriate or necessary in order to:

(i) minimize danger to occupational and public health and safety;

(ii) require additional records and the keeping of additional records as may be appropriate or necessary; and

(iii) prevent loss or theft of radiation machines subject to this section.

(4) Specific terms and conditions of certificates of registration.

(A) Each certificate of registration issued in accordance with this section shall be subject to the applicable provisions of the Texas Radiation Control Act, now or hereafter in effect, and to the applicable requirements of this chapter and orders of the agency.

(B) No certificate of registration issued or granted under this section shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, to any person unless the agency authorizes the transfer in writing.

(C) Each person registered by the agency for radiation machine use in accordance with this section shall confine use and possession of the radiation machine registered to the locations and purposes authorized in the certificate of registration.

(D) The registrant is responsible for complying with this section and the conditions of the certificate of registration.

(E) No person shall use radiation machines that are not authorized in the certificate of registration issued by the agency.

(F) In making a determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a certificate of registration, the agency may consider the technical competence and compliance history of an applicant or holder of a certificate of registration. After an opportunity for a hearing, the agency shall deny an application for a certificate of registration, an amendment to a certificate of registration, or renewal of a certificate of registration if the applicant's compliance history reveals that at least three agency actions have been issued against the applicant, within the previous six years, that assess administrative or civil penalties against the applicant, or that revoke or suspend the certificate of registration.

(G) No registrant shall engage any person for services described in §289.226(j) of this title (relating to Registration of Radiation Machine Use and Services) until such person provides evidence to the registrant of registration with the agency.

(5) Responsibilities of the registrant.

(A) The registrant shall notify the agency in writing within 30 days of any of the following changes that would render the information contained in the application for registration and/or the certificate of registration inaccurate:

(i) name and mailing address;

(ii) street address where machine will be used;

(iii) RSO; or

(iv) name of entity contracted for "provider of equipment" registered in accordance with §289.226 of this title.

(B) The following criteria applies to loaner or demonstration radiation machines and radiation machines used for clinical trial evaluations. For persons having a valid certificate of registration, radiation machines used for clinical trial evaluations and loaner or demonstration radiation machines may be used for up to 60 days. After 60 days, the registrant shall notify the agency of the following:

(i) any change in the category(ies) of machine type or type of use as authorized in the certificate of registration (for example, addition of a computerized tomography machine to the authorized dental radiographic machine); or

(ii) any increase in the number of machines authorized by the certificate of registration in any machine type or type of use category.

(C) The following applies to voluntary or involuntary petitions for bankruptcy.

(i) Each registrant shall notify the agency, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy by the registrant or its parent company. This notification shall include:

(I) the bankruptcy court in which the petition for bankruptcy was filed; and

(II) the date of the filing of the petition.

(ii) A copy of the "petition for bankruptcy" shall be submitted to the agency along with the written notification.

(D) Inventory.

(i) Each registrant shall inventory all radiation machines at an interval not to exceed one year. The inventory shall be made and maintained for inspection by the agency in accordance with subsection (k)(1)(X)(i) of this section and shall include:

(I) manufacturer's name;

(II) model and serial number of the control panel; and

(III) location of radiation machine(s), for example, room number.

(ii) Notification to the agency concerning radiation machine inventory is required within 30 days of either of the following:

(I) any change in the category(ies) of machine type or type of use as authorized in the certificate of registration (for example, addition of a computerized tomography machine to the authorized dental radiographic machine); or

(II) any increase in the number of machines authorized by the certificate of registration in any machine type or type of use category.

(E) Receipt, transfer, and disposal of radiation machines. The registrant shall ensure that records of receipt, transfer, and disposal of radiation machines are made and/or maintained for each radiation machine in accordance with subsection (k)(1)(X)(i) of this section for inspection by the agency. Records of receipt, transfer, and disposal of radiation machines shall include the following:

(i) manufacturer's name and model and serial number from the control panel;

(ii) date of the receipt, transfer, and disposal; and

(iii) name of the individual recording the information.

(F) Records of training and experience required by this section shall be maintained for inspection by the agency until disposal is authorized by the agency.

(6) Termination of certificates of registration. When a registrant decides to terminate all activities involving radiation machines authorized under the certificate of registration, the registrant shall notify the agency immediately and:

(A) request termination of the certificate of registration in writing;

(B) submit to the agency a record of the disposition of the radiation machines and if transferred, to whom transferred; and

(C) pay any outstanding fees in accordance with subsection (g) of this section.

(7) Modification, suspension, and revocation of certificate of registration.

(A) The terms and conditions of all certificates of registration shall be subject to revision or modification. A certificate of registration may be suspended or revoked by reason of amendments to the Act, by reason of requirements of this chapter or orders issued by the agency.

(B) Any certificate of registration may be revoked, suspended, or modified, in whole or in part, for any of the following:

(i) any material false statement in the application or any statement of fact required under provisions of the Act;

(ii) conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a certificate of registration on an original application;

(iii) violation of, or failure to observe any of the terms and conditions of the Act, this chapter, the certificate of registration, or order of the agency; or

(iv) existing conditions that constitute a substantial threat to the public health or safety or the environment.

(C) Each certificate of registration revoked by the agency ends at the end of the day on the date of the agency's final determination to revoke the certificate of registration, or on the revocation date stated in the determination, or as otherwise provided by the agency order.

(D) Except in cases in which the occupational and public health or safety requires otherwise, no certificate of registration shall be suspended or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the registrant in writing and the registrant shall have been afforded an opportunity to demonstrate compliance with all lawful requirements.

(8) Reciprocal recognition of out-of-state certificates of registration.

(A) Whenever any radiation machine is to be brought into the state for any temporary use, the person proposing to bring the machine into the state shall apply for and receive a notice from the agency granting reciprocal recognition prior to beginning operations. The request for reciprocity shall include the following:

(i) completed BRC Form 226-1 (Business Information Form);

(ii) completed BRC Form 252-3 (Notice of Intent to Work in Texas Under Reciprocity);

(iii) name and Texas licensing board number of the dentist if the radiation machines are used to irradiate humans;

(iv) copy of the applicant's current state certificate of registration or equivalent document;

(v) copy of the applicant's current operating and safety procedures pertinent to the proposed use;

(vi) the fee as specified in subsection (g)(2) of this section; and

(vii) qualifications of personnel who will be operating the machines.

(B) Upon a determination that the request for reciprocity meets the requirements of the agency, the agency may issue a notice granting reciprocal recognition authorizing the proposed use.

(C) Once reciprocity is granted, the out-of-state registrant shall file a BRC Form 252-3 with the agency prior to each entry into the state. This form shall be filed at least three working days before the radiation machine is to be used in the state. If, for a specific case,

the three-day period would impose an undue hardship, the out-of-state registrant may, at the determination of the agency, obtain permission to proceed sooner.

(D) When radiation machines are used as authorized under reciprocity, the out-of-state registrant shall have the following in its possession at all times for inspection by the agency:

(i) completed BRC Form 252-3;

(ii) copy of the notice from the agency granting reciprocity;

(iii) copy of the out-of-state registrant's operating and safety procedures; and

(iv) copy of the applicable rules as specified in the notice granting reciprocity.

(E) If the state from which the radiation machine is proposed to be brought does not issue certificates of registration or equivalent documents, a certificate of registration shall be obtained from the agency in accordance with the requirements of this section.

(F) The agency may withdraw, limit, or qualify its acceptance of any certificate of registration or equivalent document issued by another agency upon determining that such action is necessary in order to prevent undue hazard to occupational and public health and safety.

(G) Reciprocal recognition will expire one year from the date it is granted. A new request for reciprocity shall be submitted to the agency each year. Reciprocity requests made after the initial request shall include only the following:

(i) completed BRC Form 226-1 (Business Information Form);

(ii) completed BRC Form 252-3 (Notice of Intent to Work in Texas Under Reciprocity);

(iii) name and Texas licensing board number of the dentist if the radiation machines are used to irradiate humans;

(iv) copy of the applicant's current state certificate of registration or equivalent document;

(v) copy of the applicant's current operating and safety procedures pertinent to the proposed use;

(vi) the fee as specified in subsection (g)(1) of this section; and

(vii) qualifications of personnel who will be operating the machines.

(H) Radiation services provided by a person from out-of-state will not be granted reciprocity. Whenever radiation services are to be provided by a person from out-of-state, that person shall apply for and receive a certificate of registration from the agency before providing radiation services. The application shall be filed in accordance with this subsection, as applicable.

(9) A radiation safety officer (RSO) shall be designated on each application form. The qualifications of that individual shall be submitted to the agency with the application.

(A) The RSO shall have the following qualifications:

(i) knowledge of potential hazards and emergency precautions; and

(ii) completed educational courses related to ionizing radiation safety or a radiation safety officer course; or

(iii) experience in the use and familiarity of the type of equipment used; and

(B) In addition to the qualifications in subparagraph (A) of this paragraph, documentation of the following shall be submitted to the agency:

(i) dentist radiation safety officers shall provide documentation of licensing board number and their signature on the application; or

(ii) non-practitioner radiation safety officers shall provide any one of the following:

(I) evidence of a valid general certificate issued under the Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601, and at least two years of supervised use of radiation machines;

(II) evidence of a valid limited general certificate issued under the Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601, and at least four years of supervised use of radiation machines;

(III) evidence of registry by the American Registry of Radiologic Technologists (ARRT) or the American Registry of Clinical Radiologic Technologists (ARCRT) and at least two years of supervised use of radiation machines;

(IV) evidence of associate degree in radiologic technology, health physics, or nuclear technology, and at least two years of supervised use of radiation machines;

(V) evidence of registration with the Board of Nurse Examiners as a Registered Nurse or a Registered Nurse with an extended scope of practice (Nurse Practitioner) performing radiologic procedures, and at least two years of supervised use of radiation machines in the respective practitioners' specialty;

(VI) evidence of registration with the Texas State Board of Physician Assistant Examiners, and at least two years of supervised use of radiation machines in the respective practitioners' specialty;

(VII) evidence of:

(-a-) registration with the Texas State Board of Dental Examiners to perform radiologic procedures under a dentist's instruction and direction or evidence of a valid certificate as a registered dental hygienist; and

(-b-) at least four years of supervised use of radiation machines in the respective dentists' specialty;

(VIII) evidence of bachelor's (or higher) degree in a natural or physical science, health physics, radiological science, nuclear medicine, or nuclear engineering; or

(IX) evidence of a current Texas license under the Medical Physics Practice Act, Texas Occupations Code, Chapter 602, in medical health physics, diagnostic radiological physics, or medical nuclear physics for diagnostic x-ray facilities.

(C) Academic institutions and/or research and development facilities shall have radiation safety officers who are faculty or staff members in radiation protection, radiation engineering, or related disciplines. (This individual may also serve as the radiation safety officer over the dental section of the facility).

(D) The radiation safety officer identified on a certificate of registration issued before September 1, 1993, need not comply with the qualification requirements in this subsection.

(10) Responsibilities of radiation safety officers. Specific duties of the radiation safety officer include, but are not limited to, the following:

(A) establishing and overseeing operating and safety procedures that maintain radiation exposures as low as reasonably achievable, and to review them regularly to ensure that the procedures are current and conform with this section;

(B) investigating and reporting to the agency each known or suspected case of radiation exposure to an individual or radiation level detected in excess of limits established by this section and each theft or loss of radiation machines, determining the cause, and taking steps to prevent its recurrence;

(C) having a thorough knowledge of management policies and administrative procedures of the registrant;

(D) assuming control and having the authority to institute corrective actions including shut-down of operations when necessary in emergency situations or unsafe conditions;

(E) maintaining records as required by this section; and

(F) ensuring that personnel are adequately trained and complying with this section, the conditions of the certificate of registration, and the operating and safety procedures of the registrant.

(i) Use of Dental Radiation Machines.

(1) As low as reasonably achievable. The registrant shall use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and public doses that are as low as reasonably achievable.

(2) Prohibited uses.

(A) The agency may prohibit use of dental radiation machines that pose significant threat or endanger occupational and public health and safety, in accordance with subsections (a)-(f) and (k)(2) of this section and paragraphs (1) and (2) of this subsection.

(B) Individuals shall not be exposed to the useful beam except for healing arts purposes and unless such exposure has been authorized by a dentist. This provision specifically prohibits deliberate exposure for the following purposes:

(i) exposure of an individual for training, demonstration, or other non-healing arts purposes;

(ii) exposure of an individual for the purpose of research except as authorized by subsection (i)(7) of this section.

(3) Operating and safety procedures. Each registrant shall have and implement written operating and safety procedures. These procedures shall be made available to each individual operating a radiation machine, including any restrictions of the operating technique required for the safe operation of the particular x-ray system.

(A) The registrant shall document that each individual operating a radiation machine has read the operating and safety procedures and shall maintain this documentation for inspection by the agency in accordance with subsection (k)(1)(X)(i) of this section. The documentation shall include the following:

(i) name and signature of individual;

(ii) date individual read the operating and safety procedures; and

(iii) initials of the RSO.

(B) The operating and safety procedures shall include, but are not limited to, the following procedures as applicable.

(i) use of a technique chart in accordance with paragraph (6)(A) of this subsection;

(ii) radiation dose requirements in accordance with paragraph (4)(A) of this subsection;

(iii) holding of patients or film in accordance with paragraph (13)(A), (C), and (D) of this subsection;

(iv) film processing program or digital image processing in accordance with paragraphs (14)-(16) of this subsection;

(v) posting notices to workers in accordance with paragraph (5)(B) of this subsection;

(vi) instructions to workers in accordance with paragraph (4)(D) of this subsection;

(vii) notifications and reports to individuals in accordance with subsection (j)(2)(B) and (C) of this section;

(viii) ordering x-ray exams in accordance with subsection (b)(1) of this section; and

(ix) posting of a radiation area in accordance with paragraph (5)(D) and (E) of this subsection.

(4) Personnel requirements.

(A) Occupational dose limits.

(i) The registrant shall control the occupational dose to individuals, to the following dose limits.

(I) An annual limit shall be the total effective dose equivalent being equal to 5 rems (0.05 sievert).

(II) The annual limits to the lens of the eye, to the skin of the whole body, and to the skin of any extremities shall be:

(-a-) a lens dose equivalent of 15 rems (0.15 sievert); and

(-b-) a shallow dose equivalent of 50 rems (0.5 sievert) to the skin of the whole body or to the skin of any extremity.

(III) The annual limits for a minor shall be 10% of the annual occupational dose limits specified in subclauses (I) and (II) of this clause.

(IV) If a woman declares her pregnancy, the registrant shall ensure that the dose equivalent to an embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed 0.5 rem (5 millisievert). If a woman chooses not to declare pregnancy, the occupational dose limits specified in subclauses (I) and (II) of this clause are applicable to the woman.

(V) The registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman so as to satisfy the limit in clause (i) of this subparagraph. The National Council on Radiation Protection and Measurements recommended in NCRP Report No. 91 "Recommendations on Limits for Exposure to Ionizing Radiation" (June 1, 1987) that no more than 0.05 rem (0.5 mSv) to the embryo/fetus be received in any one month.

(ii) The assigned deep dose equivalent shall be for the portion of the body receiving the highest exposure. The assigned shallow dose equivalent shall be the dose averaged over the contiguous 10 cm^2 of the skin receiving the highest exposure.

(iii) The deep dose equivalent, lens dose equivalent, and shallow dose equivalent may be assessed from surveys or radiation

measurements for the purpose of demonstrating compliance with the occupational dose limits.

(iv) The registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received from radiation machines or radioactive materials while employed by any other person.

(B) Dose limits for individual members of the public.

(i) Each registrant shall conduct operations so that:

(I) the total effective dose equivalent to individual members of the public from exposure to radiation from radiation machines does not exceed 0.5 rem (5 millisieverts) in a year, exclusive of the dose contribution from background radiation, exposure of patients to radiation for the purpose of medical diagnosis or therapy, or to voluntary participation in medical research programs; and

(II) the dose in any unrestricted area from external exposure to radiation from radiation machines does not exceed 0.002 rem (0.02 millisieverts) in any one hour.

(ii) If the registrant permits members of the public to have access to restricted areas, the limits for members of the public continue to apply to those individuals.

(iii) The agency may impose additional restrictions on radiation levels in unrestricted areas in order to restrict the collective dose.

(C) Occupational doses from other sources of radiation. Individuals who receive occupational doses from sources of radiation other than dental radiation machines may be required to comply with the requirements of §289.231(n) and (q)-(s) of this title.

(D) Instructions to workers. The registrant shall provide instructions to radiation workers prior to beginning initial work in restricted areas. These instructions shall include the following:

(i) precautions or procedures to minimize exposure;

(ii) the applicable provisions of agency requirements and certificates of registration for the protection of personnel from exposures to radiation occurring in such areas; and

(iii) the radiation worker's responsibility to report promptly to the registrant any condition that may constitute, lead to, or cause a violation of agency requirements or certificate of registration conditions, or unnecessary exposure to radiation.

(5) Facility requirements.

(A) Caution signs. Unless otherwise authorized by the agency, the standard radiation symbol prescribed shall use the colors magenta or purple or black on yellow background. The standard radiation symbol prescribed is the three-bladed design as follows:
Figure: 25 TAC §289.232(i)(5)(A) (No change.)

(i) the cross-hatched area of the symbol is to be magenta, or purple, or black; and

(ii) the background of the symbol is to be yellow.

(B) Posting of notices to workers.

(i) Each registrant shall post current copies of the following documents:

(I) this section;

(II) the certificate of registration and conditions or documents incorporated into the certificate of registration by reference, and amendments thereto;

(III) the operating procedures applicable to work under the certificate of registration; and

(IV) any notice of violation, if applicable, involving radiological working conditions, or order issued in accordance with subsections (b) and (k)(2) of this section and documentation of the corrections of any violations.

(ii) If posting of a document specified in clause (i) of this subparagraph is not practicable, the registrant shall post a notice that describes the document and states where it may be examined.

(iii) The following form, BRC Form 232-1, "Notice to Employees," which is found at the end of the section, or an equivalent document containing at least the same wording as BRC Form 232-1, shall be posted by each registrant as required by this section.
Figure: 25 TAC §289.232(i)(5)(B)(iii)

(iv) Documents, notices, or forms posted in accordance with this subsection shall:

(I) appear in a sufficient number of places to permit individuals engaged in work under the certificate of registration to observe them on the way to or from any particular work location to which the document applies;

(II) shall be conspicuous; and

(III) shall be replaced if defaced or altered.

(C) Posting requirements. The registrant shall post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA."

(D) Exceptions to posting requirements. Registrants are exempt from the posting of the radiation area requirements in subparagraph (C) of this paragraph provided that the operator has continuous surveillance and access control of the radiation area.

(6) Radiation machine requirements.

(A) Technique chart.

(i) A technique chart relevant to the particular x-ray machine shall be provided or electronically displayed in the vicinity of the control panel and used by all operators.

(ii) Technique and exposure indicators.

(I) The technique factors to be used during an exposure shall be indicated before the exposure begins except when automatic exposure controls are used, in which case the technique factors that are set prior to the exposure shall be indicated.

(II) On radiation machines having fixed technique factors, the requirement of subclause (I) of this clause may be met by permanent markings.

(III) The x-ray control shall provide visual indication of the production of x rays.

(IV) The indicated technique factors shall be accurate to within manufacturer's specifications. If these specifications are not available from the manufacturer, the factors shall be accurate to within ±10% of the indicated setting.

(B) Labeling radiation machines. Each registrant shall ensure that each radiation machine is labeled in a conspicuous manner that cautions individuals that radiation is produced when it is energized. This label shall be affixed in a clearly visible location on the face of the radiation machine.

(C) Mechanical support of tube head. The tube housing assembly shall be adjusted to remain stable during an exposure unless

tube housing movement is a designed function of the x-ray system. The tube housing assembly supports shall not be hand-held.

(D) Battery charge indicator. On battery-powered x-ray generators, visual means shall be provided on the control panel to indicate whether the battery is in a state of charge adequate for proper operation.

(E) Beam quality. The following requirements apply to beam quality.

(i) Half-value layer.

(I) The half-value layer of the useful beam for a given x-ray tube potential shall not be less than the values shown in the following Table I. If it is necessary to determine such half-value layer at an x-ray tube potential that is not listed in Table I, linear interpolation may be made.
Figure: 25 TAC §289.232(i)(6)(E)(i)(I)

(II) For capacitor energy storage equipment, compliance with the requirements of this subparagraph shall be determined with the maximum quantity of charge per exposure.

(ii) Filtration controls. For x-ray systems that have variable kilovolt peak and variable filtration for the useful beam, a device shall link the kilovolt peak selector with the filters and shall prevent an exposure unless the minimum amount of filtration required by clause (i) of this subparagraph is in the useful beam for the given kilovolt peak that has been selected.

(iii) Any other system having removable filters shall be required to have the minimum amount of filtration as required by clause (i)(I) of this subparagraph permanently located in the useful beam during each exposure.

(F) Multiple tubes. Where two or more radiographic tubes are controlled by one exposure switch, the tube or tubes that have been selected shall be clearly indicated prior to initiation of the exposure. This indication shall be both on the x-ray control panel and at or near the tube housing assembly that has been selected.

(G) X-ray control. An x-ray control shall be incorporated into each x-ray system such that an exposure can be terminated by the operator at any time, except for exposures of 0.5 second or less. The exposure switch shall be of the continuous pressure type.

(H) Timer.

(i) The accuracy of the timer shall meet the manufacturer's specifications. If the manufacturer's specifications are not obtainable, the timer accuracy shall be ±10% of the indicated time with testing performed at 0.5 second.

(ii) Means shall be provided to terminate the exposure at a preset time interval, a preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor. In addition, it shall not be possible to make an exposure when the timer is set to a "zero" or "off" position if either position is provided.

(I) Exposure output reproducibility. When all technique factors are held constant, including control panel selections associated with automatic exposure control systems, the coefficient of variation of exposure for both manual and automatic exposure control systems shall not exceed 0.05. This requirement applies to clinically used techniques.

(J) Kilovolt peak. If the registrant possesses documentation of the appropriate manufacturer's kilovolt peak specifications, the radiation machine shall meet those specifications. If the registrant does not possess documentation of the appropriate manufacturer's kilovolt peak specifications, the indicated kilovolt peak shall be accurate to within ±10% of the indicated setting(s). For radiation machines with fewer than three fixed kilovolt peak settings, the radiation machine shall be checked at those settings.

(K) Tube stability. The x-ray tube shall remain physically stable during exposures. In cases where tubes are designed to move during exposure, the registrant shall assure proper and free movement of the radiation machine.

(L) Collimation. Field limitation shall meet the requirements of paragraphs (11) and (12) of this subsection.

(M) Radiographic entrance exposure limits for dental facilities. The in-air exposure determined for the technique used by the registrant for the specified average human adult patient thickness for routine intraoral (bite wing) dental radiography shall not exceed the following entrance exposure limits.

(i) 450 millirem for dental intraoral at 60 kilovolt peak and above; and

(ii) 600 millirem for dental intraoral less than 60 kilovolt peak.

(N) Security and control of radiation machines.

(i) The registrant shall secure radiation machines from unauthorized removal.

(ii) The registrant shall use devices and/or administrative procedures to prevent unauthorized use of radiation machines.

(7) Equipment performance evaluations.

(A) For all dental radiation machines, the registrant shall perform, or cause to be performed, tests necessary to assure proper function of equipment with the indicated standard for each item specified in paragraph (6)(H)-(M) of this subsection. After installation, the tests listed shall be performed every four years.

(B) Records of the test results, including any numerical readings shall be maintained by the registrant in accordance with subsection (k)(1)(X)(i) of this section.

(C) Any items not meeting the specifications of the tests shall be corrected or repaired. Correction or repair shall begin within 30 days following the check and shall be performed according to a plan designated by the registrant. Correction or repair shall be completed no longer than 90 days from discovery unless authorized by the agency. Records of corrections or repairs shall be maintained by the registrant in accordance with subsection (k)(1)(X)(i) of this section for inspection by the agency.

(D) Measurements of the radiation output of an x-ray system shall be performed with a calibrated dosimetry system. The dosimetry system shall have been calibrated within the preceding 24 months and the calibration shall be traceable to a national standard. During the calendar year in which the dosimetry system is not calibrated, an intercomparison to a system calibrated within the previous 12 months shall be performed.

(8) Dental research. In addition to the requirements of subsection (h)(1) of this section, any research using radiation machines on humans shall receive prior approval from the agency and shall be approved by an Institutional Review Board as required by Title 45, CFR, Part 46 and Title 21, CFR, Part 56. The Institutional Review Board shall include at least one dentist to direct any use of radiation in accordance with subsection (a)(4) of this section.

(9) Educational facilities. Facilities conducting training using non-humans are held to all the requirements of this section

except for paragraphs (14) and (15) of this subsection concerning film processing and paragraph (7) of this subsection concerning equipment performance evaluation.

(10) Certified radiation machines for dental facilities. In addition to the requirements of this section, the registrant shall not make, nor cause to be made, any modification of components or installations of components certified in accordance with the United States Food and Drug Administration Title 21, CFR, Part 1020, "Performance Standards for Ionizing Radiation Emitting Products," as amended, in any manner that could cause the installations or the components to fail to meet the requirements of the applicable parts of the standards specified in Title 21, CFR, Part 1020, except where a variance has been granted by the Director, Center for Devices and Radiological Health, United States Food and Drug Administration. A copy of the variance shall be maintained by the registrant in accordance with subsection (k)(1)(X)(i) of this section for inspection by the agency.

(11) Additional requirements for dental intraoral systems.

(A) Source-to-skin distance. X-ray systems designed for use with an intraoral image receptor shall be provided with means to limit source-to-skin distance to not less than:

(i) 18 centimeters if operable above 50 kilovolt peak; or

(ii) 10 centimeters if not operable above 50 kilovolt peak.

(B) Field limitation. Radiographic systems designed for use with an intraoral image receptor shall be provided with means to limit the x-ray beam such that:

(i) if the minimum source-to-skin distance is 18 centimeters or more, the x-ray field at the minimum source-to-skin distance shall be restricted to a dimension of no more than 7 centimeters; and

(ii) if the minimum source-to-skin distance is less than 18 centimeters, the x-ray field at the minimum source-to-skin distance shall be restricted to a dimension of no more than 6 centimeters.

(12) Additional requirements for dental extraoral systems.

(A) Field limitation. Dental rotational panoramic systems shall be provided with means to restrict the x-ray beam to the following:

(i) the imaging slit in the transverse axis; and

(ii) no more than a total of 0.5 inches larger than the imaging slit in the vertical axis.

(B) All other dental extraoral radiographic systems (e.g., cephalometric) shall be provided with means to restrict the x-ray field to the image receptor. The x-ray field shall not exceed the image receptor by more than:

(i) 2.0% of the source-to-image receptor distance for the length or width of the image receptor for rectangular collimation; or

(ii) 2.0% of the source-to-image receptor distance for the diagonal of the image receptor for circular or polygon collimation.

(13) Additional operational controls.

(A) When a patient or image receptor must be held in position during radiography, mechanical supporting or restraining devices shall be used when the exam permits except in individual cases in which the registrant has determined that the holding devices are contraindicated.

(B) The registrant's written operating and safety procedures required by paragraph (3) of this subsection shall include the following:

(i) a list of circumstances in which mechanical holding devices cannot be routinely utilized; and

(ii) a procedure used for selecting an individual to hold or support the patient or image receptor.

(C) The operator position during the exposure shall be such that the operator's exposure is as low as reasonably achievable and the operator is a minimum of six feet from the useful beam or behind a protective barrier. The operator shall maintain verbal, aural, and visual contact with the patient.

(D) In no case shall an individual hold the tube or tube housing assembly support during any radiographic exposure.

(14) Automatic and manual film processing for dental facilities and mobile dental services.

(A) Films shall be developed in accordance with the time-temperature relationships recommended by the film manufacturer. The specified developer temperature for automatic processing and the time-temperature chart for manual processing shall be posted in the darkroom. If the registrant determines an alternate time-temperature relationship is more appropriate for a specific facility, that time-temperature relationship shall be documented and posted.

(B) Chemicals shall be replaced according to the chemical manufacturer's or supplier's recommendations or at an interval not to exceed three months.

(C) Darkroom light leak tests shall be performed and any light leaks corrected at intervals not to exceed six months.

(D) Lighting in the film processing/loading area shall be maintained with the filter, bulb wattage, and distances recommended by the film manufacturer for that film emulsion or with products that provide an equivalent level of protection against fogging.

(E) Corrections or repairs of the light leaks or other deficiencies in subparagraphs (B)-(D) of this paragraph shall be initiated within 72 hours of discovery and completed no longer than 15 days from detection of the deficiency unless a longer time is authorized by the agency. Records of the corrections or repairs shall include the date and initial of the individual performing these functions and should be maintained in accordance with subsection (k)(1)(X)(i) of this section for inspection by the agency.

(F) Documentation of the items in subparagraphs (B), (C), and (E) of this paragraph shall be maintained at the site where performed and shall include the date and initials of the individual completing these items. These records shall be maintained in accordance with subsection (k)(1)(X)(i) of this section for inspection by the agency.

(15) Alternative processing systems. Users of daylight processing systems, laser processors, self-processing film systems, or other alternative processing systems shall follow manufacturer's recommendations for image processing. Documentation that the registrant is following manufacturer's recommendations shall include the date and initials of the individual completing the document and shall be made and maintained at the site where performed in accordance with subsection (k)(1)(X)(i) of this section for inspection by the agency.

(16) Digital imaging acquisition systems. Users of digital imaging acquisition systems shall follow quality assurance/quality control protocol for image processing established by the manufacturer or, if no manufacturer's protocol is available, by the registrant. The registrant shall include the protocols, whether established by the registrant

or the manufacturer, in its operating and safety procedures. The registrant shall document the frequency at which the quality assurance/quality control protocol is performed. Documentation shall include the date and initials of the individual completing the document and shall be maintained at the site where performed in accordance with subsection (k)(1)(X)(i) of this section for inspection by the agency.

(j) Records and reports.

(1) General provisions for records and reports.

(A) All records required by this section shall be accurate and factual.

(B) Records are only valid if stamped, initialed, or signed and dated by authorized personnel or otherwise authenticated. Records, such as letters, drawings, and specifications, shall include all pertinent information, such as stamps, initials, and signatures.

(C) Each registrant shall use the SI units gray, sievert, and coulomb per kilogram, or the special units rad, rem, and roentgen, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this section.

(D) The registrant shall make a clear distinction among the quantities entered on the records required by this section, such as, total effective dose equivalent, shallow dose equivalent, lens dose equivalent, and deep dose equivalent.

(E) Each record required by this section shall be legible throughout the specified retention period.

(F) The record shall be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period.

(G) The record may also be stored in electronic format with the capability for producing legible, accurate, and complete records during the required retention period.

(H) Each registrant shall maintain records of receipt, transfer, and disposal of radiation machines for inspection by the agency. The records shall include the following information and shall be kept until disposal is authorized by the agency:

(i) manufacturer's name;

(ii) model and serial number from the control panel;

(iii) date of the receipt, transfer, and disposal; and

(iv) name of the individual recording the information.

(I) Copies of records required in subsections (h)(5)(D) and (E), (i)(7), and (i)(14)(F) of this section and by certificate of registration condition that are relevant to operations at an additional authorized use location shall be maintained at that location in addition to the main location specified on a certificate of registration in accordance with subsection (k)(1)(X)(i) of this section.

(J) The registrant shall maintain adequate safeguards against tampering with and loss of records.

(K) Subject to the limitations provided in the Texas Public Information Act, Government Code, Chapter 552, all information and data collected, assembled, or maintained by the agency are public records open to inspection and copying during regular office hours.

(L) Any person who submits written information or data to the agency and requests that the information be considered confidential, privileged, or otherwise not available to the public under the Texas Public Information Act, shall justify such request in writing, including statutes and cases where applicable, addressed to the agency.

(i) Documents containing information that is claimed to fall within an exception to the Texas Public Information Act shall be marked to indicate that fact. Markings shall be placed on the document on origination or submission.

(I) The words "NOT AN OPEN RECORD" shall be placed conspicuously at the top and bottom of each page containing information claimed to fall within one of the exceptions.

(II) The following wording shall be placed at the bottom of the front cover and title page, or first page of text if there is no front cover or title page:
Figure: 25 TAC §289.232(j)(1)(L)(i)(II)

(ii) The agency requests, whenever possible, that all information submitted under the claim of an exception to the Texas Public Information Act be extracted from the main body of the application and submitted as a separate annex or appendix to the application.

(iii) Failure to comply with any of the procedures described in subparagraphs (A) and (B) of this paragraph may result in all information in the agency file being disclosed upon an open records request.

(M) The agency will determine whether information falls within one of the exceptions to the Texas Public Information Act. The agency will determine whether or not there has been a previous determination that the information falls within one of the exceptions to the Texas Public Information Act. If there has been no previous determination and the agency believes that the information falls within one of the exceptions, an opinion of the Attorney General will be requested. If the agency agrees in writing to the request, the information shall not be open for public inspection unless the Attorney General's office subsequently determines that it is not an exception.

(N) Requests for information.

(i) All requests for open records information shall be in writing and refer to documents currently in possession of the agency.

(ii) The agency will ascertain whether the information may be released or whether it falls within an exception to the Texas Public Information Act.

(I) The agency may take a reasonable period of time to determine whether information falls within one of the exceptions to the Texas Public Information Act.

(II) If the information is determined to be public, it will be presented for inspection and/or copies of documents will be furnished within a reasonable period of time. A fee will be charged to recover agency costs for copies.

(iii) Original copies of public records may not be removed from the agency. Under no circumstances shall material be removed from existing records.

(2) Reports.

(A) Reports of stolen, lost, or missing radiation machines.

(i) Each registrant shall report to the agency by telephone a stolen, lost, or missing radiation machine immediately after its occurrence becomes known to the registrant.

(ii) Each registrant required to make a report in accordance with clause (i) of this subparagraph shall, within 30 days after

making the telephone report, make a written report to the agency that includes the following information:

(I) a description of the radiation machine involved, including, the manufacturer name, model and serial number;

(II) a description of the circumstances under which the loss or theft occurred;

(III) a statement of disposition, or probable disposition, of the radiation machine involved;

(IV) exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas;

(V) actions that have been taken, or will be taken, to recover the radiation machine; and

(VI) procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of radiation machines.

(iii) Subsequent to filing the written report, the registrant shall also report additional substantive information on the loss or theft within 30 days after the registrant learns of such information.

(iv) The registrant shall prepare any report filed with the agency in accordance with this subsection so that names of individuals who may have received exposure to radiation are stated in a separate and detachable portion of the report.

(B) Reports of incidents.

(i) Notwithstanding other requirements for notification, each registrant shall immediately report each event involving a radiation machine possessed by the registrant that may have caused or threatens to cause an individual to receive:

(I) a total effective dose equivalent of 25 rems (0.25 sievert) or more;

(II) a lens dose equivalent of 75 rems (0.75 sievert) or more; or

(III) a shallow dose equivalent to the skin of the whole body or to the skin of any extremities of 250 rads (2.5 grays) or more.

(ii) Each registrant shall, within 24 hours of discovery of the event, report to the agency each event involving loss of control of a radiation machine possessed by the registrant that may have caused, or threatens to cause an individual to receive, in a period of 24 hours:

(I) a total effective dose equivalent exceeding 5 rems (0.05 sievert);

(II) a lens dose equivalent exceeding 15 rems (0.15 sievert); or

(III) a shallow dose equivalent to the skin of the whole body or to the skin of any extremities exceeding 50 rems (0.5 sievert).

(iii) Registrants shall make the initial notification reports required by clauses (i) and (ii) of this subparagraph by telephone to the agency and shall confirm the initial notification report within 24 hours by telegram, mailgram, or facsimile to the agency.

(iv) The registrant shall prepare each report filed with the agency in accordance with this section so that names of individuals who have received exposure to sources of radiation are stated in a separate and detachable portion of the report.

(C) Reports of exposures and radiation levels exceeding the limits.

(i) In addition to the notification required by subparagraph (B) of this paragraph, each registrant shall submit a written report within 30 days after learning of any of the following occurrences:

(I) incidents for which notification is required by subparagraph (B) of this paragraph;

(II) doses in excess of any of the following:

(-a-) the occupational dose limits for adults in subsection (i)(4)(A)(i) of this section;

(-b-) the occupational dose limits for a minor in subsection (i)(4)(A)(i)(III) of this section;

(-c-) the limits for an embryo/fetus of a declared pregnant woman in subsection (i)(4)(A)(i)(IV) and (V) of this section;

(-d-) the limits for an individual member of the public in subsection (i)(4)(B) of this section; or

(-e-) any applicable limit in the certificate of registration;

(III) levels of radiation in:

(-a-) a restricted area in excess of applicable limits in the certificate of registration; or

(-b-) an unrestricted area in excess of 10 times the applicable limit set forth in this section or in the certificate of registration conditions, whether or not involving exposure of any individual in excess of the limits in subsection (i)(4)(B) of this section.

(ii) Each report required by subparagraph (C)(i) of this paragraph shall describe the extent of exposure of individuals to radiation, including, as appropriate:

(I) estimates of each individual's dose;

(II) the levels of radiation involved;

(III) the cause of the elevated exposures, dose rates; and

(IV) corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, and associated registration conditions.

(iii) Each report filed in accordance with subparagraph (C)(i) of this paragraph shall include for each individual exposed: the name, a unique identification number, and date of birth. With respect to the limit for the embryo/fetus in subsection (i)(4)(A)(i)(IV) and (V) of this section, the identifiers should be those of the declared pregnant woman. The report shall be prepared so that this information is stated in a separate and detachable portion of the report.

(iv) All registrants who make reports in accordance with subparagraph (C)(i) of this paragraph shall submit the report in writing to the agency.

(D) Reports to individuals of exposures.

(i) If applicable, radiation exposure data for an individual shall be reported to the individual as specified in this paragraph. The information reported shall include data and results obtained in accordance with agency requirements, orders, certificate of registration conditions, as shown in records made and maintained by the registrant in accordance with this subsection. Each notification and report shall:

(I) be in writing;

(II) include appropriate identifying data such as the name of the registrant, the name of the individual, and the individual's identification number;

(III) include the individual's exposure information; and

(IV) contain the following statement: "This report is furnished to you under the provisions of the Texas Regulations for Control of Radiation, 25 Texas Administrative Code §289.232(i)(4)(A)-(C). You should preserve this report for further reference."

(ii) If applicable, each registrant shall advise each worker annually of the worker's estimated dose as shown in records made and maintained by the registrant in accordance with subparagraph (C) of this paragraph.

(iii) When a registrant is required in accordance with subparagraphs (B) and (C) of this paragraph to report to the agency any exposure of an identified occupationally exposed individual, or an identified member of the public, to radiation, the registrant shall also notify the individual and provide the individual with a copy of the report submitted to the agency, including the information required by clause (i) of this subparagraph. Such reports shall be transmitted at a time not later than the transmittal to the agency.

(k) Compliance and hearing procedures.

(1) Inspections.

(A) The agency may enter public or private property at reasonable times to determine whether, in a matter under the agency's jurisdiction, there is compliance with the Texas Radiation Control Act, the agency's rules, certificate of registration conditions, and orders issued by the agency.

(B) Each registrant shall afford to the agency at all reasonable times opportunity to inspect machines, activities, facilities, premises, and records in accordance with this section.

(C) During an inspection, agency inspectors may consult privately with workers as specified in subparagraphs (I) - (R) of this paragraph. The registrant may accompany agency inspectors during other phases of an inspection.

(D) If, at the time of inspection, an individual has been authorized by the workers to represent them during agency inspections, the registrant shall notify the inspectors of such authorization and shall give the workers' representative an opportunity to accompany the inspectors during the inspection of physical working conditions.

(E) Each workers' representative shall be routinely engaged in work under control of the registrant and shall have received instructions as specified in subsection (i)(4)(D) of this section.

(F) Different representatives of registrants and workers may accompany the inspectors during different phases of an inspection if there is no resulting interference with the conduct of the inspection. However, only one workers' representative at a time may accompany the inspectors.

(G) With the approval of the registrant and the workers' representative, an individual who is not routinely engaged in work under control of the registrant, for example, a consultant to the registrant or to the workers' representative, shall be afforded the opportunity to accompany agency inspectors during the inspection of physical working conditions.

(H) Notwithstanding the other provisions of this section, agency inspectors are authorized to refuse to permit accompaniment by any individual who deliberately interferes with a fair and orderly inspection. With regard to any area containing proprietary information, the workers' representative for that area shall be an individual previously authorized by the registrant to enter that area.

(I) Agency inspectors may consult privately with workers concerning matters of occupational radiation protection and other matters related to applicable provisions of agency regulations and certificates of registration to the extent the inspectors deem necessary for the conduct of an effective and thorough inspection.

(J) During the course of an inspection, any worker may bring privately to the attention of the inspectors, either orally or in writing, any past or present condition which that individual has reason to believe may have contributed to or caused any violation of the Texas Radiation Control Act, the requirements in this section, certificate of registration conditions, or any unnecessary exposure of an individual to radiation from any radiation machine under the registrant's control. Any such notice in writing shall comply with the requirements of subparagraph (L) of this paragraph.

(K) The provisions of subparagraph (J) of this paragraph shall not be interpreted as authorization to disregard instructions in accordance with subsection (i)(4)(D) of this section.

(L) Any worker or representative of workers who believes that a violation of the Texas Radiation Control Act, the requirements of this section, or certificate of registration conditions exists or has occurred in work under a certificate of registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the agency. Any such notice shall be in writing, shall set forth the specific grounds for the notice, and shall be signed by the worker or representative of the workers. A copy shall be provided to the registrant by the agency no later than at the time of inspection except that, upon the request of the worker giving such notice, the worker's name and the name(s) of individual(s) referred to therein shall not appear in such copy or on any record published, released, or made available by the agency, except for good cause shown.

(M) If, upon receipt of such notice, the agency determines that the request meets the requirements set forth in subparagraph (L) of this paragraph, and that there are reasonable grounds to believe that the alleged violation exists or has occurred, an inspection shall be made as soon as practicable to determine if such alleged violation exists or has occurred. Inspections in accordance with this section need not be limited to matters referred in the request.

(N) No registrant, contractor or subcontractor of a registrant shall discharge or in any manner discriminate against any worker because of the following:

(i) such worker has filed any request or instituted or caused to be instituted any proceeding under this section;

(ii) such worker has testified or is about to testify in any such proceeding; or

(iii) because of the exercise by such worker on behalf of that individual or others of any option afforded by this section.

(O) If the agency determines, with respect to a request under subparagraphs (L)-(N) of this paragraph, that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the agency shall notify the requestor in writing of such determination. The requestor may obtain review of such determination in accordance with the provisions of the Texas Radiation Control Act and the Government Code, Chapters 2001 and 2002.

(P) If the agency determines that an inspection is not warranted because the requirements of subparagraph (L) of this paragraph have not been met, the agency shall notify the requestor in writing of such determination. Such determination shall be without preju-

dice to the filing of a new request meeting the requirements of subparagraph (L) of this paragraph.

(Q) The routine inspection interval for dental facilities is four years. On-site inspections and remote inspections may be alternated. The inspection interval specified is based upon the average number of health-related violations per inspection, as determined from compliance history data. This interval will be reviewed at least every two years, and appropriate adjustments will be made. Registrant's having certificates of registration authorizing multiple uses will be inspected on-site at the most frequent interval specified for the uses authorized.

(R) Notwithstanding the inspection interval specified in subparagraph (Q) of this paragraph, the agency may inspect registrants more frequently due to:

(i) the persistence or severity of violations found during an inspection;

(ii) investigation of an incident or complaint concerning the facility;

(iii) a request for an inspection by a worker(s) in accordance with subparagraphs (L)-(N) of this paragraph;

(iv) any change in a facility or radiation machine that might cause a significant increase in radiation output or hazard; or

(v) a mutual agreement between the agency and registrant.

(S) The agency will conduct inspections of dental radiation machines in a manner designed to cause as little disruption of a dental practice as is practicable.

(T) For remote inspection of radiation machines, each registrant shall:

(i) respond to a request from the agency for a remote inspection;

(ii) complete the remote inspection forms in accordance with the instructions included with the forms; and

(iii) return to the agency the completed remote inspection forms including documentation of the most recent equipment performance evaluation performed in accordance with subsection (i)(7) of this section and an inventory in accordance with subsection (h)(5)(D) of this section by the deadline indicated on the forms.

(U) Each registrant shall perform, upon instructions from the agency, or shall permit the agency to perform such reasonable surveys as the agency deems appropriate or necessary including, but not limited to, surveys of:

(i) radiation machines;

(ii) facilities where radiation machines are used; and

(iii) other equipment and devices used in connection with utilization or storage of radiation machines.

(V) A person who performs on-site inspection of dental radiation machines will have training in the design and uses of the products as specified in subparagraph (W) of this paragraph.

(W) Training for agency inspectors of dental radiation machines.

(i) Objectives. Training of agency individuals who perform inspections of radiation machines will be conducted by the agency. Upon completion of training, the inspector will be able to:

(I) select and operate the necessary testing equipment used to perform an inspection of radiation machines;

(II) utilize radiation protection principles;

(III) operate radiation detection instruments;

(IV) define basic regulatory terminology;

(V) apply this section regarding radiation machines;

(VI) perform routine agency inspections of radiation machines;

(VII) complete agency inspection documentation;

(VIII) demonstrate knowledge of agency ethics, professional, and technical policies; and

(IX) successfully achieve the objectives in this clause.

(ii) Initial training program.

(I) Initial training will be conducted during a six-month period.

(II) All training evaluation instruments will be developed by the agency.

(III) Instruments to be used in determining a proficiency level are as follows:

(-a-) evaluation of each inspector's training needs prior to initial training;

(-b-) evaluation of knowledge obtained and verification of tasks performed by each inspector subsequent to training received by the agency; and

(-c-) evaluation of each inspector's task performance by the agency.

(iii) Continuing education.

(I) The agency inspector of radiation machines will accumulate 24 hours of continuing education regarding radiation machines, at intervals not to exceed 24 months. These hours of continuing education may be acquired as follows:

(-a-) documented continuing education earned in an agency-accepted training format; and

(-b-) agency staff meetings.

(II) Failure to obtain 24 hours of continuing education within each 24 month interval may result in a reassessment by the agency of an agency inspector's proficiency level.

(III) After the initial training period, each inspector of radiation machines will be evaluated by the agency, at intervals not to exceed 12 months.

(iv) Agency proficiency standards. The agency proficiency standards for agency inspectors of radiation machines are as follows.

(I) Level I. The agency inspector has not successfully achieved the objectives in clause (i) of this subparagraph after the initial training period. Additional training is required. Unsupervised inspections will not be performed.

(II) Level II. The agency inspector has partially achieved the objectives in clause (i) of this subparagraph, but has not achieved the objective in clause (i)(IX) of this subparagraph after the initial training period. Additional training is required. Unsupervised inspections are not permitted for the type of radiation machines for

which the objectives of clause (i)(IX) of this subparagraph have not been achieved. Unsupervised inspections may be performed for the type of radiation machines for which the objectives in clause (i)(IX) of this subparagraph have been successfully achieved.

(III) Level III. The agency inspector has successfully achieved the objectives in clause (i) of this subparagraph. Supervision is not required for routine inspections.

(X) Time requirement for record keeping.

(i) Each registrant shall maintain the following records/documents at each location and make available to the agency for inspection.
Figure: 25 TAC §289.232(k)(1)(X)(i) (No change.)

(ii) For radiation machines authorized for mobile service, copies of the records specified in clause (i)(III)-(V) of this subparagraph shall be maintained with the radiation machine in accordance with clause (i) of this subparagraph for inspection by the agency. If on-board processors are utilized, film processing records shall also be made on board in accordance with subsection (i)(14)(F) and (15) of this section and maintained in accordance with clause (i) of this subparagraph for inspection by the agency.

(iii) For authorized records locations for mobile services, copies of the records specified in clause (i)(II) and (VI)-(XII) of this subparagraph shall be maintained in accordance with clause (i) of this subparagraph for inspection by the agency.

(2) Hearing and enforcement procedures.

(A) Violations. A court injunction or agency order may be issued prohibiting any violation of any provision of the Texas Radiation Control Act, Health and Safety Code, Chapter 401, or any rule or order issued thereunder. Any person who violates any provision of the Texas Radiation Control Act, Health and Safety Code, Chapter 401, or any rule or order issued thereunder may be subject to civil and/or administrative penalties. Such person may also be guilty of a misdemeanor.

(B) Denial of an application for a certificate of registration.

(i) When the agency contemplates denial of an application for a certificate of registration, the registrant shall be afforded the opportunity for a hearing. Notice of the denial shall be delivered to the registrant by personal service or certified mail, addressed to the last known address.

(ii) Any applicant or registrant against whom the agency contemplates denial of an application may request a hearing by writing the director within 30 days of service or date of mailing.

(I) The written request for a hearing shall contain the following:

(-a-) statement requesting a hearing; and

(-b-) name and address of the applicant or registrant;

(II) Failure to submit a written request for a hearing within 30 days will render the agency action final.

(C) Compliance procedures for registrants and other persons.

(i) A registrant or other person who commits a violation(s) will be issued a notice of violation. The person receiving the notice shall provide the agency with a written statement and supporting documentation by the date stated in the notice describing the following:

(I) steps taken by the person and the results achieved;

(II) corrective steps to be taken to prevent recurrence; and

(III) the date when full compliance was or is expected to be achieved. The agency may require responses to notices of violation to be under oath.

(ii) The terms and conditions of all certificates of registration shall be subject to amendment or modification. A certificate of registration may be modified, suspended, or revoked by reason of amendments to the Texas Radiation Control Act, or for violation of the Texas Radiation Control Act, the requirements of this section, a condition of the certificate of registration, or an order of the agency.

(iii) Any certificate of registration may be modified, suspended, or revoked in whole or in part, for any of the following:

(I) any material false statement in the application or any statement of fact required in accordance with provisions of the Texas Radiation Control Act;

(II) conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a certificate of registration on an original application;

(III) violation of, or failure to observe any of the terms and conditions of the Texas Radiation Control Act, Health and Safety Code, Chapter 401, this section, or of the certificate of registration, or order of the agency; or

(IV) existing conditions that constitute a substantial threat to the public health or safety of the environment.

(iv) If another state or federal entity takes an action such as modification, revocation, or suspension of the certificate of registration, the agency may take a similar action against the registrant.

(v) When the agency determines that the action provided for in clause (viii) of this subparagraph or subparagraph (D) of this paragraph is not to be taken immediately, the agency may offer the registrant an opportunity to attend an informal meeting to discuss the following with the agency:

(I) methods and schedules for correcting the violation(s); or

(II) methods and schedules for showing compliance with applicable provisions of the Act, the rules, registration conditions, or any orders of the agency.

(vi) Notice of any informal meeting shall be delivered by personal service, or certified mail, addressed to the last known address. An informal meeting is not a prerequisite for the action to be taken in accordance with clause (viii) of this subparagraph or subparagraph (D) of this paragraph.

(vii) Except in cases in which the occupational and public health or safety requires otherwise, no certificate of registration shall be suspended or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the registrant in writing, and the registrant shall have been afforded an opportunity to demonstrate compliance with all lawful requirements.

(viii) When the agency contemplates modification, suspension, or revocation of the certificate of registration, the registrant shall be afforded the opportunity for a hearing. Notice of the contem-

plated action, along with a complaint, shall be given to the registrant by personal service or certified mail, addressed to the last known address.

(ix) Any applicant or registrant against whom the agency contemplates an action described in clause (viii) of this subparagraph may request a hearing by submitting a written request to the director within 30 days of service of the notice.

(I) The written request for a hearing shall contain the following:

(-a-) statement requesting a hearing;

(-b-) name, address, and identification number of the registrant against whom the action is being taken.

(II) Failure to submit a written request for a hearing within 30 days will render the agency action final.

(D) Assessment of Administrative Penalties.

(i) When the agency determines that monetary penalties are appropriate, proposals for assessment of and hearings on administrative penalties shall be made in accordance with the Texas Radiation Control Act, Health and Safety Code, §401.384, Title 1, Texas Administrative Code, Chapter 155, and applicable sections of the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title.

(ii) Assessment of administrative penalties shall be based on the following criteria:

(I) the seriousness of the violation(s);

(II) previous compliance history;

(III) the amount necessary to deter future violations;

(IV) efforts to correct the violation; and

(V) any other mitigating or enhancing factors.

(iii) Application of administrative penalties. The agency may impose differing levels of penalties for different severity level violations and different classes of users as follows.

(I) Administrative penalties may be imposed for severity level I and II violations. Administrative penalties may be imposed for severity level III, IV, and V violations when they are combined with those of higher severity level(s) or for repeated violations.

(II) The following Tables IIA and IIB show the base administrative penalties.

Figure: 25 TAC §289.232(k)(2)(D)(iii)(II) (No change.)

(III) Adjustments to the percentages of base amounts in Table IIB may be made for the presence or absence of the following factors:

(-a-) prompt identification and reporting;

(-b-) corrective action to prevent recurrence;

(-c-) compliance history;

(-d-) prior notice of similar event;

(-e-) multiple occurrences; and

(-f-) negligence that resulted in or increased adverse effects.

(IV) The penalty for each violation may be in an amount not to exceed $10,000 a day for a person who violates the Texas Radiation Control Act or a rule, order, or certificate of registration issued in accordance with the Texas Radiation Control Act. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

(iv) The agency may conduct settlement negotiations.

(E) Severity levels of violations for registrants or other persons.

(i) Violations for registrants or other persons shall be categorized by one of the following severity levels.

(I) Severity level I are violations that are most significant and may have a significant negative impact on occupational and/or public health and safety or on the environment.

(II) Severity level II are violations that are very significant and may have a negative impact on occupational and/or public health and safety or on the environment.

(III) Severity level III are violations that are significant and which, if not corrected, could threaten occupational and/or public health and safety or the environment.

(IV) Severity level IV are violations that are of more than minor significance, but if left uncorrected, could lead to more serious circumstances.

(V) Severity level V are violations that are of minor safety or environmental significance.

(ii) Criteria to elevate or reduce severity levels.

(I) Severity levels may be elevated to a higher severity level for the following reasons:

(-a-) more than one violation resulted from the same underlying cause;

(-b-) a violation contributed to or was the consequence of the underlying cause, such as a management breakdown or breakdown in the control of registered activities;

(-c-) a violation occurred multiple times between inspections;

(-d-) a violation was willful or grossly negligent;

(-e-) compliance history; or

(-f-) other mitigating factors.

(II) Severity levels may be reduced to a lower level for the following reasons:

(-a-) the registrant identified and corrected the violation prior to the agency inspection;

(-b-) the registrant's actions corrected the violation and prevented recurrence; or

(-c-) other mitigating factors.

(iii) Examples of severity levels. Examples of severity levels are available upon request to the agency.

(F) Impoundment of radiation machines. Radiation machines shall be subject to impounding in accordance with the Texas Radiation Control Act, Health and Safety Code, §401.068 and this paragraph.

(i) In the event of an emergency, the agency shall have the authority to impound or order the impounding of radiation machines possessed by any person not equipped to observe or failing to observe the provisions of the Texas Radiation Control Act, or any rules, certificate of registration conditions, or orders issued by the agency. The agency shall submit notice of the action to be published in the *Texas Register* no later than 30 days following the end of the month in which the action was taken.

(ii) At the agency's discretion, the impounded radiation machines may be disposed of by:

(I) returning the radiation machine to a properly registered owner, upon proof of ownership, who did not cause the emergency;

(II) releasing the radiation machine as evidence to police or courts;

(III) returning the radiation machine to a registrant after the emergency is over and settlement of any compliance action; or

(IV) sale, destruction or other disposition within the agency's discretion.

(iii) If agency action is necessary to protect the public health and safety, no prior notice need be given the owner or possessor. If agency action is not necessary to protect the public health and safety, the agency will give written notice to the owner and/or the possessor of the impounded radiation machine of the intention to dispose of the radiation machine. Notice shall be the same as provided in subparagraph (C)(viii) of this paragraph. The owner or possessor shall have 30 days from the date of personal service or mailing to request a hearing under Title 1, Texas Administrative Code, Chapter 155, and the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title, and in accordance with subparagraph (C)(ix) of this paragraph, concerning the intention of the agency. If no hearing is requested within that period of time, the agency may take the contemplated action, and such action is final.

(iv) Upon agency disposition of a source of radiation, the agency may notify the owner and/or possessor of any expense the agency may have incurred during the impoundment and/or disposition and request reimbursement. If the amount is not paid within 60 days from the date of notice, the agency may request the Attorney General to file suit against the owner/possessor for the amount requested.

(v) If the agency determines from the facts available to the agency that an impounded radiation machine is abandoned, with no reasonable evidence showing its owner or possessor, the agency may make such disposition of the radiation machine as it sees fit.

(G) Emergency orders.

(i) When an emergency exists requiring immediate action to protect the public health or safety or the environment, the agency may, without notice or hearing, issue an order citing the existence of such emergency and require that certain actions be taken as it shall direct to meet the emergency. The agency shall, no later than 30 days following the end of the month in which the action was taken, submit notice of the action for publication in the *Texas Register*. The action taken will remain in full force and effect unless and until modified by subsequent action of the agency.

(ii) An emergency order takes effect immediately upon service.

(iii) Any person receiving an emergency order shall comply immediately.

(iv) The person receiving the order shall be afforded the opportunity for a hearing on an emergency order. Notice of the action, along with a complaint, shall be given to the person by personal service or certified mail, addressed to the last known address. A hearing shall be held on an emergency order if the person receiving the order submits a written request to the director within 30 days of the date of the order.

(I) The hearing shall be held not less than 10 days nor more than 20 days after receipt of the written application for hearing.

(II) At the conclusion of the hearing and after the proposal for decision is made as provided in the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001, the commissioner shall take one of the following actions:

(-a-) determine that no further action is warranted;

(-b-) amend the certificate of registration;

(-c-) revoke or suspend the certificate of registration;

(-d-) rescind the emergency order; or

(-e-) issue such other order as is appropriate.

(III) The application and hearing shall not delay compliance with the emergency order.

(H) Miscellaneous provisions.

(i) Computation of time. A time period established by the requirements of this section shall begin on the first day after the event that invokes the time period. When the last day of the period falls on a Saturday, Sunday, or state or federal holiday, the period shall end on the next day that is not a Saturday, Sunday, or state or federal holiday. The time period shall expire at 5:00 p.m. of the last day of the computed period.

(ii) Hearing location. Hearings will be held at the offices of the State Office of Administrative Hearings in Austin unless the ALJ specifies another location.

(iii) Non-party witness and mileage fees.

(I) A witness or deponent who is not a party (or an employee, agent, or representative of a party) and who is subpoenaed or otherwise compelled to attend an agency hearing or a proceeding to give a deposition, or to produce books, records, papers, accounts, documents, or other objects necessary and proper for the purposes of the hearing or proceeding may receive reimbursement for transportation and other costs at rates established by the current Appropriations Act for state employees.

(II) The person requesting the attendance of the witness or deponent shall deposit with the agency the funds to accrue in accordance with subclause (I) of this clause when filing a motion for the issuance of a subpoena or a commission to take a deposition.

(iv) Service. A return of service by the person who performed personal service, postal return receipt, or proof of mailing to the last known address shall be conclusive evidence of service.

§289.233. Radiation Control Regulations for Radiation Machines Used in Veterinary Medicine.

(a) Purpose. This section establishes the following.

(1) Fees for certificates of registration for veterinary facilities and provisions for their payment.

(2) Requirements for the registration of persons using radiation machines. No person shall use radiation machines except as authorized in a certificate of registration issued by the agency in accordance with the requirements of this section. A person who receives, possesses, uses, owns, or acquires radiation machines prior to receiving a certificate of registration is subject to the requirements of this chapter.

(3) Requirements intended to control the receipt, possession, use, and transfer of radiation machines by any person so the total dose to an individual, including doses resulting from all radiation machines other than background radiation, does not exceed the standards for protection against radiation prescribed in this section. However, nothing in this section shall be construed as limiting actions that may be necessary to protect health and safety in an emergency.

(4) Requirements for the use of radiation machines used in veterinary medicine. The registrant shall assure that the requirements of this section are met in the operation of such radiation machines.

(5) Specific record keeping requirements and general provisions for records and reports.

(6) Requirements for providing notices to employees and instructions and options available to such individuals in connection with agency inspections of registrants to ascertain compliance with the provisions of the Texas Radiation Control Act (Act), Health and Safety Code, Chapter 401, and requirements of this chapter, orders, and certificates of registration issued thereunder regarding radiological working conditions.

(7) Governing of the following in accordance with the Act, Health and Safety Code, Chapter 401; the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001; Title 1, Texas Administrative Code (TAC), Chapter 155; and the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title.

(A) proceedings for the granting, denying, renewing, transferring, amending, suspending, revoking, or annulling of a certificate of registration;

(B) determining compliance with or granting of exemptions from requirements of this chapter, an order, or a condition of certificate of registration;

(C) assessing administrative penalties; and

(D) determining propriety of other agency orders.

(b) Scope.

(1) Except as specifically provided in other sections of this chapter, this section applies to persons who receive, possess, use, or transfer radiation machines used in veterinary medicine. The dose limits in this section do not apply to doses due to background radiation or voluntary participation in medical research programs. No radiation may be deliberately applied to animals except by or under the supervision of a veterinarian authorized by the Texas Board of Veterinary Medical Examiners to engage in veterinary medicine.

(2) Registrants who are also registered by the agency to receive, possess, acquire, transfer, or use class IIIb and class IV lasers in veterinary medicine shall also comply with the requirements of §289.301 of this title (relating to Registration of Radiation Safety Requirements for Lasers).

(3) Registrants who are also registered by the agency to receive, possess, transfer, or use accelerators, therapeutic radiation machines, and radiation therapy simulation systems for use in veterinary medicine shall also comply with the requirements of §289.229 of this title (relating to Radiation Safety Requirements for Accelerators, Therapeutic Radiation Machines, and Simulators).

(4) Registrants who are also specifically licensed by the agency to receive, possess, use, and transfer radioactive materials must also comply with the applicable requirements of §289.201 of this title (relating to General Provisions for Radioactive Material), §289.202 of this title (relating to Standards for Protection Against Radiation from Radioactive Materials), §289.252 of this title (relating to Licensing of Radioactive Material), §289.256 of this title (relating to Medical and Veterinary Use of Radioactive Material), and §289.257 of this title (relating to Packaging and Transportation of Radioactive Material).

(5) The agency may, by requirements in this chapter, an order, or a condition of certificate of registration, impose upon any registrant such requirements in addition to those established in this chapter as it deems appropriate or necessary to minimize danger to public health and safety or property or the environment.

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

(1) Absorbed dose--The energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

(2) Accessible surface--The external surface of the enclosure or housing provided by the manufacturer.

(3) Act--Texas Radiation Control Act, Health and Safety Code, Chapter 401.

(4) Administrative Law Judge (ALJ)--Administrative law judge from the State Office of Administrative Hearings.

(5) Administrative penalty--A monetary penalty assessed by the agency in accordance with the Act, Health and Safety Code, §401.384, to emphasize the need for lasting remedial action and to deter future violations.

(6) Adult--An individual 18 or more years of age.

(7) Agency--The Department of State Health Services or its successor.

(8) Agreement State--Any state with which the United States Nuclear Regulatory Commission (NRC) has entered into an effective agreement under Section 274b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

(9) As low as is reasonably achievable (ALARA)--Making every reasonable effort to maintain exposures to radiation as far below the dose limits in this chapter as is practical, consistent with the purpose for which the registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of ionizing radiation and radiation machines in the public interest.

(10) Attenuate--To reduce the exposure rate upon passage of radiation through matter.

(11) Attenuation block--A block or stack, having dimensions 20 centimeters (cm) by 20 cm by 3.8 cm, of type 1100 aluminum alloy or other materials having equivalent attenuation. The nominal chemical composition of type 1100 aluminum alloy is 99% minimum aluminum, 0.12% copper.

(12) Background radiation--Radiation from cosmic sources; non-technologically enhanced naturally occurring radioactive material, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents, such as Chernobyl, that contribute to background radiation and are not under the control of the registrant. "Background radiation" does not include radiation from radiation machines regulated by the agency.

(13) Barrier--(See definition for protective barrier.)

(14) Beam axis--A line from the source through the centers of the x-ray fields.

(15) Beam-limiting device--A device that provides a means to restrict the dimensions of the x-ray field.

(16) Beam quality (diagnostic x-ray)--A term that describes the penetrating power of the x-ray beam. This is identified numerically by half-value layer and is influenced by kilovolt peak (kVp) and filtration.

(17) Certificate of registration--A form of permission given by the agency to an applicant who has met the requirements for registration set out in the Act and this chapter.

(18) Coefficient of variation or C--The ratio of the standard deviation to the mean value of a population of observations. It is estimated using the following equation:
Figure: 25 TAC §289.233(c)(18)

(19) Collective dose--The sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(20) Commissioner--The Commissioner of the Department of State Health Services.

(21) Computed tomography (CT)--The production of a tomogram by the acquisition and computer processing of x-ray transmission data.

(22) Control panel--The part of the radiation machine control upon which are mounted the switches, knobs, push buttons, and other hardware necessary for manually setting the technique factors.

(23) CT conditions of operation--All selectable parameters governing the operation of a CT x-ray system including, but not limited to, nominal tomographic section thickness, filtration, and the technique factors as defined in this subsection.

(24) CT gantry--The tube housing assemblies, beam-limiting devices, detectors, and the supporting structures and frames that hold these components.

(25) Declared pregnant woman--A woman who has voluntarily informed the registrant, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman voluntarily withdraws the declaration in writing or is no longer pregnant.

(26) Deep dose equivalent (DDE), that applies to external whole body exposure--The DE at a tissue depth of 1 centimeter (cm) (1,000 milligrams per square centimeter (mg/cm^2)).

(27) Diagnostic source assembly--The tube housing assembly with a beam-limiting device attached.

(28) Diagnostic x-ray system--An x-ray system designed for irradiation of any part of any animal for the purpose of diagnosis or visualization.

(29) Director--The director of the radiation control program under the agency's jurisdiction.

(30) Dose--For external exposure to x-ray radiation from radiation machines, a generic term that means absorbed dose, DE, or total effective dose equivalent. For purposes of this chapter, "radiation dose" is an equivalent term.

(31) Dose equivalent (DE)--The product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of DE are the sievert (Sv) and rem.

(32) Dose limits--The permissible upper bounds of radiation doses established in accordance with this chapter. For purposes of this chapter, "limits" is an equivalent term.

(33) Embryo/fetus--The developing human organism from conception until the time of birth.

(34) Exposure--The quotient of dQ by dm where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass "dm" are completely stopped in air. The SI unit of exposure is the coulomb per kilogram (C/kg). The roentgen is the special unit of exposure. For purposes of this chapter, this term is used as a noun.

(35) Exposure rate--The exposure per unit of time.

(36) External dose--That portion of the DE received from any source of radiation outside the body.

(37) Extremity--Hand, elbow, arm below the elbow, foot, knee, and leg below the knee. The arm above the elbow and the leg above the knee are considered part of the whole body.

(38) Field emission equipment--Equipment that uses an x-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

(39) Field size--The dimensions along the major axes of an area in a plane perpendicular to the central axis of the beam at the normal treatment or examination source to image distance and defined by the intersection of the major axes and the 50% isodose line.

(40) Filter--Material placed in the useful beam to preferentially absorb selected radiation.

(41) Fluoroscopic imaging assembly--A subsystem in which x-ray photons produce a fluoroscopic image. It includes the image receptors such as the image intensifier and spot-film device, electrical interlocks, if any, and structural material providing linkage between the image receptor and diagnostic source assembly.

(42) Gray (Gy)--The SI unit of absorbed dose. One gray is equal to an absorbed dose of 1 joule per kilogram (J/kg) or 100 rad.

(43) Half-value layer (HVL)--The thickness of a specified material that attenuates the beam of radiation to an extent such that the exposure rate is reduced to one-half of its original value.

(44) Healing arts--Any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, injury, or unhealthy or abnormal physical or mental condition.

(45) Hearing--A proceeding to examine an application or other matter before the agency in order to adjudicate rights, duties, or privileges.

(46) High radiation area--An area, accessible to individuals, in which radiation levels from radiation machines external to the body could result in an individual receiving a DE in excess of 0.1 rem (1 millisievert (mSv)) in one hour at 30 cm from any source of radiation or from any surface that the radiation penetrates.

(47) Image intensifier--A device, installed in its housing, that instantaneously converts an x-ray pattern into a corresponding light image of higher energy density.

(48) Image receptor--Any device, such as a fluorescent screen or radiographic film, that transforms incident x-ray photons either into a visible image or into another form that can be made into a visible image by further transformations.

(49) Individual--Any human being.

(50) Individual monitoring--The assessment of DE to an individual by the use of:

(A) individual monitoring devices; or

(B) survey data.

(51) Individual monitoring devices--Devices designed to be worn by a single individual for the assessment of DE. For purposes of this chapter, "personnel dosimeter" and "dosimeter" are equivalent terms. Examples of individual monitoring devices include, but are not limited to, film badges, thermoluminescence dosimeters (TLDs), optically stimulated luminescence dosimeters (OSLs), pocket ionization chambers (pocket dosimeters), and electronic personal dosimeters.

(52) Informal conference--A meeting held by the agency with a person to discuss the following:

(A) safety, safeguards, or environmental problems;

(B) compliance with regulatory or registration condition requirements;

(C) proposed corrective measures including, but not limited to, schedules for implementation; and

(D) enforcement options available to the agency.

(53) Inspection--An official examination and/or observation including, but not limited to, records, tests, surveys, and monitoring to determine compliance with the Act and rules, orders, requirements, and conditions of the agency.

(54) Ionizing radiation--Any electromagnetic or particulate radiation capable of producing ions, directly or indirectly, in its passage through matter. Ionizing radiation includes gamma rays and x rays, alpha and beta particles, high speed electrons, neutrons, and other nuclear particles.

(55) Irradiation--The exposure of matter to ionizing radiation.

(56) kV--Kilovolt.

(57) kVp--Kilovolt peak (See definition for peak tube potential).

(58) Lead equivalent--The thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(59) Lens dose equivalent (LDE)--The external DE to the lens of the eye at a tissue depth of 0.3 cm (300 mg/cm^2).

(60) Lost or missing radiation machine(s)--A radiation machine(s) whose location is unknown.

(61) mA--Milliampere.

(62) Machine-produced radiation--A stimulated emission of radiation from a manufactured product or device or component part of a manufactured product or device that has an electronic circuit that during operation can generate or emit a physical field of radiation.

(63) mAs--Milliampere-second.

(64) Member of the public--Any individual, except when that individual is receiving an occupational dose.

(65) Minor--An individual less than 18 years of age.

(66) Mobile service operation--The provision of radiation machines and personnel at temporary sites for limited time periods. The radiation machines may be fixed inside a motorized vehicle or may be a portable radiation machine that may be removed from the vehicle and taken into a facility for use.

(67) Monitoring--The measurement of radiation and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of this chapter, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

(68) Notice of violation--A written statement prepared by the agency of one or more alleged infringements of a legally binding requirement.

(69) Occupational dose--The dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to sources of radiation from licensed/registered and unlicensed/unregistered sources of radiation, whether in the possession of the licensee/registrant or other person. Occupational dose does not include dose received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with this chapter, from voluntary participation in medical research programs, or as a member of the public.

(70) Order--A specific directive contained in a legal document issued by the agency.

(71) Party--A person designated as such by the hearing examiner. A party may consist of the following:

(A) the agency; and

(B) an applicant, licensee, registrant, accredited mammography facility, or certified industrial radiographer.

(72) Peak tube potential--The maximum value of the potential difference in kilovolts across the x-ray tube during an exposure.

(73) Person--Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, local government, any other state or political subdivision or agency thereof, or any other legal entity, and any legal successor, representative, agent, or agency of the foregoing, other than the United States Nuclear Regulatory Commission (NRC) and other federal government agencies licensed or exempted by the NRC.

(74) Personnel monitoring equipment--(See definition for individual monitoring devices.)

(75) Phototimer--A method for controlling exposures to image receptors by the amount of radiation that reaches a radiation monitoring device. The radiation monitoring device is part of an electronic circuit that controls the duration of time the tube is activated (See definition for automatic exposure control.)

(76) Portable x-ray equipment--(See definition for x-ray equipment.)

(77) Primary protective barrier--(See definition for protective barrier.)

(78) Protective apron--An apron made of radiation absorbing materials used to reduce radiation exposure.

(79) Protective barrier--A barrier of radiation absorbing materials used to reduce radiation exposure. The types of protective barriers are as follows:

(A) primary protective barrier--A barrier sufficient to attenuate the useful beam to the required degree; or

(B) secondary protective barrier--A barrier sufficient to attenuate the stray radiation to the required degree.

(80) Protective glove--A glove made of radiation absorbing materials used to reduce radiation exposure.

(81) Public dose--The dose received by a member of the public from exposure to sources of radiation released by a licensee or

registrant, or to any other source of radiation under the control of a licensee/registrant. It does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with this chapter, or from voluntary participation in medical research programs.

(82) Rad--The special unit of absorbed dose. One rad is equal to an absorbed dose of 100 ergs per gram (erg/g) or 0.01 J/kg (0.01 gray).

(83) Radiation--One or more of the following:

(A) gamma and x rays; alpha and beta particles and other atomic or nuclear particles or rays;

(B) radiation emitted to energy density levels that could reasonably cause bodily harm from an electronic device; or

(C) sonic, ultrasonic, or infrasonic waves from any electronic device or resulting from the operation of an electronic circuit in an electronic device in the energy range to reasonably cause detectable bodily harm.

(84) Radiation area--Any area, accessible to individuals, in which radiation levels could result in an individual receiving a DE in excess of 0.005 rem (0.05 mSv) in one hour at 30 cm from the radiation machine or from any surface that the radiation penetrates.

(85) Radiation machine--Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(86) Radiation safety officer (RSO)--An individual who has a knowledge of and the authority and responsibility to apply appropriate radiation protection rules, standards, and practices, who must be specifically authorized on a certificate of registration, and who is the primary contact with the agency.

(87) Radiograph--An image receptor on which the image is created directly or indirectly by an x-ray exposure and results in a permanent record.

(88) Registrant--Any person issued a certificate of registration by the agency in accordance with the Act and this chapter.

(89) Regulation--(See definition for rule.)

(90) Rem--The special unit of any of the quantities expressed as DE. The DE in rem is equal to the absorbed dose in rad multiplied by the quality factor (1 rem = 0.01 sievert (Sv)).

(91) Remote inspection--An examination by the agency of information submitted by the registrant on a form provided by the agency.

(92) Research and development--Research and development is defined as:

(A) theoretical analysis, exploration, or experimentation; or

(B) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(93) Restricted area--An area, access to which is limited by the registrant for the purpose of protecting individuals against undue risks from exposure to radiation. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

(94) Roentgen (R)--The special unit of exposure. One roentgen (R) equals 2.58 x 10^{-4} C/kg of air. (See definition for exposure.)

(95) Rule--Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior section but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures. The word "rule" was formerly referred to as "regulation."

(96) Scan--The complete process of collecting x-ray transmission data for the production of a tomogram. Data can be collected simultaneously during a single scan for the production of one or more tomograms.

(97) Scan time--The period of time between the beginning and end of x-ray transmission data accumulation for a single scan.

(98) Scattered radiation--Radiation that has been deviated in direction during passage through matter.

(99) Secondary protective barrier--(See definition for protective barrier.)

(100) Severity level--A classification of violations based on relative seriousness of each violation and the significance of the effect of the violation on the occupational or public health or safety or the environment.

(101) Shallow dose equivalent (SDE)--The DE at a tissue depth of 0.007 cm (7 mg/cm^2) that applies to the external exposure of the skin of the whole body or the skin of an extremity.

(102) Shutter--A device attached to the tube housing assembly that can totally intercept the useful beam and that has a lead equivalency not less than that of the tube housing assembly.

(103) SI--The abbreviation for the International System of Units.

(104) Sievert (Sv)--The SI unit of any of the quantities expressed as DE. The DE in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 Sv = 100 rem.)

(105) Source--The focal spot of the x-ray tube.

(106) Source of radiation--Any radioactive material, or any device or equipment emitting or capable of producing radiation.

(107) Source-to-image receptor distance (SID)--The distance from the source to the center of the input surface of the image receptor.

(108) Source-to-skin distance (SSD)--The distance from the source to the skin of the patient.

(109) Special units--The conventional units historically used by registrants, for example, rad (absorbed dose), and rem (DE).

(110) Spot film--A radiograph that is made during a fluoroscopic examination to permanently record conditions that exist during that fluoroscopic procedure.

(111) Stationary x-ray equipment--(See definition for x-ray equipment.)

(112) Stray radiation--The sum of leakage and scattered radiation.

(113) Supervision--The delegating of the task of applying radiation in accordance with this section to persons who perform tasks under the veterinarian's control. The veterinarian assumes full respon-

sibility for these tasks and shall assure that the tasks will be administered correctly.

(114) Survey--An evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, disposal, and/or presence of radiation machines. When appropriate, such survey includes, but is not limited to, tests, physical examination of location of equipment, measurements of levels of radiation present, and evaluation of administrative and/or engineered controls.

(115) Technique chart--A chart that provides all necessary generator control settings and geometry needed to make clinical radiographs when the radiography system is in manual mode.

(116) Technique factors--The conditions of operation that are specified as follows:

(A) for capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs;

(B) for field emission equipment rated for pulsed operation, peak tube potential in kV and number of x-ray pulses;

(C) for CT equipment designed for pulsed operations, peak tube potential in kV, scan time in seconds, and either tube current in mA, x-ray pulse width in seconds, and the number of x-ray pulses per scan or the product of tube current, x-ray pulse width, and the number of x-ray pulses in mAs;

(D) for CT equipment not designed for pulsed operation, peak tube potential in kV, and either tube current in mA and scan time in seconds or the product of tube current and exposure time in mAs when the scan time and exposure time are equivalent; and

(E) for all other equipment, peak tube potential in kV and either tube current in mA and exposure time in seconds or the product of tube current and exposure time in mAs.

(117) Termination--A release by the agency of the obligations and authorizations of the registrant under the terms of the certificate of registration. It does not relieve a person of duties and responsibilities imposed by law.

(118) Texas Regulations for Control of Radiation (TRCR)--All sections of Title 25 Texas Administrative Code (TAC), Chapter 289.

(119) Total effective dose equivalent (TEDE)--For external exposures only to x-ray radiation from radiation machines, the TEDE is equal to the DDE. If an individual receives an occupational dose from both radiation machines and radioactive materials, the TEDE is the sum of the DDE for external exposures and the committed effective dose equivalent for internal exposures as defined in §289.201(b) of this title.

(120) Tube--An x-ray tube, unless otherwise specified.

(121) Tube housing assembly--The tube housing with tube installed. It includes high-voltage and/or filament transformers and other appropriate elements when such are contained within the tube housing.

(122) Unrestricted area (uncontrolled area)--An area, access to which is neither limited nor controlled by the registrant. For purposes of this chapter, "uncontrolled area" is an equivalent term.

(123) Useful beam--Radiation that passes through the window, aperture, cone, or other collimating device of the source housing. Also referred to as the primary beam.

(124) Veterinarian--An individual licensed by the Texas Board of Veterinary Medical Examiners.

(125) Very high radiation area--An area, accessible to individuals, in which radiation levels from radiation machines external to the body could result in an individual receiving an absorbed dose in excess of 500 rads (5 grays) in one hour at 1 meter (m) from a radiation machine or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose, gray and rad, are appropriate, rather than units of DE, Sv and rem.

(126) Violation--An infringement of any rule, license or registration condition, order of the agency, or any provision of the Act.

(127) Whole body--For purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(128) Worker--An individual engaged in work under a certificate of registration issued by the agency and controlled by a registrant, but does not include the registrant.

(129) X-ray control--A device that controls input power to the x-ray high-voltage generator and/or the x-ray tube. It includes equipment such as timers, phototimers, automatic brightness stabilizers, and similar devices that control the technique factors of an x-ray exposure.

(130) X-ray equipment--An x-ray system, subsystem, or component thereof. For the purposes of this rule, types of x-ray equipment are as follows:

(A) portable x-ray equipment--x-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled. Portable x-ray equipment may also include equipment designed to be hand-carried; or

(B) stationary x-ray equipment--x-ray equipment that is installed in a fixed location.

(131) X-ray field--That area of the intersection of the useful beam and any one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth of the maximum in the intersection.

(132) X-ray high-voltage generator--A device that transforms electrical energy from the potential supplied by the x-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tubes, high-voltage switches, electrical protective devices, and other appropriate elements.

(133) X-ray system--An assemblage of components for the controlled production of x rays. It includes minimally an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components that function with the system are considered integral parts of the system.

(134) X-ray subsystem--Any combination of two or more components of an x-ray system.

(135) X-ray tube--Any electron tube that is designed to be used primarily for the production of x rays.

(136) Year--The period of time beginning in January used to determine compliance with the provisions of this chapter. The registrant may change the starting date of the year used to determine compliance by the registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

(d) Exemptions.

(1) Electronic equipment that produces radiation incidental to its operation for other purposes is exempt from the registration and notification requirements of this section, provided that the dose equivalent rate averaged over an area of 10 square centimeters (cm^2) does not exceed 0.5 millirem per hour (mrem/hr) at 5 centimeters (cm) from any accessible surface of such equipment. The production, testing, or factory servicing of such equipment shall not be exempt.

(2) Radiation machines in transit or in storage incident to transit are exempt from the requirements of this section. This exemption does not apply to the providers of radiation machines for mobile services. Facilities that have placed all radiation machines in storage, including on-site storage, and have notified the agency in writing, are exempt from the requirements of this section. This exemption is void if any radiation machine is energized resulting in the production of radiation.

(3) Domestic television receivers and video display terminals, including the servicing of such devices, are exempt from the requirements of this section.

(4) Inoperable radiation machines are exempt from the requirements of this section. For the purposes of this section, an inoperable radiation machine means a radiation machine that cannot be energized when connected to a power supply without repair or modification.

(5) Financial institutions that take possession of radiation machines as the result of foreclosure, bankruptcy, or other default of payment are exempt from the requirements in this section to the extent that they demonstrate that the unit is operable for the sole purpose of selling, leasing, or transferring.

(6) Individuals who are sole veterinarians, sole operators, and the only occupationally exposed individual are exempt from the following requirements:

(A) subsection (i)(4)(B) of this section "Posting of notices to workers;"

(B) subsection (i)(3)(G) of this section "Instructions to workers;" and

(C) operating and safety procedures in accordance with subsection (i)(2) of this section.

(7) The agency may, upon application therefore or upon its own initiative, exempt a source of radiation or a kind of use or user from the requirements of this chapter if the agency determines that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment. In determining such exemptions, the agency will consider:

(A) state of technology;

(B) economic considerations in relation to benefits to the public health and safety; and

(C) other societal, socioeconomic, or public health and safety considerations.

(e) Communications.

(1) Except where otherwise specified, all communications and reports concerning this chapter and applications filed under them should be addressed to Radiation Control, Department of State Health Services, P.O. Box 149347, Austin, Texas, 78714-9347. Communications, reports, and applications may be delivered in person to the agency's office located at 8407 Wall Street, Austin, Texas.

(2) Documents transmitted to the agency will be deemed submitted on the date of the postmark, telegram, telefacsimile, or electronic media transmission.

(f) Interpretations. Except as specifically authorized by the agency in writing, no interpretation of the meaning of this chapter by any officer or employee of the agency other than a written legal interpretation by the agency, will be considered binding upon the agency.

(g) Fees for certificates of registration for veterinary facilities.

(1) Payment of fees.

(A) Each application for a certificate of registration shall be accompanied by a nonrefundable fee of $264. No application will be accepted for filing or processed prior to payment of the full amount specified.

(B) A nonrefundable fee of $264 shall be paid for each certificate of registration for radiation machines used in veterinary medicine. The fee shall be paid every two years and shall be paid in full on or before the due date stated on the invoice. In the case of a single certificate of registration that authorizes more than one category of use, the category listed in §289.204(j) of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services) and assigned the higher fee will be used. For each additional use location on a single certificate of registration, the registrant shall pay an additional $72.

(C) Each application for reciprocal recognition of an out-of-state registration in accordance with subsection (h)(8) of this section shall be accompanied by the $264 fee, provided that no such fee has been submitted within 24 months of the date of commencement of the proposed activity.

(D) Fee payments shall be in cash or by check or money order made payable to the Department of State Health Services. The payments may be made by personal delivery to the central office, Radiation Control, Department of State Health Services, 1100 West 49th Street, Austin, Texas, or mailed to Radiation Control, Department of State Health Services, P.O. Box 149347, MC 2003, Austin, Texas, 78714-9347.

(2) Failure to pay prescribed fees.

(A) In any case where the agency finds that an applicant for a certificate of registration has failed to pay the fee prescribed in this section, the agency will not process that application until such fee is paid.

(B) In any case where the agency finds that a registrant has failed to pay a fee prescribed by this section by the due date, the agency may implement compliance procedures as provided in subsection (k)(2) of this section.

(3) Fees for Texas Online participation. For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(h) Registration of radiation machine use.

(1) Requirements for application for registration for use of radiation machines for veterinary medicine.

(A) Each person having a radiation machine used in veterinary medicine shall apply for registration with the agency within 30 days after beginning use of the radiation machine, except for mobile services that shall be registered in accordance with subsection (h)(2) of this section.

(B) Application for registration shall be completed on forms prescribed by the agency and shall contain all the information required by the form and accompanying instructions.

(C) The applicant shall be qualified by reason of training and experience to use the radiation machine for the purpose requested in accordance with this section in such a manner as to minimize danger to occupational and public health and safety.

(D) The applicant's proposed equipment, facilities, and operating and safety procedures shall be adequate to minimize danger to occupational and public health and safety.

(E) A radiation safety officer (RSO) shall be designated on each application form. The qualifications of that individual shall be submitted to the agency with the application.

(i) The RSO shall have the following qualifications:

(I) knowledge of potential hazards and emergency precautions; and

(II) completed educational courses related to ionizing radiation safety or a radiation safety officer course; or

(III) experience in the use and familiarity of the type of equipment used; and

(ii) In addition to the qualifications in clause (i) of this subparagraph, documentation of the following shall be submitted to the agency:

(I) for veterinarian RSOs, veterinary license board number; or

(II) for non-veterinarian RSOs, two years minimum experience in the use of radiation machines in veterinary medicine under the supervision of a licensed veterinarian.

(iii) The RSO identified on a certificate of registration for use of radiation machines for veterinary medicine issued before September 1, 1993, need not comply with the training requirements in this subsection.

(iv) Specific duties of the RSO include, but are not limited to, the following:

(I) establishing and overseeing operating and safety procedures that maintain radiation exposures as low as reasonably achievable (ALARA), and to review them regularly to ensure that the procedures are current and conform with this chapter;

(II) ensuring that individual monitoring devices are properly used by occupationally-exposed personnel, that records are kept of the monitoring results, and that timely notifications are made as required by subsections (i)(4)(B) and (C) and (j)(3)(B)-(D) of this section;

(III) investigating and reporting to the agency each known or suspected case of radiation exposure to an individual or radiation level detected in excess of limits established by this chapter and each theft or loss of source(s) of radiation, determining the cause, and taking steps to prevent its recurrence;

(IV) having a thorough knowledge of management policies and administrative procedures of the registrant and keeping management informed on a periodic basis of the performance of the registrant's radiation protection program, if applicable;

(V) assuming control and having the authority to institute corrective actions including shut-down of operations when necessary in emergency situations or unsafe conditions;

(VI) making and maintaining records as required by this chapter; and

(VII) ensuring that personnel are adequately trained and complying with this chapter, the conditions of the certificate of registration, and the operating and safety procedures of the registrant.

(F) An application for use of radiation machines for veterinary medicine shall be signed by a licensed veterinarian. The signature of the administrator, president, or chief executive officer will be accepted in lieu of a veterinarian's signature if the facility has more than one veterinarian who may direct the operation of radiation machines. The application shall also be signed by the RSO if the RSO is someone other than the licensed veterinarian.

(G) Each application for a certificate of registration shall be accompanied by the fee prescribed in subsection (g) of this section. No application will be accepted for filing or processed prior to payment of the full amount specified.

(H) Each application shall be accompanied by a completed BRC Form 226-1 (Business Information Form).

(I) The agency may at any time after the filing of the original application, require further statements in order to enable the agency to determine whether the certificate of registration should be issued or denied.

(J) An application for a certificate of registration may include a request for a certificate of registration authorizing one or more activities.

(K) Applications and documents submitted to the agency may be made available for public inspection except that the agency may withhold any document or part thereof from public inspection in accordance with subsection (j)(1)(K)-(N) of this section.

(2) Application for registration of mobile service operation used in veterinary medicine. In addition to the requirements of paragraph (1) of this subsection, each applicant shall apply for and receive authorization for mobile service operation before beginning mobile service operation. The following shall be submitted:

(A) an established main location where the machine(s), records, etc. will be maintained for inspection. This shall be a street address, not a post office box number;

(B) a sketch or description of the normal configuration of each radiation machine's use, including the operator's position and any ancillary personnel's location during exposures. If a mobile van is used with a fixed unit inside, furnish the floor plan indicating protective shielding and the operator's location; and

(C) a current copy of the applicant's operating and safety procedures regarding radiological practices for protection of operators, employees, and the general public.

(3) Issuance of certificate of registration.

(A) Upon a determination that an application meets the requirements of the Act and the requirements of the agency, the agency may issue a certificate of registration authorizing the proposed activity in such form and containing such conditions and limitations as the agency deems appropriate or necessary.

(B) The agency may incorporate in the certificate of registration at the time of issuance, or thereafter by amendment, such additional requirements and conditions with respect to the registrant's possession, use, and transfer of radiation machines subject to this chapter as it deems appropriate or necessary in order to:

(i) minimize danger to occupational and public health and safety;

(ii) require additional reports and the keeping of additional records as may be appropriate or necessary; and

(iii) prevent loss or theft of radiation machines subject to this section.

(4) Specific terms and conditions of certificates of registration.

(A) Each certificate of registration issued in accordance with this section shall be subject to the applicable provisions of the Act, now or hereafter in effect, and to the applicable requirements of this chapter and orders of the agency.

(B) No certificate of registration issued or granted under this section shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, to any person unless the agency authorizes the transfer in writing.

(C) Each person registered by the agency for radiation machine use in accordance with this section shall confine use and possession of the radiation machine registered to the locations and purposes authorized in the certificate of registration.

(D) In making a determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a certificate of registration, the agency may consider the technical competence and compliance history of an applicant or holder of a certificate of registration. After an opportunity for a hearing, the agency shall deny an application for a certificate of registration, an amendment to a certificate of registration, or renewal of a certificate of registration if the applicant's compliance history reveals that at least three agency actions have been issued against the applicant, within the previous six years, that assess administrative or civil penalties against the applicant, or that revoke or suspend the certificate of registration.

(5) Responsibilities of the registrant.

(A) Each registrant shall inventory all radiation machines at an interval not to exceed one year. The inventory shall be made and maintained for inspection by the agency in accordance with subsection (j)(2) of this section and shall include:

(i) manufacturer's name;

(ii) model and serial number of the control panel; and

(iii) location of radiation machine(s), for example, room number.

(B) Notification to the agency concerning radiation machine inventory is required within 30 days of either of the following:

(i) any change in the category(ies) of machine type or type of use as authorized in the certificate of registration (for example, addition of a computerized tomography machine to the authorized veterinary radiographic machine); or

(ii) any increase in the number of machines authorized by the certificate of registration in any machine type or type of use category.

(C) The registrant shall notify the agency in writing of any changes that would render the information contained in the application for registration and/or the certificate of registration inaccurate. Notification is required within 30 days of the following changes:

(i) name and mailing address;

(ii) street address where machine will be used;

(iii) RSO; or

(iv) name of entity contracted for "provider of equipment," registered in accordance with §289.226 of this title (relating to Registration of Radiation Machines Use and Services.)

(D) The following criteria apply to radiation machines used for loaner or demonstration radiation machines. For persons having a valid certificate of registration, radiation machines used for loaner or demonstration radiation machines may be used for up to 60 days. After 60 days, the registrant shall notify the agency of the following:

(i) any change in the category(ies) of machine type or type of use as authorized in the certificate of registration (for example, addition of a computerized tomography machine to the authorized veterinary radiographic machine); or

(ii) any increase in the number of machines authorized by the certificate of registration in any machine type or type of use category.

(E) No registrant shall engage any person for services described in §289.226(b)(9) and (10) of this title until such person provides to the registrant evidence of registration with the agency.

(F) The following applies to voluntary or involuntary petitions for bankruptcy.

(i) Each registrant shall notify the agency, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy by the registrant or its parent company. This notification shall include:

(I) the bankruptcy court in which the petition for bankruptcy was filed; and

(II) the date of the filing of the petition.

(ii) A copy of the "petition for bankruptcy" shall be submitted to the agency along with the written notification.

(G) The registrant is responsible for complying with this chapter and the conditions of the certificate of registration.

(H) No person shall use radiation machines that are not authorized in the certificate of registration issued by the agency.

(6) Termination of certificates of registration. When a registrant decides to terminate all activities involving radiation machines authorized under the certificate of registration, the registrant shall notify the agency immediately and do the following:

(A) request termination of the certificate of registration in writing;

(B) submit to the agency a record of the disposition of the radiation machines and if transferred, to whom transferred; and

(C) pay any outstanding fees in accordance with subsection (g) of this section.

(7) Modification, suspension, and revocation of certificates of registration.

(A) The terms and conditions of all certificates of registration shall be subject to revision or modification. A certificate of registration may be suspended or revoked by reason of amendments to the Act, by reason of requirements of this chapter or orders issued by the agency.

(B) Any certificate of registration may be revoked, suspended, or modified, in whole or in part, for any of the following:

(i) any material false statement in the application or any statement of fact required under provisions of the Act;

(ii) conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a certificate of registration on an original application;

(iii) violation of, or failure to observe any of the terms and conditions of the Act, this chapter, the certificate of registration, or order of the agency; or

(iv) existing conditions that constitute a substantial threat to the public health or safety or the environment.

(C) Each certificate of registration revoked by the agency ends at the end of the day on the date of the agency's final determination to revoke the certificate of registration, or on the revocation date stated in the determination, or as otherwise provided by the agency order.

(D) Except in cases in which the occupational and public health or safety requires otherwise, no certificate of registration shall be suspended or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the registrant in writing and the registrant shall have been afforded an opportunity to demonstrate compliance with all lawful requirements.

(8) Reciprocal recognition for out-of-state certificates of registration.

(A) Whenever any radiation machine is to be brought into the state for any temporary use, the person proposing to bring the machine into the state shall apply for and receive a notice from the agency granting reciprocal recognition prior to beginning operations. The request for reciprocity shall include the following:

(i) completed BRC Form 226-1 (Business Information Form);

(ii) completed BRC Form 252-3 (Notice of Intent to Work in Texas Under Reciprocity);

(iii) copy of the applicant's current state certificate of registration or equivalent document;

(iv) copy of the applicant's current operating and safety procedures pertinent to the proposed use; and

(v) fee as specified in subsection (g) of this section.

(B) Upon a determination that the request for reciprocity meets the requirements of the agency, the agency may issue a notice granting reciprocal recognition authorizing the proposed use.

(C) Once reciprocity is granted, the out-of-state registrant shall file a BRC Form 252-3 with the agency prior to each entry into the state. This form shall be filed at least three working days before the radiation machine is to be used in the state. If, for a specific case, the three-day period would impose an undue hardship, the out-of-state registrant may, at the determination of the agency, obtain permission to proceed sooner.

(D) When radiation machines are used as authorized under reciprocity, the out-of-state registrant shall have the following in its possession at all times for inspection by the agency:

(i) completed BRC Form 252-3;

(ii) copy of the notice from the agency granting reciprocity;

(iii) copy of the out-of-state registrant's operating and safety procedures; and

(iv) copy of the applicable rules as specified in the notice granting reciprocity.

(E) If the state from which the radiation machine is proposed to be brought does not issue certificates of registration or equivalent documents, a certificate of registration shall be obtained from the agency in accordance with the requirements of this section.

(F) The agency may withdraw, limit, or qualify its acceptance of any certificate of registration or equivalent document issued by another agency upon determining that such action is necessary in order to prevent undue hazard to occupational and public health and safety or property.

(G) Reciprocal recognition will expire one year from the date it is granted. A new request for reciprocity shall be submitted to the agency each year. Reciprocity requests made after the initial request shall include only the following:

(i) a completed BRC Form 226-1;

(ii) a completed BRC Form 252-3;

(iii) the fee as specified in subsection (g) of this section; and

(iv) copy of the applicant's current state certificate of registration or equivalent document; and

(v) copy of the applicant's current operating and safety procedures pertinent to the proposed use.

(i) Use of radiation machines for veterinary medicine.

(1) As low as reasonably achievable. The registrant shall use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and public doses that are as low as reasonably achievable.

(2) Operating and safety procedures. Each registrant shall have and implement written operating and safety procedures. These procedures shall be made available to each individual operating a radiation machine, including any restrictions of the operating technique required for the safe operation of the particular x-ray system.

(A) The registrant shall document that each individual operating a radiation machine has read the operating and safety procedures and shall maintain this documentation for inspection by the agency in accordance with subsection (j)(2) of this section. The documentation shall include the following:

(i) name and signature of individual;

(ii) date individual read the operating and safety procedures; and

(iii) initials of the RSO.

(B) The operating and safety procedures shall include, but are not limited to, the following procedures as applicable:

(i) posting notices to workers in accordance with paragraph (4)(B) of this subsection;

(ii) instructions to workers in accordance with paragraph (3)(G) of this subsection;

(iii) notifications and reports to individuals in accordance with paragraph (4)(B) and (C) of this subsection and subsection (j)(3)(B)-(D) of this section;

(iv) ordering x-ray exams in accordance with subsection (b)(1) of this section;

(v) occupational dose requirements in accordance with paragraph (3)(A) of this subsection;

(vi) compliance with dose and personnel monitoring requirements in accordance with paragraphs (3)(B), (D), and (E) of this subsection;

(vii) controlling a radiation area in accordance with paragraph (4)(D) of this subsection;

(viii) use of a technique chart in accordance with paragraph (5)(A) of this subsection;

(ix) use of protective devices in accordance with paragraph (3)(H) of this subsection;

(x) exposure of individuals other than the animal in accordance with paragraph (3)(I) of this subsection;

(xi) holding of animals or image receptors in accordance with paragraph (3)(J) of this subsection;

(xii) control of scattered radiation in accordance with paragraph (6)(C) of this subsection; and

(xiii) film processing program or digital image processing in accordance with paragraphs (9)-(11) of this subsection.

(3) Personnel requirements.

(A) Occupational dose limits. Except as otherwise exempted, all individuals who are associated with the operation of a radiation machine are subject to the occupational dose limits of this subparagraph regarding dose limits to individuals, and the personnel monitoring requirements of subparagraph (B) of this paragraph.

(i) The registrant shall control the occupational dose to individuals to the following dose limits.

(I) An annual limit shall be the TEDE being equal to 5 rems (0.05 Sv).

(II) The annual limits to the lens of the eye, to the skin of the whole body, and to the skin of the extremities shall be:

(-a-) an LDE of 15 rems (0.15 Sv); and

(-b-) an SDE of 50 rems (0.5 Sv) to the skin of the whole body or to the skin of any extremity.

(III) The annual limits for a minor shall be 10% of the annual occupational dose limits specified in subclauses (I) and (II) of this clause.

(IV) If a woman declares her pregnancy, the registrant shall ensure that the DE to an embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed 0.5 rem (5 mSv). If a woman chooses not to declare pregnancy, the occupational dose limits specified in subclauses (I) and (II) of this clause are applicable to the woman.

(-a-) The registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman so as to satisfy the limit in clause (i) of this subparagraph. The National Council on Radiation Protection and Measurements recommended in NCRP Report No. 91 "Recommendations on Limits for Exposure to Ionizing Radiation" (June 1, 1987) that no more than 0.05 rem (0.5 mSv) to the embryo/fetus be received in any one month.

(-b-) If by the time the woman declares pregnancy to the registrant, the DE to the embryo/fetus has exceeded 0.45 rem (4.5 mSv), the registrant shall be deemed to be in compliance with clause (i) of this subparagraph, if the additional DE to the embryo/fetus does not exceed 0.05 rem (0.5 mSv) during the remainder of the pregnancy.

(-c-) The DE to an embryo/fetus shall be taken as the DE that is most representative of the DE to the embryo/fetus from external radiation, that is, in the mother's lower torso region.

(-d-) If multiple measurements have been made, assignment of the DDE for the declared pregnant woman from the individual monitoring device that is most representative of the DE to the embryo/fetus shall be the DE to the embryo/fetus. Assignment of the highest DDE for the declared pregnant woman to the embryo/fetus is not required unless that dose is also the most representative DDE for the region of the embryo/fetus.

(-e-) If multiple measurements have not been made, assignment of the highest DDE for the declared pregnant woman shall be the DE to the embryo/fetus.

(ii) The assigned DDE shall be for the portion of the body receiving the highest exposure. The assigned SDE shall be the dose averaged over the contiguous 10 cm2 of skin receiving the highest exposure.

(iii) When a protective apron is worn while working with fluoroscopic equipment used for clinical diagnostic or research purposes, the effective dose equivalent (EDE) for external radiation shall be determined as follows:

(I) when only one individual monitoring device is used and it is located at the neck (collar) outside the protective apron, the reported DDE shall be the EDE for external radiation; or

(II) when only one individual monitoring device is used and it is located at the neck (collar) outside the protective apron, and the reported dose exceeds 25% of the limit specified in clause (i) of this subparagraph, the reported DDE value multiplied by 0.3 shall be the EDE for external radiation; or

(III) when individual monitoring devices are worn, both under the protective apron at the waist and outside the protective apron at the neck (collar), the EDE for external radiation shall be assigned the value of the sum of the DDE reported for the individual monitoring device located at the waist under the protective apron multiplied by 1.5 and the DDE reported for the individual monitoring device located at the neck (collar) outside the protective apron multiplied by 0.04.

(iv) The DDE, LDE, and SDE may be assessed from surveys or radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable.

(v) The registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received from radiation machines or radioactive materials while employed by any other person. See subparagraph (F)(iv) of this paragraph.

(B) Conditions requiring individual monitoring of occupational dose. Each registrant shall monitor exposures from radiation machines at levels sufficient to demonstrate compliance with the occupational dose limits of this section. As a minimum, each registrant shall monitor occupational exposure to radiation from radiation machines and shall supply and require the use of individual monitoring devices by:

(i) adults likely to receive, in one year from sources external to the body, a dose in excess of 10% of the limits in subparagraph (A)(i) of this paragraph;

(ii) minors likely to receive, in one year from radiation machines external to the body, a DDE in excess of 0.1 rem (1 mSv), an LDE in excess of 0.15 rem (1.5 mSv), or an SDE to the skin of the whole body or to the skin of any extremities in excess of 0.5 rem (5 mSv);

(iii) declared pregnant women likely to receive during the entire pregnancy, from radiation machines external to the body, a DDE in excess of 0.1 rem (1 mSv); and

(iv) individuals entering a high or very high radiation area.

(C) Dose limits for individual members of the public.

(i) Each registrant shall conduct operations so that:

(I) the TEDE to individual members of the public from exposure to radiation from radiation machines does not exceed 0.5 rem (5 mSv) in a year, exclusive of the dose contribution from background radiation, exposure of patients to radiation for the purpose of medical diagnosis or therapy, or to voluntary participation in medical research programs; and

(II) the dose in any unrestricted area from registered external sources does not exceed 0.002 rem (0.02 mSv) in any one hour.

(ii) If the registrant permits members of the public to have access to restricted areas, the limits for members of the public continue to apply to those individuals.

(iii) The agency may impose additional restrictions on radiation levels in unrestricted areas in order to restrict the collective dose.

(D) Compliance with dose limits for individual members of the public.

(i) The registrant shall make or cause to be made surveys of radiation levels in unrestricted areas to demonstrate compliance with the dose limits for individual members of the public as required in subparagraph (C) of this paragraph.

(ii) A registrant shall show compliance with the annual dose limit in subparagraph (C) of this paragraph by demonstrating by measurement or calculation that the TEDE to the individual likely to receive the highest dose from the registered operation does not exceed the annual dose limit.

(iii) Registrants exempt from individual monitoring requirements in accordance with subparagraph (B)(ii) of this paragraph are exempt from the requirements of clauses (i) and (ii) of this subparagraph.

(E) Location and use of individual monitoring devices.

(i) Each registrant shall ensure that individuals who are required to monitor occupational doses in accordance with subparagraph (B) of this paragraph wear and use individual monitoring devices as follows.

(I) An individual monitoring device shall be assigned to and worn by only one individual.

(II) An individual monitoring device used for monitoring the dose to the whole body shall be worn at the unshielded location of the whole body likely to receive the highest exposure. When a protective apron is worn, the location of the individual monitoring device is typically at the neck (collar).

(III) If an additional individual monitoring device is used for monitoring the dose to an embryo/fetus of a declared pregnant woman, in accordance with subparagraph (B)(iii) of this paragraph, it shall be located at the waist under any protective apron being worn by the woman.

(IV) An individual monitoring device used for monitoring the LDE, to demonstrate compliance with subparagraph (A)(i)(II)(-a-) of this paragraph, shall be located at the neck (collar) or at a location closer to the eye, outside any protective apron being worn by the monitored individual.

(V) An individual monitoring device used for monitoring the dose to the extremities, to demonstrate compliance with subparagraph (A)(i)(II)(-b-) of this paragraph, shall be worn on the extremity likely to receive the highest exposure. Each individual monitoring device, to the extent practicable, shall be oriented to measure the highest dose to the extremity being monitored.

(ii) Each registrant shall ensure that individual monitoring devices are returned to the dosimetry processor for proper processing.

(iii) Each registrant shall ensure that adequate precautions are taken to prevent a deceptive exposure of an individual monitoring device.

(F) Determination of occupational dose for the current year.

(i) For each individual who is likely to receive, in a year, an occupational dose requiring monitoring in accordance with subparagraph (B) of this paragraph, the registrant shall determine the occupational radiation dose received during the current year. Occupational dose includes doses received from exposure to registered/licensed or unregistered/unlicensed sources of radiation as defined in subsection (c) of this section.

(ii) In complying with the requirements of clause (i) of this subparagraph, a registrant may:

(I) accept, as a record of the occupational dose that the individual received during the current year, BRC Form 233-1 (Occupational Exposure Record for a Monitoring Period) from prior or other current employers, or other clear and legible record, of all information required on that form and indicating any periods of time for which data are not available; or

(II) accept, as a record of the occupational dose that the individual received during the current year, a written signed statement from the individual, or from the individual's prior or other current employer(s) for work involving radiation exposure, that discloses the nature and the amount of any occupational dose that the individual received during the current year; or

(III) obtain reports of the individual's DE from prior or other current employer(s) for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the registrant, by telephone, telegram, facsimile, or letter. The registrant shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

(iii) The registrant shall record the exposure data for the current year, as required by clause (i) of this subparagraph, on BRC Form 233-1, or other clear and legible record, of all the information required on BRC Form 233-1.

(iv) If the registrant is unable to obtain a complete record of an individual's current occupational dose while employed by any other registrant or licensee, the registrant shall assume in establishing administrative controls in accordance with subsection (m)(5) of this section for the current year, that the allowable dose limit for the

individual is reduced by 1.25 rems (12.5 millisieverts (mSv)) for each quarter; or 416 millirems (mrem) (4.16 mSv) for each month for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure.

(v) If an individual has incomplete (for example, a lost or damaged personnel monitoring device) current occupational dose data for the current year and that individual is employed solely by the registrant during the current year, the registrant shall:

(I) assume that the allowable dose limit for the individual is reduced by 1.25 rems (12.5 mSv) for each quarter;

(II) assume that the allowable dose limit for the individual is reduced by 416 mrem (4.16 mSv) for each month; or

(III) assess an occupational dose for the individual during the period of missing data using surveys, radiation measurements, or other comparable data for the purpose of demonstrating compliance with the occupational dose limits.

(vi) Administrative controls established in accordance with clause (iv) of this subparagraph shall be documented and maintained for inspection by the agency. Occupational dose assessments made in accordance with clause (v) of this subparagraph and records of data used to make the assessment shall be made and maintained for inspection by the agency. The registrant shall retain the records in accordance with subsection (j)(2) of this section.

(vii) Occupational exposure form. The following BRC Form 233-1 (Occupational Exposure Record for a Monitoring Period), is to be used to document occupational exposures for a monitoring period.
Figure: 25 TAC §289.233(i)(3)(F)(vii)

(G) Instructions to workers.

(i) All individuals likely to receive in a year an occupational dose in excess of 100 millirem (1 millisievert) shall be:

(I) kept informed of the storage, transfer, or use of sources of radiation in the licensee's or registrant's workplace;

(II) instructed in the health protection problems associated with exposure to sources of radiation, in precautions or procedures to minimize exposure, and in the purposes and functions of protective devices employed;

(III) instructed in, and instructed to observe, to the extent within the worker's control, the applicable provisions of agency requirements and certificates of registration, for the protection of personnel from exposures to sources of radiation occurring in such areas;

(IV) instructed of their responsibility to report promptly to the registrant any condition that may constitute, lead to, or cause a violation of agency requirements or certificate of registration conditions, or unnecessary exposure to sources of radiation;

(V) instructed in the appropriate response to warnings made in the event of any unusual occurrence or malfunction that may involve exposure to sources of radiation; and

(VI) advised as to the radiation exposure reports that workers may request in accordance with subsection (j)(3)(D)(i) and (ii) of this section.

(ii) The extent of these instructions shall be commensurate with potential radiological health protection problems associated with the source(s) of radiation in the workplace.

(H) Protective devices. Protective devices shall be utilized when required, as in subparagraphs (J)(i) and (ii) and (K) of this paragraph and paragraph (6)(C) of this subsection.

(i) Protective devices shall be of no less than 0.25 millimeter (mm) lead equivalent material except as specified in paragraph (6)(C)(ii)(I) of this subsection.

(ii) Protective devices, including aprons, gloves, and shields shall be checked annually for defects such as holes, cracks, and tears. These checks may be performed by the registrant by visual or tactile means, or x-ray imaging. If a defect is found, protective devices shall be replaced or removed from service until repaired. A record of this test shall be made and maintained by the registrant in accordance with subsection (j)(2) of this section for inspection by the agency.

(I) Exposure of individuals other than the animal. No individual other than the animal, operator, and ancillary personnel shall be in the x-ray room or area while exposures are being made unless such individual's assistance is required.

(J) Holding of animal or image receptor.

(i) When an animal or image receptor must be held in position during radiography, mechanical supporting or restraining devices shall be used when the exam permits.

(ii) If an animal or image receptor must be held by an individual during an exposure, that individual shall be protected with appropriate shielding devices described in subparagraph (H) of this paragraph.

(iii) The registrant's written operating and safety procedures required by paragraph (2) of this subsection shall include the following:

(I) a list of circumstances in which mechanical holding devices cannot be routinely utilized; and

(II) a procedure used for selecting an individual to hold or support the animal or image receptor.

(K) Operator position. The operator position during the exposure shall be such that the operator's exposure is as low as reasonably achievable (ALARA) and the operator is a minimum of six feet from the radiation machine or protected by an apron, gloves, or other shielding having a minimum of 0.25 lead equivalent material.

(L) Holding of tube. In no case shall an individual hold the tube or tube housing assembly supports during any radiographic exposure.

(4) Facility requirements.

(A) Caution signs. Unless otherwise authorized by the agency, the standard radiation symbol prescribed shall use the colors magenta, or purple, or black on yellow background. The standard radiation symbol prescribed is the three-bladed design as follows:
Figure: 25 TAC §289.233(i)(4)(A) (No change.)

(i) the cross-hatched area of the symbol is to be magenta, or purple, or black; and

(ii) the background of the symbol is to be yellow.

(B) Posting of notices to workers.

(i) Each registrant shall post current copies of the following documents:

(I) §289.233 of this title;

(II) the certificate of registration and conditions or documents incorporated into the certificate of registration by reference, and amendments thereto;

(III) the operating procedures applicable to work under the certificate of registration; and

(IV) any notice of violation, if applicable, involving radiological working conditions, or order issued in accordance with subsection (k)(2) of this section.

(ii) If posting of a document specified in clause (i) of this subparagraph is not practicable, the registrant shall post a notice that describes the document and states where it may be examined.

(iii) The following form, BRC Form 233-2, "Notice to Employees," which is found at the end of the section, or an equivalent document containing at least the same wording as BRC Form 233-2. Figure: 25 TAC §289.233(i)(4)(B)(iii)

(iv) Documents, notices, or forms posted in accordance with this subsection shall:

(I) appear in a sufficient number of places to permit individuals engaged in work under the certificate of registration to observe them on the way to or from any particular work location to which the document applies;

(II) be conspicuous; and

(III) be replaced if defaced or altered.

(C) Posting requirements.

(i) The registrant shall post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA."

(ii) The registrant shall post each high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA."

(iii) The registrant shall post each very high radiation area with a conspicuous sign or signs bearing the radiation symbol and words "GRAVE DANGER, VERY HIGH RADIATION AREA."

(D) Exceptions to posting requirements. A registrant is not required to post caution signs in areas or rooms containing radiation machines for periods of less than 8 hours, if each of the following conditions is met:

(i) the radiation machines are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to radiation in excess of the limits established in this section; and

(ii) the area or room is subject to the registrant's control.

(E) General surveys and monitoring.

(i) Each registrant shall make, or cause to be made, surveys that:

(I) are necessary for the registrant to comply with this section; and

(II) are necessary under the circumstances to evaluate:

(-a-) the magnitude and extent of radiation levels; and

(-b-) the potential radiological hazards.

(ii) The registrant shall ensure that instruments and equipment used for qualitative and quantitative radiation measurements, for example, dose rate, are operable and calibrated:

(I) by a person licensed or registered by the agency, another agreement state, a licensing state, or the United States Nuclear Regulatory Commission to perform such service;

(II) at intervals not to exceed 12 months unless a different time interval is specified in another section of this chapter;

(III) after each instrument or equipment repair;

(IV) for the types of radiation used and at energies appropriate for use; and

(V) at an accuracy within 20% of the true radiation level.

(iii) All individual monitoring devices, except for direct and indirect reading pocket dosimeters, electronic personal dosimeters, and those individual monitoring devices used to measure the dose to any extremity, that require processing to determine the radiation dose and that are used by registrants to comply with subparagraph (A) of this paragraph, with other applicable provisions of this chapter, shall be processed and evaluated by a dosimetry processor:

(I) holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and

(II) approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

(F) Control of access to high radiation areas.

(i) The registrant shall ensure that each entrance or access point to a high radiation area has one or more of the following features:

(I) a control device that, upon entry into the area, causes the level of radiation to be reduced below that level at which an individual might receive a DDE of 0.1 rem (1 mSv) in one hour at 30 cm from the source of radiation from any surface that the radiation penetrates;

(II) a control device that energizes a conspicuous visible or audible alarm signal so that the individual entering the high radiation area and the supervisor of the activity are made aware of the entry; or

(III) entryways that are locked, except during periods when access to the areas is required, with positive control over each individual entry.

(ii) In place of the controls required by clause (i) of this subparagraph for a high radiation area, the registrant may substitute continuous direct or electronic surveillance that is capable of preventing unauthorized entry.

(iii) The registrant may apply to the agency for approval of alternative methods for controlling access to high radiation areas.

(iv) The registrant shall establish the controls required by clauses (i) and (iii) of this subparagraph in a way that does not prevent individuals from leaving a high radiation area.

(G) Control of access to very high radiation areas.

(i) In addition to the requirements in subparagraph (F) of this paragraph, the registrant shall institute measures to ensure that an individual is not able to gain unauthorized or inadvertent access to areas in which radiation levels could be encountered at 500 rads (5 grays) or more in one hour at 1 m from a radiation machine or any surface through which the radiation penetrates at this level.

(ii) The entry control devices required by clause (i) of this subparagraph shall be established in such a way that no individual will be prevented from leaving the area.

(H) Security and control of radiation machines.

(i) The registrant shall secure radiation machines from unauthorized removal.

(ii) The registrant shall use devices and/or administrative procedures to prevent unauthorized use of radiation machines.

(5) Radiation Machine Requirements.

(A) Technique chart. A technique chart relevant to the particular radiation machine shall be provided or electronically displayed in the vicinity of the control panel and used by all operators.

(B) Labeling radiation machines. Each registrant shall ensure that each radiation machine is labeled in a conspicuous manner that cautions individuals that radiation is produced when it is energized. This label shall be affixed in a clearly visible location on the face of the control unit.

(C) Mechanical support of tube head. The tube housing assembly shall be adjusted to remain stable during an exposure unless tube housing movement is a designed function of the x-ray system.

(D) Battery charge indicator. On battery-powered x-ray generators, visual means shall be provided on the control panel to indicate whether the battery is in a state of charge adequate for proper operation.

(E) Beam quality. The following requirements apply to beam quality.

(i) Half-value layer.

(I) The half-value layer of the useful beam for a given x-ray tube potential shall not be less than the values shown in the following Table I. If it is necessary to determine such half-value layer at an x-ray tube potential that is not listed in Table I, linear interpolation may be made.
Figure: 25 TAC §289.233(i)(5)(E)(i)(I) (No change.)

(II) For capacitor energy storage equipment, compliance with the requirements of subparagraph (I) of this paragraph shall be determined with the maximum quantity of charge per exposure.

(ii) Filtration controls.

(I) For x-ray systems that have variable kVp and variable filtration for the useful beam, a device shall link the kVp selector with the filters and shall prevent an exposure unless the minimum amount of filtration required by subparagraph (A) of this paragraph is in the useful beam for the given kVp that has been selected.

(II) Any other system having removable filters shall be required to have the minimum amount of filtration as required by subparagraph (E)(i)(I) of this paragraph permanently located in the useful beam during each exposure.

(F) Multiple tubes. Where two or more radiographic tubes are controlled by one exposure switch, the tube or tubes that have been selected shall be clearly indicated prior to initiation of the exposure. This indication shall be both on the x-ray control panel and at or near the tube housing assembly that has been selected.

(G) Technique and exposure indicators.

(i) The technique factors to be used during an exposure shall be indicated before the exposure begins except when automatic exposure controls are used, in which case the technique factors that are set prior to the exposure shall be indicated.

(ii) On machines having fixed technique factors, the requirement of subparagraph (A) of this paragraph may be met by permanent markings.

(iii) The x-ray control shall provide visual or audible indication of the production of x-rays observable at or from the operator's protected position whenever x-rays are produced.

(iv) The indicated technique factors shall be accurate to meet manufacturer's specifications. If these specifications are not available from the manufacturer, the factors shall be accurate to within plus or minus 10% of the indicated setting.

(H) Beam limiting devices. Beam limiting devices shall do the following:

(i) provide the same degree of protection as is required of the housing;

(ii) restrict the useful beam to the area of clinical interest;

(iii) the numerical SID indicator shall be present and shall be accurate to within 2.0% of the SID;

(iv) limit the x-ray field such that the x-ray field shall not exceed:

(I) 2.0% of the SID for the length or width of the rectangular image receptor; or

(II) 2.0% of the SID for the diagonal of the image receptor; and

(v) a means shall be provided to center the primary beam to the image receptor within 2.0% of the SID.

(I) Means for terminating exposure.

(i) A means shall be provided to terminate the exposure at the following:

(I) a preset time interval;

(II) a preset product of current and time;

(III) a preset number of pulses; or

(IV) a preset radiation exposure to the image receptor.

(ii) The radiation machine shall not be able to make an exposure when the timer is set to a "zero" or "off" position if either position is provided.

(J) Stationary or portable x-ray systems. All stationary or portable x-ray systems used for veterinary x rays shall be provided with the following:

(i) a continuous pressure type exposure switch; and

(ii) either a six and one-half foot high protective barrier for operator protection during exposures; or

(iii) a means for the operator to be at least six feet from the tube housing assembly.

(K) Hand-held portable radiation machines. Operators using portable radiation machines designed to be hand-held are exempt from the requirements of subparagraph (J) of this paragraph. The hand-held portable radiation machine shall be held by the tube housing support or handle. The operator shall wear protective devices in accordance with paragraph (3)(H) of this subsection.

(L) Portable radiation machines. Portable machines shall comply with the requirements in subparagraph (H) of this paragraph, as applicable, based on manufacturer's design.

(M) Exams and retakes. All exams and retakes shall be ordered by the veterinarian.

(N) Equipment performance evaluations.

(i) For all radiographic machines used in veterinary medicine, the registrant shall perform, or cause to be performed, tests necessary to assure proper function of equipment with the indicated standard for each of the following items. These tests shall be performed each time the registrant is requested by the agency to submit the equipment performance evaluations with the remote inspection form. The tests listed shall also be performed after each machine installation.

(I) Timer.

(-a-) The accuracy of the timer shall meet the manufacturer's specifications. If the manufacturer's specifications are not obtainable, the timer accuracy shall be plus or minus 10% of the indicated time with testing performed at 0.5 second.

(-b-) Means shall be provided to terminate the exposure at a preset time interval, a preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor. In addition, it shall not be possible to make an exposure when the timer is set to a "zero" or "off" position if either position is provided.

(II) Kilovolt peak. If the registrant possesses documentation of the appropriate manufacturer's kilovolt peak specifications, the radiation machine shall meet those specifications. If the registrant does not possess documentation of the appropriate manufacturer's kilovolt peak specifications, the indicated kilovolt peak shall be accurate to within plus or minus 10% of the indicated setting(s). For radiation machines with fewer than three fixed kilovolt peak settings, the radiation machine shall be checked at those settings.

(III) Tube stability. The x-ray tube shall remain physically stable during exposures. In cases where tubes are designed to move during exposure, the registrant shall assure proper and free movement of the radiation machine.

(IV) Collimation. Field limitation shall meet the requirements for beam-limiting devices of subparagraph (H) of this paragraph.

(ii) Records of the test results, including any numerical readings shall be maintained by the registrant in accordance with subsection (j)(2) of this section.

(iii) Any items not meeting the specifications of the tests shall be corrected or repaired. Correction or repair shall begin within 30 days following the check and shall be performed according to a plan designated by the registrant. Correction or repair shall be completed no longer than 90 days from discovery unless authorized by the agency. Records of corrections or repairs shall be maintained by the registrant in accordance with subsection (j)(2) of this section for inspection by the agency.

(iv) Measurements of the radiation output of an x-ray system shall be performed with a calibrated dosimetry system. The dosimetry system shall have been calibrated within the preceding 24 months and the calibration shall be traceable to a national standard. During the calendar year in which the dosimetry system is not calibrated, an intercomparison to a system calibrated within the previous 12 months shall be performed.

(v) Fluoroscopic x-ray systems shall comply with the additional requirements specified in paragraph (6) of this subsection.

(6) Additional requirements for fluoroscopic x-ray systems.

(A) Limitation of the useful beam. Limitation of the useful beam shall be as follows.

(i) Primary barrier.

(I) The fluoroscopic imaging assembly shall be provided with a primary protective barrier that intercepts the entire cross section of the useful beam at any SID.

(II) The x-ray tube used for fluoroscopy shall not produce x rays unless the barrier is in position to intercept the useful beam and the imaging device is in place and operable.

(III) The exposure rate due to transmission through the barrier with the attenuation block in the useful beam, combined with radiation through the image intensifier if provided, shall not exceed 3.34×10^{-3} % of the entrance exposure rate at a distance of 10 cm from any accessible surface of the fluoroscopic imaging assembly beyond the plane of the image receptor.

(ii) Measuring compliance of barrier transmission.

(I) The exposure rate due to transmission through the primary protective barrier combined with radiation through the image intensifier shall be determined by measurements averaged over an area of 100 cm^2 with no linear dimension greater than 20 cm.

(II) If the source is below the tabletop, the measurement shall be made with the input surface of the fluoroscopic imaging assembly positioned 30 cm above the tabletop.

(III) If the source is above the tabletop and the SID is variable, the measurement shall be made with the end of the beam-limiting device or spacer as close to the tabletop as it can be placed, provided that it shall not be closer than 30 cm.

(IV) Movable grids and compression devices shall be removed from the useful beam during the measurement.

(V) The attenuation block shall be positioned in the useful beam 10 cm from the point of measurement of entrance exposure rate and between this point and the input surface of the fluoroscopic imaging assembly.

(VI) The collimator shall be fully open when the measurement is made.

(iii) X-ray field.

(I) Compliance with subclauses (II)-(VII) of this clause shall be determined with the beam axis perpendicular to the plane of the image receptor.

(II) Equipment with a fixed SID and the capability of a visible area of no greater than 300 cm^2 shall be provided with either stepless adjustment of the x-ray field or a means to further limit the x-ray field at the image receptor to 125 cm^2 or less. If the equipment is provided with stepless adjustment, the minimum x-ray field size at the maximum SID shall be less than or equal to 5 cm by 5 cm at the image receptor.

(III) Equipment with a variable SID or a fixed SID with the capability of a visible area of greater than 300 cm^2 shall be provided with stepless adjustment of the field size. The minimum x-ray field size at the maximum SID shall be less than or equal to 5 cm by 5 cm at the image receptor.

(IV) Neither the length nor the width of the x-ray field in the plane of the image receptor shall exceed that of the visible area of the image receptor by more than 3.0% of the SID. The sum of the excess length and the excess width shall be no greater than 4.0% of the SID.

(V) For rectangular x-ray fields used with circular image receptors, the error in alignment shall be determined along the length and width dimensions of the x-ray field that pass through the center of the visible area of the image receptor.

(VI) For fluoroscopic equipment with only a manual mode of collimation, the x-ray field produced shall be limited to the area of the spot-film cassette at 16 inches above tabletop. Additionally, during fluoroscopy, the beam shall be restricted to the area of the input phosphor.

(VII) Spot-film devices shall meet the following additional requirements.

(-a-) Means shall be provided between the source and the animal for adjustment of the x-ray field size in the plane of the film to the size of that portion of the film that has been selected on the spot-film selector.

(-1-) Such adjustment shall be automatically accomplished except when the x-ray field size in the plane of the film is smaller than that of the selected portion of the film.

(-2-) The total misalignment of the edges of the x-ray field with the respective edges of the selected portion of the image receptor along the length or width dimensions of the x-ray field in the plane of the image receptor shall not exceed 3.0% of the SID when adjusted for full coverage of the selected portion of the image receptor.

(-3-) The sum, without regard to sign of the misalignment along any two orthogonal dimensions, shall not exceed 4.0% of the SID.

(-b-) The center of the x-ray field in the plane of the film shall be aligned with the center of the selected portion of the film to within 2.0% of the SID.

(B) Activation of the fluoroscopic tube. X-ray production in the fluoroscopic mode shall be controlled by a device that requires continuous pressure by the fluoroscopist for the entire time of the exposure (continuous pressure type switch). When recording serial fluoroscopic images, the fluoroscopist shall be able to terminate the x-ray exposures at any time, but means may be provided to permit completion of any single exposure of the series in process.

(C) Control of scattered radiation.

(i) Fluoroscopic configuration, including fluoroscopic table designs, shall not permit any portion of any individual's body, except the head, neck, and extremities, to be exposed to scattered radiation emanating from above or below the tabletop unless the radiation has passed through not less than a total of 0.25 mm lead equivalent material. The material may be, but is not limited to, drapes, self-supporting curtains, or viewing shields, in addition to any lead equivalency provided by a protective apron.

(ii) Where sterile fields or special procedures prohibit the use of normal protective barriers or drapes, all of the following conditions shall be met.

(I) All persons in the room where fluoroscopy is performed shall wear protective aprons that provide a shielding equivalent of 0.5 mm of lead.

(II) The fluoroscopic field size shall be reduced to the absolute minimum required for the procedure being performed (area of clinical interest).

(III) Operating and safety procedures shall reflect the above conditions, and fluoroscopy personnel shall exhibit awareness of situations requiring the use and/or nonuse of the protective drapes.

(iii) For image-intensified fluoroscopic equipment with only a manual mode of collimation, the x-ray field produced shall be limited to the area of the spot-film cassette at 16 inches above tabletop. Additionally, during fluoroscopy, the beam shall be restricted to the area of the input phosphor.

(7) Additional requirements for CT x-ray systems.

(A) Initiation of operation.

(i) The x-ray control and gantry shall provide visual indication whenever x rays are produced and, if applicable, whether the shutter is open or closed.

(ii) Means shall be provided to require operator initiation of each individual scan or series of scans.

(iii) All emergency buttons/switches shall be clearly labeled as to their functions.

(B) Termination of exposure.

(i) Means shall be provided to terminate the x-ray exposure automatically by either de-energizing the x-ray source or shuttering the x-ray beam in the event of equipment failure affecting data collection. Such termination shall occur within an interval that limits the total scan time to no more than 110% of its preset value through the use of either a backup timer or devices that monitor equipment function.

(ii) A signal visible to the operator shall indicate when the x-ray exposure has been terminated through the means required by clause (i) of this subparagraph.

(iii) The operator shall be able to terminate the x-ray exposure at any time during a scan or series of scans under CT x-ray system control of greater than 0.5 seconds duration. Termination of the x-ray exposure shall necessitate resetting of the CT conditions of operation prior to initiation of another scan.

(8) Educational facilities. Facilities conducting training using animals are held to the requirements of this section except for paragraphs (9)-(11) of this subsection concerning film processing.

(9) Automatic and manual film processing for veterinary facilities and mobile veterinary services.

(A) Films shall be developed in accordance with the time-temperature relationships recommended by the film manufacturer. The specified developer temperature for automatic processing and the time-temperature chart for manual processing shall be posted in the darkroom. If the registrant determines an alternate time-temperature relationship is more appropriate for a specific facility, that time-temperature relationship shall be documented and posted.

(B) Chemicals shall be replaced according to the chemical manufacturer's or supplier's recommendations or at an interval not to exceed three months.

(C) Darkroom light leak tests shall be performed and any light leaks corrected at intervals not to exceed six months.

(D) Lighting in the film processing/loading area shall be maintained with the filter, bulb wattage, and distances recommended by the film manufacturer for that film emulsion or with products that provide an equivalent level of protection against fogging.

(E) Corrections or repairs of the light leaks or other deficiencies in paragraphs (2)-(4) of this subsection shall be initiated within 72 hours of discovery and completed no longer than 15 days from detection of the deficiency unless a longer time is authorized by the agency. Records of the correction or repairs shall include the date and initials of the individual performing these functions and shall be maintained in accordance with subsection (t)(1) of this section for inspection by the agency.

(F) Documentation of the items in subparagraphs (B), (C), and (E) of this paragraph shall be maintained at the site where performed and shall include the date and initials of the individual completing these items. These records shall be made and maintained in accordance with subsection (j)(2) of this section for inspection by the agency.

(10) Alternative processing systems. Users of daylight processing systems, laser processors, self-processing film units, or other alternative processing systems shall follow manufacturer's recommendations for image processing. Documentation that the registrant is following manufacturer's recommendations shall include the date and initials of the individual completing the document and shall be maintained at the site where performed in accordance with subsection (j)(2) of this section for inspection by the agency.

(11) Digital imaging acquisition systems. Users of digital imaging acquisition systems shall follow quality assurance/quality control protocol for image processing established by the manufacturer, or if no manufacturer's protocol is available, by the registrant. The registrant shall include the protocols, whether established by the registrant or the manufacturer, in its operating and safety procedures. The registrant shall document the frequency at which the quality assurance/quality control protocol is performed. Documentation shall include the date and initials of the individual completing the document and shall be maintained at the site where performed in accordance with subsection (j)(2) of this section for inspection by the agency.

(j) Records and reports.

(1) General provisions for records and reports.

(A) Each registrant shall maintain records at each site including sites authorized by certificate of registration condition and records sites for mobile services. The records shall include those specified in paragraph (2) of this subsection and shall be maintained at the time interval indicated for inspection by the agency. Additional record requirements are specified elsewhere in this chapter. All records required by this chapter shall be accurate and factual.

(B) Records are only valid if stamped, initialed, or signed and dated by authorized personnel or otherwise authenticated. Records such as letters, drawings, and specifications, shall include all pertinent information, such as stamps, initials, and signatures.

(C) Each registrant shall use the SI units gray, sievert, and coulomb per kilogram, or the special units rad, rem, and roentgen, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this chapter.

(D) The registrant shall make a clear distinction among the quantities entered on the records required by this section, such as TEDE, SDE, LDE, or DDE.

(E) Each record required by this section shall be legible throughout the specified retention period.

(F) The record shall be the original or a reproduced copy or a mircroform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period.

(G) The record may also be stored in electronic format with the capability for producing legible, accurate, and complete records during the required retention period.

(H) Each registrant shall maintain records of receipt, transfer, and disposal of radiation machines for inspection by the agency. The records shall include the following information and shall be kept until disposal is authorized by the agency:

(i) manufacturer's name;

(ii) model and serial number from the control panel;

(iii) date of the receipt, transfer, and disposal; and

(iv) name of the individual recording the information.

(I) The registrant shall maintain adequate safeguards against tampering with and loss of records.

(J) Subject to the limitations provided in the Texas Public Information Act, Government Code, Chapter 552, all information and data collected, assembled, or maintained by the agency are public records open to inspection and copying during regular office hours.

(K) Any person who submits written information or data to the agency and requests that the information be considered confidential, privileged, or otherwise not available to the public under the Texas Public Information Act, shall justify such request in writing, including statutes and cases where applicable, addressed to the agency.

(i) Documents containing information that is claimed to fall within an exception to the Texas Public Information Act shall be marked to indicate that fact. Markings shall be placed on the document on origination or submission.

(I) The words "NOT AN OPEN RECORD" shall be placed conspicuously at the top and bottom of each page containing information claimed to fall within one of the exceptions.

(II) The following wording shall be placed at the bottom of the front cover and title page, or first page of text if there is no front cover or title page:
Figure: 25 TAC §289.233(j)(1)(K)(i)(II)

(ii) The agency requests, whenever possible, that all information submitted under the claim of an exception to the Texas Public Information Act be extracted from the main body of the application and submitted as a separate annex or appendix to the application.

(iii) Failure to comply with any of the procedures described in clauses (i) and (ii) of this subparagraph may result in all information in the agency file being disclosed upon an open records request.

(L) The agency will determine whether information falls within one of the exceptions to the Texas Public Information Act. The agency will determine whether or not there has been a previous determination that the information falls within one of the exceptions to the Texas Public Information Act. If there has been no previous determination and the agency believes that the information falls within one of the exceptions, an opinion of the Attorney General will be requested. If the agency agrees in writing to the request, the

information shall not be open for public inspection unless the Attorney General's office subsequently determines that it does not fall within an exception.

(M) Requests for information.

(i) All requests for open records information must be in writing and refer to documents currently in possession of the agency.

(ii) The agency will ascertain whether the information may be released or whether it falls within an exception to the Texas Public Information Act.

(I) The agency may take a reasonable period of time to determine whether information falls within one of the exceptions to the Texas Public Information Act.

(II) If the information is determined to be public, it will be presented for inspection and/or copies of documents will be furnished within a reasonable period of time. A fee will be charged to recover agency costs for copies.

(iii) Original copies of public records may not be removed from the agency. Under no circumstances shall material be removed from existing records.

(N) Records of surveys.

(i) Each registrant shall make and maintain records showing the results of surveys required by subsection (i)(4)(E) of this section for inspection by the agency. The registrant shall retain these records in accordance with subsection (j)(2) of this section.

(ii) The registrant shall retain the results of surveys to determine the dose from external sources of radiation used, in the absence of or in combination with individual monitoring data, in the assessment of individual DEs in accordance with subsection (j)(2) of this section.

(O) Records of individual monitoring results.

(i) Each registrant shall make or cause to be made and maintain records in accordance with subsection (i)(3)(F) of this section of the doses received by all individuals for whom monitoring was required in accordance with subsection (i)(3)(B) of this section, and records of doses received during accidents, and emergency conditions. Assessments of DE and records made using units in effect before January 1, 1994, need not be changed. These records shall include, when applicable:

(I) the DDE to the whole body, LDE, SDE to the skin of the whole body, and SDE to the skin of any extremities; and

(II) the data used to make occupational dose assessments in accordance with subsection (i)(3)(F)(v) of this section.

(ii) The registrant shall make entries of the records specified in clause (i) of this subparagraph at intervals not to exceed one year and within 90 days of the end of the year.

(iii) The registrant shall make or cause to be made and maintain the records specified in clause (i) of this subparagraph on BRC Form 233-1, in accordance with the instructions for BRC Form 233-1, or in clear and legible records containing all the information required by BRC Form 233-1.

(iv) The registrant shall make or cause to be made and maintain the records of dose to an embryo/fetus with the records of dose to the declared pregnant woman. The declaration of pregnancy, including the estimated date of conception, shall also be kept on file, but may be maintained separately from the dose records.

(v) The registrant shall retain each required form or record required by this subsection in accordance with subsection (j)(2) of this section for inspection by the agency. The registrant shall retain records used in preparing BRC Form 233-1 or equivalent in accordance with subsection (j)(2) of this section.

(P) Records of dose to individual members of the public.

(i) Each registrant shall make and maintain records sufficient to demonstrate compliance with the dose limit for individual members of the public for inspection by the agency. See subsection (i)(3)(C) and (D) of this section.

(ii) The registrant shall retain the records required by clause (i) of this subparagraph in accordance with subsection (j)(2) of this section.

(2) Record/document requirements. Each registrant shall maintain the following records/documents at each site, including authorized records sites for mobile services at the time intervals specified and make available to the agency for inspection.
Figure: 25 TAC §289.233(j)(2) (No change.)

(3) Reports.

(A) Reports of stolen, lost, or missing radiation machines.

(i) Each registrant shall report to the agency by telephone a stolen, lost, or missing radiation machine immediately after its occurrence becomes known to the registrant.

(ii) Each registrant required to make a report in accordance with clause (i) of this subparagraph shall, within 30 days after making the telephone report, make a written report to the agency that includes the following information:

(I) a description of the radiation machine involved, including, the manufacturer and model and serial number;

(II) a description of the circumstances under which the loss or theft occurred;

(III) a statement of disposition, or probable disposition, of the radiation machine involved;

(IV) exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible TEDE to persons in unrestricted areas;

(V) actions that have been taken, or will be taken, to recover the radiation machine; and

(VI) procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of radiation machines.

(iii) Subsequent to filing the written report, the registrant shall also report additional substantive information on the loss or theft within 30 days after the registrant learns of such information.

(iv) The registrant shall prepare any report filed with the agency in accordance with this subsection so that names of individuals who may have received exposure to radiation are stated in a separate and detachable portion of the report.

(B) Reports of incidents.

(i) Notwithstanding other requirements for notification, each registrant shall immediately report each event involving a radiation machine possessed by the registrant that may have caused or threatens to cause an individual to receive:

(I) a TEDE of 25 rems (0.25 Sv) or more;

(II) an LDE of 75 rems (0.75 Sv) or more; or

(III) an SDE to the skin of the whole body or to the skin of any extremities of 250 rads (2.5 grays) or more.

(ii) Each registrant shall, within 24 hours of discovery of the event, report to the agency each event involving loss of control of a radiation machine possessed by the registrant that may have caused, or threatens to cause an individual to receive, in a period of 24 hours:

(I) a TEDE exceeding 5 rems (0.05 Sv);

(II) an LDE exceeding 15 rems (0.15 Sv); or

(III) an SDE to the skin of the whole body or to the skin of any extremities exceeding 50 rems (0.5 Sv).

(iii) Registrants shall make the initial notification reports required by clauses (i) and (ii) of this subparagraph by telephone to the agency and shall confirm the initial notification report within 24 hours by telegram, mailgram, or facsimile to the agency.

(iv) The registrant shall prepare each report filed with the agency in accordance with this section so that names of individuals who have received exposure to radiation are stated in a separate and detachable portion of the report.

(C) Reports of exposures and radiation levels exceeding the limits.

(i) In addition to the notification required by subparagraph (B) of this paragraph, each registrant shall submit a written report within 30 days after learning of any of the following occurrences:

(I) incidents for which notification is required by subparagraph (B) of this paragraph;

(II) doses in excess of any of the following:

(-a-) the occupational dose limits for adults in subsection (i)(3)(A)(i)(I) of this section;

(-b-) the occupational dose limits for a minor in subsection (i)(3)(A)(i)(III) of this section;

(-c-) the limits for an embryo/fetus of a declared pregnant woman in subsection (i)(3)(A)(i)(IV) of this section;

(-d-) the limits for an individual member of the public in subsection (i)(3)(C) of this section; or

(-e-) any applicable limit in the certificate of registration;

(III) levels of radiation in:

(-a-) a restricted area in excess of applicable limits in the certificate of registration; or

(-b-) an unrestricted area in excess of 10 times the applicable limit set forth in this section or in the registration, whether or not involving exposure of any individual in excess of the limits in subsection (i)(3)(C) of this section.

(ii) Each report required by clause (i) of this subparagraph shall describe the extent of exposure of individuals to radiation, including, as appropriate:

(I) estimates of each individual's dose;

(II) the levels of radiation involved;

(III) the cause of the elevated exposures, dose rates; and

(IV) corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, and associated registration conditions.

(iii) Each report filed in accordance with clause (i) of this subparagraph shall include for each individual exposed: the name, a unique identification number, and date of birth. With respect to the limit for the embryo/fetus in subsection (i)(3)(A)(i)(IV) of this section, the identifiers should be those of the declared pregnant woman. The report shall be prepared so that this information is stated in a separate and detachable portion of the report.

(iv) All registrants who make reports in accordance with clause (i) of this subparagraph shall submit the report in writing to the agency.

(D) Reports to individuals of exposures.

(i) Radiation exposure data for an individual shall be reported annually to the individual as specified in this section. The information reported shall include data and results obtained in accordance with agency requirements, orders, certificate of registration conditions, as shown in records maintained by the registrant in accordance with this paragraph. Each notification and report shall:

(I) be in writing;

(II) include appropriate identifying data such as the name of the registrant, the name of the individual, and the individual's identification number;

(III) include the individual's exposure information; and

(IV) contain the following statement: "This report is furnished to you under the provisions of the Texas Regulations for Control of Radiation, 25 Texas Administrative Code §289.233. You should preserve this report for further reference."

(ii) Each registrant shall advise each worker annually of the worker's dose as shown in records maintained by the registrant in accordance with paragraph (1)(P) of this subsection.

(iii) At the written request of a worker formerly engaged in activities controlled by the registrant, each registrant shall furnish a written report of the worker's exposure to radiation machines. The report shall include the dose record for each year the worker was required to be monitored in accordance with subsection (i)(3)(B) of this section. Such report shall be furnished within 30 days from the date of the request, or within 30 days after the dose of the individual has been determined by the registrant, whichever is later. The report shall cover the period of time that the worker's activities involved exposure to radiation machines and the dates and locations of work under the certificate of registration in which the worker participated during this period.

(iv) When a registrant is required, in accordance with subparagraphs (B) and (C) of this paragraph, to report to the agency any exposure of an individual to radiation machines, the registrant shall also provide the individual a written report of that individual's exposure data included therein. Such reports shall be transmitted at a time not later than the transmittal to the agency.

(v) At the written request of a worker who is terminating employment with the registrant in work involving exposure to radiation machines during the current year, each registrant shall provide at termination to each such worker, or to the worker's designee, a written report regarding the radiation dose received by that worker from operations of the registrant during the current year or fraction thereof. If the most recent individual monitoring results are not available at that time, a written estimate of the dose shall be provided together with a

clear indication that this is an estimate. When the final individual monitoring results are available, those written results shall be provided to the worker or the worker's designee.

(vi) When a registrant is required in accordance with paragraph (3)(C) of this subsection to report to the agency any exposure of an identified occupationally exposed individual, or an identified member of the public, to radiation, the registrant shall also notify the individual and provide a copy of the report submitted to the agency, to the individual. Such notice shall be transmitted at a time not later than the transmittal to the agency, and shall comply with the provisions of paragraph (3)(D) of this subsection.

(k) Compliance and hearing procedures.

(1) Inspections.

(A) The agency may enter public or private property at reasonable times to determine whether, in a matter under the agency's jurisdiction, there is compliance with the Act, the agency's rules, certificate of registration conditions, and orders issued by the agency.

(B) Each registrant shall afford the agency, at all reasonable times, opportunity to inspect machines, activities, facilities, premises, and records in accordance with this section.

(C) Each registrant shall make available to the agency for inspection, upon reasonable notice, records made and maintained in accordance with this chapter.

(D) During an inspection, agency inspectors may consult privately with workers as specified in subparagraphs (J)-(L) of this paragraph. The registrant may accompany agency inspectors during other phases of an inspection.

(E) If, at the time of inspection, an individual has been authorized by the workers to represent them during agency inspections, the registrant shall notify the inspectors of such authorization and shall give the workers' representative an opportunity to accompany the inspectors during the inspection of physical working conditions.

(F) Each worker's representative shall be routinely engaged in work under control of the registrant and shall have received instructions as specified in subsection (i)(3)(K) of this section.

(G) Different representatives of registrants and workers may accompany the inspectors during different phases of an inspection if there is no resulting interference with the conduct of the inspection. However, only one worker's representative at a time may accompany the inspectors.

(H) With the approval of the registrant and the worker's representative, an individual who is not routinely engaged in work under control of the registrant, for example, a consultant to the registrant or to the worker's representative, shall be afforded the opportunity to accompany agency inspectors during the inspection of physical working conditions.

(I) Notwithstanding the other provisions of this section, agency inspectors are authorized to refuse to permit accompaniment by any individual who deliberately interferes with a fair and orderly inspection. With regard to any area containing proprietary information, the worker's representative for that area shall be an individual previously authorized by the registrant to enter that area.

(J) Agency inspectors may consult privately with workers concerning matters of occupational radiation protection and other matters related to applicable provisions of agency regulations and certificates of registration to the extent the inspectors deem necessary for the conduct of an effective and thorough inspection.

(K) During the course of an inspection any worker may bring privately to the attention of the inspectors, either orally or in writing, any past or present condition which that individual has reason to believe may have contributed to or caused any violation of the Act, the requirements in this chapter, certificate of registration conditions, or any unnecessary exposure of an individual to radiation from any source of radiation under the registrant's control. Any such notice in writing shall comply with the requirements of subparagraph (M) of this paragraph.

(L) The provisions of subparagraph (K) of this paragraph shall not be interpreted as authorization to disregard instructions in accordance with subsection (i)(3)(K) of this section.

(M) Any worker or representative of workers who believes that a violation of the Act, the requirements of this chapter, or certificate of registration conditions exists or has occurred in work under a certificate of registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the agency. Any such notice shall be in writing, shall set forth the specific grounds for the notice, and shall be signed by the worker or representative of the workers. A copy shall be provided to the registrant by the agency no later than at the time of inspection except that, upon the request of the worker giving such notice, the worker's name and the name(s) of individual(s) referred to therein shall not appear in such copy or on any record published, released, or made available by the agency, except for good cause shown.

(N) If, upon receipt of such notice, the agency determines that the request meets the requirements set forth in subparagraph (M) of this paragraph, and that there are reasonable grounds to believe that the alleged violation exists or has occurred, an inspection shall be made as soon as practicable to determine if such alleged violation exists or has occurred. Inspections in accordance with this section need not be limited to matters referred to in the request.

(O) No registrant, contractor or subcontractor of a registrant shall discharge or in any manner discriminate against any worker because of the following:

(i) such worker has filed any request or instituted or caused to be instituted any proceeding under this chapter;

(ii) such worker has testified or is about to testify in any such proceeding; or

(iii) because of the exercise by such worker on behalf of that individual or others of any option afforded by this section.

(P) If the agency determines, with respect to a request under subparagraphs (M)-(O) of this paragraph, that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the agency shall notify the requestor in writing of such determination. The requestor may obtain review of such determination in accordance with the provisions of the Act and the Government Code, Chapters 2001 and 2002.

(Q) If the agency determines that an inspection is not warranted because the requirements of subparagraph (M) of this paragraph have not been met, the agency shall notify the requestor in writing of such determination. Such determination shall be without prejudice to the filing of a new request meeting the requirements of subparagraph (M) of this paragraph.

(R) The routine inspection interval for veterinary facilities is five years. On-site inspections and remote inspections may be alternated. The inspection interval specified is based upon the average number of health-related violations per inspection, as determined from

compliance history data. This interval will be reviewed at least every two years, and appropriate adjustments will be made.

(S) For remote inspection of radiation machines for veterinary medicine, each registrant shall:

(i) respond to a request from the agency for a remote inspection;

(ii) complete the remote inspection forms in accordance with the instructions included with the forms; and

(iii) return to the agency the completed remote inspection forms including documentation of the equipment performance evaluation performed in accordance with subsection (i)(5)(N) of this section and an inventory in accordance with subsection (h)(5)(A) and (B) of this section by the deadline indicated on the forms.

(T) Notwithstanding the inspection intervals specified in this section, the agency may inspect registrants more frequently due to:

(i) the persistence or severity of violations found during an inspection;

(ii) investigation of an incident or complaint concerning the facility;

(iii) a request for an inspection by a worker(s) in accordance with subparagraphs (M)-(O) of this paragraph;

(iv) any change in a facility or equipment that might cause a significant increase in radiation output or hazard; or

(v) a mutual agreement between the agency and registrant.

(U) The agency will conduct inspections of veterinary radiation machines in a manner designed to cause as little disruption of a veterinary practice as is practicable.

(V) Each registrant shall perform, upon instructions from the agency, or shall permit the agency to perform such reasonable surveys as the agency deems appropriate or necessary including, but not limited to, surveys of:

(i) radiation machines;

(ii) facilities where radiation machines are used or stored;

(iii) radiation detection and monitoring instruments; and

(iv) other equipment and devices used in connection with utilization or storage of radiation machines.

(W) A person who performs on-site inspections of veterinary radiation machines will have training in the design and use of the machines and will receive the following training.

(i) Objectives. Training of agency inspectors of radiation machines will be conducted by the agency. Upon completion of training, the inspector will be able to:

(I) select and operate the necessary testing equipment used to perform an inspection of radiation machines;

(II) utilize radiation protection principles;

(III) operate radiation detection instruments;

(IV) define basic regulatory terminology;

(V) apply this section regarding radiation machines;

(VI) perform routine agency inspections of radiation machines;

(VII) complete agency inspection documentation;

(VIII) demonstrate knowledge of agency ethics, professional, and technical policies; and

(IX) successfully achieve the objectives in this subparagraph.

(ii) Initial training program.

(I) Initial training will be conducted during a six-month period.

(II) All training evaluation instruments will be developed by the agency.

(III) Instruments to be used in determining a proficiency level are as follows:

(-a-) evaluation of each inspector's training needs prior to initial training;

(-b-) evaluation of knowledge obtained and verification of tasks performed by each inspector subsequent to training received by the agency; and

(-c-) evaluation of each inspector's task performance by the agency.

(iii) Continuing education.

(I) The agency inspector of radiation machines will accumulate 24 hours of continuing education regarding radiation machines, at intervals not to exceed 24 months. These hours of continuing education may be acquired as follows:

(-a-) documented continuing education earned in an agency-accepted training format; and

(-b-) agency staff meetings.

(II) Failure to obtain 24 hours of continuing education within each 24 month interval may result in a reassessment by the agency of an agency inspector's proficiency level.

(III) After the initial training period, each inspector of radiation machines will be evaluated by the agency, at intervals not to exceed 12 months.

(iv) Agency proficiency standards. The agency proficiency standards for agency inspectors of veterinary radiation machines are as follows.

(I) Level I. The agency inspector has not successfully achieved the objectives in clause (i) of this subparagraph after the initial training period. Additional training is required. Unsupervised inspections will not be performed.

(II) Level II. The agency inspector has partially achieved the objectives in clause (i) of this subparagraph, but has not achieved the objective in clause (i)(IX) of this subparagraph after the initial training period. Additional training is required. Unsupervised inspections are not permitted for the type of veterinary radiation machines for which the objectives of clause (i)(IX) of this subparagraph have not been achieved. Unsupervised inspections may be performed for the type of veterinary radiation machines for which the objectives in clause (i)(IX) of this subparagraph have been successfully achieved.

(III) Level III. The agency inspector has successfully achieved the objectives in clause (i) of this subparagraph. Supervision is not required for routine inspections.

(2) Hearing and enforcement procedures.

(A) Violations. A court injunction or agency order may be issued prohibiting any violation of any provision of the Act or any rule or order issued thereunder. Any person who willfully violates any provision of the Act or any rule or order issued thereunder may be subject to civil and/or administrative penalties. Such person may also be guilty of a misdemeanor and upon conviction, may be punished by fine or imprisonment or both, as provided by law.

(B) Denial of an application for a certificate of registration.

(i) When the agency contemplates denial of an application for a certificate of registration, the registrant shall be afforded the opportunity for a hearing. Notice of the denial shall be delivered by personal service or certified mail, addressed to the last known address, to the registrant.

(ii) Any applicant or registrant against whom the agency contemplates an action described in clause (i) of this subparagraph may request a hearing by submitting a written request to the director within 30 days of service of the notice.

(I) The written request for a hearing must contain the following:

(-a-) statement requesting a hearing; and

(-b-) name and address of the applicant or registrant;

(II) Failure to submit a written request for a hearing within 30 days will render the agency action final.

(C) Compliance procedures for registrants and other persons.

(i) A registrant or other person who commits a violation(s) will be issued a notice of violation. The person receiving the notice shall provide the agency with a written statement and supporting documentation by the date stated in the notice describing the following:

(I) steps taken by the person and the results achieved;

(II) corrective steps to be taken to prevent recurrence; and

(III) the date when full compliance was or is expected to be achieved. The agency may require responses to notices of violation to be under oath.

(ii) The terms and conditions of all certificates of registration shall be subject to amendment or modification. A certificate of registration may be modified, suspended, or revoked by reason of amendments to the Act, or for violation of the Act, the requirements of this chapter, a condition of the certificate of registration, or an order of the agency.

(iii) Any certificate of registration may be modified, suspended, or revoked in whole or in part, for any of the following:

(I) any material false statement in the application or any statement of fact required in accordance with provisions of the Act;

(II) conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a certificate of registration on an original application;

(III) violation of, or failure to observe applicable terms and conditions of the Act, this chapter, or of the certificate of registration or order of the agency; or

(IV) existing conditions that constitute a substantial threat to the public health or safety or the environment.

(iv) If another state or federal entity takes an action such as modification, revocation, or suspension of the certificate of registration, the agency may take a similar action against the registrant.

(v) When the agency determines that the action provided for in clause (viii) of this subparagraph or subparagraph (D) of this paragraph is not to be taken immediately, the agency may offer the registrant an opportunity to attend an informal meeting to discuss the following with the agency:

(I) methods and schedules for correcting the violation(s); or

(II) methods and schedules for showing compliance with applicable provisions of the Act, the requirements of this chapter, certificate of registration conditions, or any orders of the agency.

(vi) Notice of any informal meeting shall be delivered by personal service, or certified mail, addressed to the last known address. An informal meeting is not a prerequisite for the action to be taken in accordance with clause (viii) of this subparagraph or subparagraph (D) of this paragraph.

(vii) Except in cases in which the occupational and public health, or safety requires otherwise, no certificate of registration shall be suspended or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the registrant in writing, and the registrant shall have been afforded an opportunity to demonstrate compliance with all lawful requirements.

(viii) When the agency contemplates modification, suspension, or revocation of the certificate of registration, the registrant shall be afforded the opportunity for a hearing. Notice of the contemplated action, along with a complaint, shall be given to the registrant by personal service or certified mail, addressed to the last known address.

(ix) Any applicant or registrant against whom the agency contemplates an action described in clause (viii) of this subparagraph may request a hearing by submitting a written request to the director within 30 days of service of the notice.

(I) The written request for a hearing must contain the following:

(-a-) statement requesting a hearing;

(-b-) name, address, and identification number of the registrant against whom the action is being taken.

(II) Failure to submit a written request for a hearing within 30 days will render the agency action final.

(D) Assessment of administrative penalties.

(i) When the agency determines that monetary penalties are appropriate, proposals for assessment of and hearings on administrative penalties shall be made in accordance with the Act, Health and Safety Code, §401.384, Title 1, TAC, Chapter 155, and applicable sections of Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title.

(ii) Assessment of administrative penalties shall be based on the following criteria:

(I) the seriousness of the violation(s);

(II) previous compliance history;

(III) the amount necessary to deter future violations;

(IV) efforts to correct the violation; and

(V) any other mitigating or enhancing factors.

(iii) Application of administrative penalties. The agency may impose differing levels of penalties for different severity level violations and different classes of users as follows.

(I) Administrative penalties may be imposed for severity level I and II violations. Administrative penalties may be imposed for severity level III, IV, and V violations when they are combined with those of higher severity level(s) or for repeated violations.

(II) The following Tables IIA and IIB show the base administrative penalties.
Figure: 25 TAC §289.233(k)(2)(D)(iii)(II) (No change.)

(III) Adjustments to the percentages of base amounts in Table IIB may be made for the presence or absence of the following factors:

(-a-) prompt identification and reporting;
(-b-) corrective action to prevent recurrence;
(-c-) compliance history;
(-d-) prior notice of similar event;
(-e-) multiple occurrences; and
(-f-) negligence that resulted in or increased adverse effects.

(IV) The penalty for each violation may be in an amount not to exceed $10,000 a day for a person who violates the Act or requirements of this chapter, order, certificate of registration issued in accordance with the Act. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

(iv) The agency may conduct settlement negotiations.

(E) Severity levels of violations for registrants or other persons.

(i) Violations for registrants or other persons shall be categorized by one of the following severity levels.

(I) Severity level I are violations that are most significant and may have a significant negative impact on occupational and/or public health and safety or on the environment.

(II) Severity level II are violations that are very significant and may have a negative impact on occupational and/or public health and safety or on the environment.

(III) Severity level III are violations that are significant and which, if not corrected, could threaten occupational and/or public health and safety or the environment.

(IV) Severity level IV are violations that are of more than minor significance, but if left uncorrected, could lead to more serious circumstances.

(V) Severity level V are violations that are of minor safety or environmental significance.

(ii) Criteria to elevate or reduce severity levels.

(I) Severity levels may be elevated to a higher severity level for the following reasons:

(-a-) more than one violation resulted from the same underlying cause;

(-b-) a violation contributed to or was the consequence of the underlying cause, such as a management breakdown or breakdown in the control of licensed or registered activities;

(-c-) a violation occurred multiple times between inspections;

(-d-) a violation was willful or grossly negligent;

(-e-) compliance history; or

(-f-) other mitigating factors.

(II) Severity levels may be reduced to a lower level for the following reasons:

(-a-) the registrant identified and corrected the violation prior to the agency inspection;

(-b-) the registrant's actions corrected the violation and prevented recurrence; or

(-c-) other mitigating factors.

(iii) Examples of severity levels. Examples of severity levels are available upon request to the agency.

(F) Impoundment of radiation machines. Radiation machines shall be subject to impounding in accordance with the Act, Health and Safety Code, §401.068, and this paragraph.

(i) In the event of an emergency, the agency shall have the authority to impound or order the impounding of radiation machines possessed by any person not equipped to observe or failing to observe the provisions of the Act, Health and Safety Code, Chapter 401, or any rules, certificate of registration conditions, or orders issued by the agency. The agency shall submit notice of the action to be published in the *Texas Register* no later than 30 days following the end of the month in which the action was taken.

(ii) At the agency's discretion, the impounded radiation machines may be disposed of by:

(I) returning the source of radiation to a properly registered owner, upon proof of ownership, who did not cause the emergency;

(II) releasing the source of radiation as evidence to police or courts;

(III) returning the source of radiation to a registrant after the emergency is over and settlement of any compliance action; or

(IV) sale, destruction or other disposition within the agency's discretion.

(iii) If agency action is necessary to protect the public health and safety, no prior notice need be given the owner or possessor. If agency action is not necessary to protect the public health and safety, the agency will give written notice to the owner and/or the possessor of the radiation machine of the intention to dispose of the radiation machine. Notice shall be the same as provided in subparagraph (C)(viii) of this paragraph. The owner or possessor shall have 30 days from the date of personal service or mailing to request a hearing under Title 1, TAC, Chapter 155, and the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title, and in accordance with subparagraph (C)(ix) of this paragraph, concerning the intention of the agency. If no hearing is requested within that period of time, the agency may take the contemplated action, and such action is final.

(iv) Upon agency disposition of a radiation machine, the agency may notify the owner and/or possessor of any expense the agency may have incurred during the impoundment and/or disposition and request reimbursement. If the amount is not paid within 60 days

from the date of notice, the agency may request the Attorney General to file suit against the owner/possessor for the amount requested.

(v) If the agency determines from the facts available to the agency that an impounded radiation machine is abandoned, with no reasonable evidence showing its owner or possessor, the agency may make such disposition of the radiation machine as it sees fit.

(G) Emergency orders.

(i) When an emergency exists requiring immediate action to protect the public health or safety or the environment, the agency may, without notice or hearing, issue an order citing the existence of such emergency and require that certain actions be taken as it shall direct to meet the emergency. The agency shall, no later than 30 days following the end of the month in which the action was taken, submit notice of the action for publication in the *Texas Register*. The action taken will remain in full force and effect unless and until modified by subsequent action of the agency.

(ii) An emergency order takes effect immediately upon service.

(iii) Any person receiving an emergency order shall comply immediately.

(iv) The person receiving the order shall be afforded the opportunity for a hearing on an emergency order. Notice of the action, along with a complaint, shall be given to the person by personal service or certified mail, addressed to the last known address. A hearing shall be held on an emergency order if the person receiving the order submits a written request to the director within 30 days of the date of the order.

(I) The hearing shall be held not less than 10 days nor more than 20 days after receipt of the written application for hearing.

(II) At the conclusion of the hearing and after the proposal for decision is made as provided in the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001, the commissioner shall take one of the following actions:

(-a-) determine that no further action is warranted;

(-b-) amend the certificate of registration;

(-c-) revoke or suspend the certificate of registration;

(-d-) rescind the emergency order; or

(-e-) issue such other order as is appropriate.

(III) The application and hearing shall not delay compliance with the emergency order.

(H) Miscellaneous provisions.

(i) Computation of time. A time period established by the requirements of this chapter shall begin on the first day after the event that invokes the time period. When the last day of the period falls on a Saturday, Sunday, or state or federal holiday, the period shall end on the next day that is not a Saturday, Sunday, or state or federal holiday. The time period shall expire at 5:00 p.m. of the last day of the computed period.

(ii) Hearing location. Hearings will be held at the offices of the State Office of Administrative Hearings in Austin unless the ALJ specifies another location.

(iii) Non-party witness and mileage fees.

(I) A witness or deponent who is not a party (or an employee, agent, or representative of a party) and who is subpoenaed or otherwise compelled to attend an agency hearing or a proceeding to give a deposition, or to produce books, records, papers, accounts, documents, or other objects necessary and proper for the purposes of the hearing or proceeding may receive reimbursement for transportation and other costs at rates established by the current Appropriations Act for state employees.

(II) The person requesting the attendance of the witness or deponent must deposit with the agency the funds estimated to accrue in accordance with subclause (I) of this clause when filing a motion for the issuance of a subpoena or a commission to take a deposition.

(iv) Service. A return of service by the person who performed personal service, postal return receipt, or proof of mailing to the last known address shall be conclusive evidence of service.

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

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 458-7111 x6972

SUBCHAPTER G. REGISTRATION REGULATIONS

25 TAC §289.301

STATUTORY AUTHORITY

The amendment is adopted under Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; Health and Safety Code, §401.301, which allows the department to collect fees for radiation control licenses and registrations that it issues; Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rule implements Government Code, §2001.039.

§289.301. Registration and Radiation Safety Requirements for Lasers and Intense-Pulsed Light Devices.

(a) Purpose.

(1) This section establishes requirements for protection against all classes of laser radiation and intense-pulsed light (IPL) device hazards. This section includes responsibilities of the registrant and the laser safety officer (LSO), laser and IPL device hazard control methods, training requirements, and notification of injuries.

(2) This section establishes requirements for the registration of persons who receive, possess, acquire, transfer, or use Class 3b (IIIb), International Electrotechnical Commission (IEC) Class 3B and Class 4 (IV), IEC Class 4 lasers in the healing arts, veterinary medicine, industry, academic, research and development institutions, and of persons who are in the business of providing laser services. No person shall use Class 3b (IIIb), IEC Class 3B or 4 (IV), IEC Class 4 lasers or perform laser services except as authorized in a certificate of laser registration issued by the agency in accordance with the requirements of this section. Class 1 (I) lasers, IEC Class 1 and 1M, Class 2 (II) lasers, IEC Class 2 and 2M, and Class 3a (IIIa) lasers, IEC Class 3R and IPL devices are not required to be registered. However, use of Class 1 (I) lasers, IEC Class 1 and 1M, Class 2 (II) lasers, IEC Class 2 and 2M, and Class 3a (IIIa) lasers, IEC Class 3R and IPL devices are subject to other applicable requirements in this section.

(b) Scope.

(1) Except as otherwise specifically provided, this section applies to all persons who receive, possess, acquire, transfer, or use lasers that emit or may emit laser radiation. Individuals shall not use lasers or IPL devices on humans unless under the supervision of a licensed practitioner of the healing arts and unless the use of lasers or IPL devices is within the scope of practice of their professional license. Nothing in this section shall be interpreted as limiting the intentional exposure of patients to laser or IPL device radiation for the purpose of diagnosis, therapy, or treatment by a licensed practitioner of the healing arts within the scope of practice of their professional license. This section does not apply to the manufacture of lasers or IPL devices.

(2) This section applies to lasers that operate at wavelengths between 180 nanometers (nm) and 1 millimeter (mm).

(3) This section applies to IPL devices. These devices shall be Class 2 or Class 3 surgical devices certified as complying with the design, labeling, and manufacturing standards of the United States Food and Drug Administration (FDA).

(4) This section applies to lasers that meet the requirements of IEC standards 60825-1 and 60601-2-22 as allowed by the United States Food and Drug Administration Centers for Devices and Radiological Health in guidance document, Laser Notice No.50, dated July 26, 2001.

(5) In addition to the requirements of this section, all registrants authorized to use Class 3b and Class 4 lasers are subject to the following requirements:

(A) §289.203 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections) with the exception of subsection (d), "Notifications and reports to individuals" and information relating to ionizing radiation or exposure history contained in subsection (i), "Notice to employees."

(B) §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services);

(C) subsections (a), (b), and (h)-(n) of §289.205 of this title (relating to Hearing and Enforcement Procedures); and

(D) subsections (d), (f)-(j), (aa), (bb), (ff), (kk), and (ll)(1), (2), and (5) of §289.231 of this title (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation) and the applicable definitions in subsection (c) of §289.231 of this title.

(c) Prohibitions.

(1) The agency may prohibit the use of lasers and IPL devices that pose significant threat or endanger occupational or public health and safety, in accordance with §289.205 of this title and §289.231 of this title.

(2) Individuals shall not be intentionally exposed to laser and IPL radiation above the maximum permissible exposure (MPE) unless such exposure has been authorized by a licensed practitioner of the healing arts.

(A) Exposure of an individual for training, demonstration, or other non-healing arts purposes is prohibited unless authorized by a licensed practitioner of the healing arts.

(B) Exposure of an individual for the purpose of healing arts screening is prohibited, except as specifically authorized by the agency.

(C) Exposure of an individual for the purpose of research is prohibited, except as authorized in research studies. Any research using radiation-producing devices on humans must be approved by an institutional review board (IRB) as required by Title 45, Code of Federal Regulations (CFR), Part 46 and Title 21, CFR, Part 56. The IRB must include at least one practitioner of the healing arts to direct use of laser and IPL device radiation in accordance with subsection (b)(1) of this section.

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

(1) Access to laser radiation--Proximity to radiation that is not blocked by an intervening barrier or filter.

(2) Accessible emission limit (AEL)--The maximum accessible emission level permitted within a particular class.

(3) Accessible laser radiation--Proximity to radiation that is not blocked by an intervening barrier or filter.

(4) Aperture--An opening through which radiation can pass.

(5) Apparent visual angle--The angular subtense of the source as calculated from source size and distance from the eye. It is not the beam divergence of the source.

(6) Beam--A collection of rays characterized by direction, diameter (or dimensions), and divergence (or convergence).

(7) Class 1 (I) laser, IEC Class 1 and 1M--Any laser that does not permit access during the operation to levels of laser radiation in excess of the accessible emission limits contained in American National Standards Institute (ANSI) Z136.1-2000, Safe Use of Lasers.

(8) Class 2 (II) laser, IEC Class 2 and 2M--Any laser that permits human access during operation to levels of visible laser radiation in excess of the accessible emission limits of Class 1 lasers contained in ANSI Z136.1-2000, Safe Use of Lasers, but does not permit human access during operation to levels of laser radiation in excess of the accessible emission limits of Class 2 lasers contained in ANSI Z136.1-2000, Safe Use of Lasers.

(9) Class 3a (IIIa) laser, IEC Class 3R--Any laser that permits human access during operation to levels of visible laser radiation in excess of the accessible emission limits of Class 2 lasers contained in ANSI Z136.1-2000, Safe Use of Lasers, but does not permit human access during operation to levels of laser radiation in excess of the accessible emission limits of Class 3a lasers contained in ANSI Z136.1-2000, Safe Use of Lasers.

(10) Class 3b (IIIb) laser, IEC Class 3B--Any laser that permits human access during operation to levels of laser radiation in excess of the accessible emission limits of Class 3a lasers in ANSI Z136.1-2000, Safe Use of Lasers but does not permit human access during operation to levels of laser radiation in excess of the emission limits of Class 3b lasers contained in ANSI Z136.1-2000, Safe Use of Lasers.

(11) Class 4 (IV) laser, IEC Class 4--Any laser that permits human access during operation to levels of laser radiation in excess of the accessible emission limits of Class 3b lasers contained in the most recent edition of ANSI Z136.1-2000, Safe Use of Lasers.

(12) Coherent--A light beam is said to be coherent when the electric vector at any point in it is related to that at any other point by a definite, continuous function.

(13) Collateral radiation--Any electromagnetic radiation, except laser radiation, emitted by a laser that is physically necessary for its operation. The applicable, accessible emission limits for collateral radiation may be found in Title 21, CFR, Part 1040.10.

(14) Continuous wave--The output of a laser that is operated in a continuous rather than a pulsed mode. In this section, a laser operating with a continuous output for a period of $\geq$0.25 seconds is regarded as a continuous wave laser.

(15) Controlled area--An area where the occupancy and activity of those within is subject to control and supervision by the registrant for the purpose of protection from radiation hazards.

(16) Divergence--For the purposes of this section, divergence is taken as the plane angle projection of the cone that includes 1 - 1/e (for example 63.2%) of the total radiant energy or power. The value of the divergence is expressed in radians or milliradians.

(17) Electromagnetic radiation--The flow of energy consisting of orthogonally vibrating electric and magnetic fields lying transverse to the direction of propagation. X-ray, ultraviolet, visible, infrared, and radio waves occupy various portions of the electromagnetic spectrum and differ only in frequency, wavelength, or photon energy.

(18) Electronic product--Any product or article defined as follows:

(A) any manufactured or assembled product that, when in operation:

(i) contains or acts as part of an electronic circuit; and

(ii) emits, or in the absence of effective shielding or other controls would emit, electronic product radiation; or

(B) any manufactured or assembled article that is intended for use as a component, part, or accessory of a product described in subparagraph (A) of this paragraph and that when in operation emits, or in the absence of effective shielding or other controls would emit, such radiation.

(19) Energy--The capacity for doing work. Energy content is commonly used to characterize the output from pulsed lasers, and is generally expressed in joules (J).

(20) Healing arts--Any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, injury, or unhealthy or abnormal physical or mental condition.

(21) Infrared radiation--The region of the electromagnetic spectrum between the long-wavelength extreme of the visible spectrum (about 0.7 μm) and the shortest microwaves (about 1 mm).

(22) Inoperable--Incapable of operation by reason of damage, disassembly, removal, or inactivation of key components that cannot be restored without significant repair or renovation.

(23) Institutional Review Board (IRB)--Any board, committee, or other group formally designated by an institution to review, approve the initiation of, and conduct periodic review of biomedical research involving human subjects.

(24) Intense-pulsed light (IPL) device--A device that emits radiation to energy density levels that could reasonably cause bodily harm and that is used for photothermolysis. This device is a Class 2 or Class 3 surgical device certified as complying with the design, labeling, and manufacturing standards of the United States Food and Drug Administration (FDA).

(25) Invisible radiation--Laser or collateral radiation having wavelengths of equal to or greater than 180 nm but less than or equal to 400 nm or greater than 710 nm but less than or equal to 1.0 x 10^6 nm (1 millimeter).

(26) Irradiance--Radiant power incident per unit area upon a surface, expressed in watts-per-square-centimeter ($W\text{-}cm^{-2}$).

(27) Joule--A unit of energy. One joule is equal to one watt • second.

(28) Laser--An electronic device that emits stimulated radiation to energy density levels that could reasonably cause bodily harm. A laser may also produce an intense, coherent, directional beam of light by stimulating electronic or molecular transitions to lower energy levels. The term "laser" also includes the assembly of electrical, mechanical, and optical components associated with the laser. A laser can be a component of a product or system.

(29) Laser product--Any manufactured product or assemblage of components that constitutes, incorporates, or is intended to incorporate a laser and is classified as a Class 1 (I), IEC Class 1 and 1M, Class 2 (II), IEC Class 2 and 2M, Class 3a (IIIa), IEC Class 3R, Class 3b (IIIb), IEC Class 3B or Class 4 (IV), IEC Class 4 laser product according to the performance standards set by the United States Food and Drug Administration (FDA). A laser that is intended for use as a component of an electronic product shall itself be considered a laser product. A laser product can contain an enclosed laser with an assigned class number higher than the inherent capability of the laser product in which it is incorporated and where the product's lower classification is appropriate due to the engineering features limiting accessible emission.

(30) Laser safety officer (LSO)--An individual who has a knowledge of and the authority and responsibility to apply appropriate laser radiation protection rules, standards, and practices, and who must be specifically authorized on a certificate of laser registration.

(31) Maximum permissible exposure (MPE)--The level of laser radiation to which a person may be exposed without hazardous effect or adverse biological changes in the eye or skin. For the purposes of this section, maximum permissible exposures for laser radiation may be found in ANSI Z136.1-2000, Safe Use of Lasers.

(32) Medical event--Any adverse patient health effect that is a result of failure or misuse of laser safety equipment.

(33) Mobile service operation--The provision of lasers and personnel at temporary sites for limited time periods. The lasers may

be fixed inside a motorized vehicle or may be a portable laser that may be removed from the vehicle and taken into a facility for use.

(34) Nominal hazard zone (NHZ)--The space within which the level of direct, reflected, or scattered radiation during operation exceeds the applicable MPE. Exposure levels beyond the boundary of the NHZ are below the applicable MPE level.

(35) Optical density (D_λ)--The logarithm to the base ten of the reciprocal of the transmittance. $D_\lambda = -\log_{10} \tau_\lambda$, where τ_λ is transmittance.

(36) Practitioner of the healing arts (practitioner)--For the purposes of this section, a person licensed to practice the healing arts by either the Texas Medical Board as a physician; the Texas State Board of Dental Examiners; the Texas Board of Chiropractic Examiners; or the Texas State Board of Podiatric Medicine. A practitioner's use of a laser is limited to his/her scope of professional practice as determined by the appropriate licensing agency.

(37) Protective housing--An enclosure surrounding the laser that prevents access to laser radiation above the applicable MPE level. The aperture through which the useful beam is emitted is not part of the protective housing. The protective housing may enclose associated optics and a work station and shall limit access to other associated radiant energy emissions and to electrical hazards associated with components and terminals.

(38) Provider of lasers--Provision of lasers on a routine basis to a facility for limited time periods.

(39) Pulse duration--The duration of a laser pulse. This is usually measured as the time interval between the half-power points on the leading and trailing edges of the laser pulse.

(40) Pulsed laser--A laser that delivers its energy in the form of a single pulse or a train of pulses. In this section, the duration of a pulse is <5seconds.

(41) Reflection--The deviation of radiation following incidence on a surface.

(42) Source--A laser or a laser-illuminated reflecting surface.

(43) Transmission--Passage of radiation through a medium.

(44) Ultraviolet radiation--Electromagnetic radiation with wavelengths shorter than those of visible radiation; for the purposes of this section 0.18 to 0.4 μm.

(45) Visible radiation (light)--In this section, the term is used to describe electromagnetic radiation that can be detected by the human eye. This term is commonly used to describe wavelengths that lie in the range of 0.4 to 0.7 μm.

(46) Watt--The unit of power or radiant flux. 1 watt equals 1 joule per second.

(47) Wavelength (λ)--The distance between two successive points on a periodic wave that have the same phase.

(e) Exemptions.

(1) Lasers in transit or in storage incident to transit are exempt from the requirements of this section. This exemption does not apply to the providers of lasers.

(2) Inoperable lasers are exempt from the requirements of this section.

(3) Class 1 (I), IEC Class 1 and 1M, Class 2 (II), IEC Class 2 and 2M, and Class 3a (IIIa), IEC Class 3R lasers or products and IPL devices are exempt from the registration requirements of subsections (f) and (g) of this section.

(4) Facilities, including academic institutions and research or development facilities, registered for the use of lasers are exempt from the registration requirements of subsections (f) of this section, regarding laser services, and the applicable paragraphs of subsection (g) of this section, to the extent that their personnel perform laser services only for the registrant by whom they are employed.

(f) Registration of use of Class 3b and 4 lasers and laser services.

(1) For purposes of this section, use of Class 3b or 4 lasers and laser services shall include, but may not be limited to:

(A) possession and use of lasers in the healing arts, veterinary medicine, industry, academic, and research and development institutions;

(B) demonstration and sales of lasers that require the individual to operate or cause a laser to be operated in order to demonstrate or sell;

(C) provision of lasers on a routine basis to a facility for limited time periods by a provider of lasers. For healing arts facilities, the use of lasers shall be directed by a practitioner employed by the contracting facility;

(D) alignment, calibration, and/or repair; or

(E) laser light shows.

(2) A person who has made application for registration in accordance with this section and is using a Class 3b or 4 laser prior to receiving a certificate of laser registration is subject to the requirements of this chapter.

(g) Application requirements.

(1) General application requirements.

(A) Application for certificate of laser registration shall be completed on forms prescribed by the agency and shall contain all the information required by the form and accompanying instructions.

(B) An LSO shall be designated on each application form. The qualifications of that individual shall be submitted to the agency with the application. The LSO shall meet the applicable requirements of subsection (p) of this section and carry out the responsibilities of subsection (q) of this section.

(C) Each application shall be accompanied by a completed BRC Form 226-1 (Business Information Form).

(D) Each application for a certificate of laser registration shall be accompanied by the appropriate fee prescribed in §289.204 of this title.

(E) An application for a certificate of laser registration may include a request for authorization of one or more activities.

(F) The agency may, at any time after filing of the original application, require further statements in order to enable the agency to determine whether the certificate of laser registration should be granted or denied.

(G) Applications and documents submitted to the agency may be made available for public inspection except that the agency may withhold any document or part thereof from public inspection in accordance with §289.231(aa) of this title.

(2) Application for use of Class 3b or 4 lasers on humans or animals.

(A) In addition to the requirements of subsection (g)(1) of this section, each person having a Class 3b or 4 laser for use in the healing arts, or for use on animals, shall submit an application to the agency within 30 days after beginning operation of the laser.

(B) An application for healing arts shall be signed by a licensed practitioner of the healing arts. An application for veterinary medicine shall be signed by a licensed veterinarian. The signature of the administrator, president, or chief executive officer will be accepted in lieu of a licensed practitioner's signature if the facility is a licensed hospital or a medical facility. A signature by the administrator, president, or chief executive officer does not relieve the practitioner user or veterinarian user from complying with the requirements of this section.

(C) If a person is furnished a Class 3b or 4 laser by a provider of lasers, that person is responsible for ensuring that a licensed practitioner of the healing arts authorizes intentional exposure of laser radiation to humans.

(3) Application for use of Class 3b or 4 lasers in industrial, academic, and research and development institutions. In addition to the requirements of subsection (g)(1) of this section, each applicant having a laser(s) for use in industrial, academic, and research and development institutions shall submit an application to the agency within 30 days after beginning operation of the laser.

(4) Application for demonstration for the purpose of sales of Class 3b or 4 lasers. Each applicant shall apply for and receive a certificate of laser registration before the demonstration for purpose of selling laser(s) in accordance with paragraph (1) of this subsection.

(5) Application for providers of Class 3b or 4 lasers.

(A) Each applicant shall apply for and receive a certificate of laser registration before providing Class 3b or 4 lasers.

(B) In addition to the requirements of subsection (g)(1) of this section, the applicant shall submit the address of the established main location where the laser and records will be maintained for inspection. This shall be a physical street address, not a post office box number.

(6) Application for alignment, calibration, and/or repair of Class 3b or 4 lasers. In addition to the requirements of subsection (g)(1) of this section, each applicant shall apply for and receive a certificate of laser radiation for alignment, calibration, and/or repair before providing alignment, calibration, and/or repair of Class 3b or 4 lasers or other lasers that allow access, through alignment, calibration, and/or repair, to Class 3b or 4 lasers.

(7) Application for laser light show.

(A) Each applicant shall apply for and receive a certificate of laser registration for a laser light show before beginning any show.

(B) In accordance with subparagraph (A) of this paragraph and in addition to the requirements of subsection (g)(1) of this section, each applicant shall submit the following:

(i) a valid variance issued from the FDA for the laser intended to be used with all applicable documents required by the variance; and

(ii) a written notice of the laser light show to be performed in Texas. The information contained in BRC Form 301-3 shall be provided at least seven days prior to each show. If, in a specific case, the seven-day period would impose an undue hardship on the applicant, the applicant may, upon written request to the agency, obtain permission to proceed sooner.

(8) Application for mobile service operation for Class 3b or 4 lasers used in the healing arts and veterinary arts.

(A) Each applicant shall apply for and receive a certificate of laser registration for mobile service operation involving Class 3b or 4 lasers before beginning mobile service operation.

(B) In addition to the requirements of subsection (g)(1) of this section, each applicant shall submit the address of the established main location where the laser, records, etc., will be maintained for inspection. This shall be a physical street address, not a post office box number.

(C) An application for mobile service operation for the healing arts shall be signed by a licensed practitioner of the healing arts and an application for mobile services for veterinary medicine shall be signed by a licensed veterinarian.

(h) Issuance of certificate of laser registration.

(1) Upon determination that an application meets the requirements of the Texas Radiation Control Act (Act) and the rules of the agency, the agency may issue a certificate of laser registration authorizing the proposed activity in such form and containing such conditions and limitations as the agency deems appropriate or necessary.

(2) The agency may incorporate in the certificate of laser registration at the time of issuance, or thereafter by amendment, additional requirements and conditions with respect to the registrant's receipt, possession, use, and transfer of lasers subject to this section as it deems appropriate or necessary in order to:

(A) minimize danger to occupational and public health and safety;

(B) require additional reports and the keeping of additional records as may be appropriate or necessary; and

(C) prevent loss or theft of lasers subject to this section.

(3) The agency may request, and the registrant shall provide, additional information after the certificate of laser registration has been issued to enable the agency to determine whether the certificate of laser registration should be modified in accordance with subsection (n) of this section.

(i) Specific terms and conditions of certificates of laser registration.

(1) Each certificate of laser registration issued in accordance with this section shall be subject to the applicable provisions of the Act, now or hereafter in effect, and to the applicable rules in this chapter and orders issued by the agency.

(2) Each person registered by the agency for laser use in accordance with this section shall confine use and possession of the laser registered to the locations and purposes authorized in the certificate.

(3) No certificate of laser registration issued or granted under this section shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, to any person unless the agency authorizes the transfer in writing.

(4) In making a determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a certificate of laser registration, the agency may consider the technical competence and compliance history of an applicant or holder of a certificate of laser registration. After an opportunity for a hearing, the agency shall deny an application for a certificate of laser registration, an amendment to

a certificate of laser registration, or renewal of a certificate of laser registration if the applicant's compliance history reveals that at least three agency actions have been issued against the applicant, within the previous six years, that assess administrative or civil penalties against the applicant, or that revoke or suspend the certificate of laser registration.

(j) Responsibilities of registrant.

(1) The registrant shall notify the agency in writing within 30 days of a change in any of the following:

(A) business name and mailing address;

(B) street address where laser(s) will be used;

(C) laser safety officer (LSO).

(2) No person shall make, sell, lease, transfer, or lend lasers unless such machines and equipment, when properly placed in operation and used, meet the applicable requirements of this section.

(3) Each registrant shall inventory all Class 3B and 4 lasers in their possession at an interval not to exceed one year. The inventory record shall be maintained for inspection by the agency in accordance with subsection (ee) of this section and shall include:

(A) manufacturer's name;

(B) model and serial number of the laser(s);

(C) description of the laser(s) (for example, yag, silicon, CO_2, neon);

(D) location of laser(s) (for example, room number); and

(E) if using a provider of lasers as defined in subsection (d)(38) of this section, a statement with the inventory that the registrant is using lasers provided by a provider of lasers.

(4) Notification to the agency is required within 30 days of the following:

(A) any increase in the number of lasers authorized by the certificate of laser registration; or

(B) if the registrant begins or terminates the use of a provider of lasers as defined in subsection (d)(38) of this section.

(5) No registrant shall engage any person for services described in subsection (g)(6) of this section until such person provides to the registrant evidence of registration with the agency.

(6) The registrant is responsible for complying with this section and the conditions of the certificate of laser registration.

(7) Registrants with certificates of laser registration in accordance with subsection (g)(7) of this section shall have the following documents on site at each laser light show:

(A) certificate of laser registration;

(B) FDA variance with all applicable documents required by the variance; and

(C) instructions for the safe use of lasers in accordance with subsection (r)(2) of this section.

(8) Each registrant shall maintain records of receipt, transfer, and disposal of Class 3b or 4 lasers for inspection by the agency. The records shall include the following information and shall be kept until disposal is authorized by the agency:

(A) manufacturer's name;

(B) model and serial number from the laser;

(C) date of the receipt, transfer, and disposal;

(D) name and address of person laser(s) received from, transferred to, or disposed of; and

(E) name of the individual recording the information.

(k) Expiration of certificates of laser registration.

(1) Except as provided by subsection (m) of this section, each certificate of laser registration expires at the end of the day, in the month and year stated in the certificate of laser registration.

(2) If a registrant does not submit an application for renewal of the certificate of laser registration in accordance with subsection (m) of this section, as applicable, the registrant shall on or before the expiration date specified in the certificate of laser registration:

(A) terminate use of all lasers and/or terminate laser servicing or laser services authorized under the certificate of laser registration;

(B) submit to the agency a record of the disposition of the lasers, if applicable, and if transferred, to whom it was transferred within 30 days following the expiration date; and

(C) pay any outstanding fees in accordance with §289.204 of this title.

(3) Expiration of the certificate of laser registration does not relieve the registrant of the requirements of this chapter.

(l) Termination of certificates of laser registration. When a registrant decides to terminate all activities involving laser or laser services authorized under the certificate of laser registration, the registrant shall immediately do the following:

(1) request termination of the certificate of laser registration in writing;

(2) submit to the agency a record of the disposition of the radiation machines, if applicable; and if transferred, to whom it was transferred; and

(3) pay any outstanding fees in accordance with §289.204 of this title.

(m) Renewal of certificate of laser registration.

(1) An application for renewal of a certificate of laser registration shall be filed in accordance with subsection (g)(1)(A)-(B), and (E)-(G) of this section and applicable paragraphs of subsections (g)(2), (4), and (7) of this section.

(2) If a registrant files an application for a renewal in proper form before the existing certificate of laser registration expires, such existing certificate of laser registration shall not expire until the application status has been determined by the agency.

(n) Modification, suspension, and revocation of certificates of laser registration.

(1) The terms and conditions of all certificates of laser registration shall be subject to revision or modification.

(2) Any certificate of laser registration may be revoked, suspended, or modified, in whole or in part, for any of the following:

(A) any material false statement in the application or any statement of fact required under the provisions of the Act;

(B) conditions revealed by such application or statement of fact, or any report, record, or inspection, or other means

that would warrant the agency to refuse to grant a certificate of laser registration on an original application;

(C) violation of, or failure to observe any of the terms and conditions of the Act, this chapter, or of the certificate of laser registration, or order of the agency; or

(D) existing conditions that constitute a substantial threat to the public health or safety or the environment.

(3) Each certificate of laser registration revoked by the agency ends at the end of the day on the date of the agency's final determination to revoke the certificate of laser registration, or on the revocation date stated in the determination, or as otherwise provided by the agency order.

(4) Except in cases in which the occupational and public health or safety requires otherwise, no certificate of laser registration shall be suspended or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the registrant in writing and the registrant shall have been afforded an opportunity to demonstrate compliance with all lawful requirements.

(o) Notifications. The following applies to voluntary or involuntary petitions for bankruptcy.

(1) Each registrant shall notify the agency, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy by the registrant or its parent company. This notification shall include:

(A) the bankruptcy court in which the petition for bankruptcy was filed; and

(B) the date of the filing of the petition.

(2) A copy of the "petition for bankruptcy" shall be submitted to the agency along with the written notification.

(p) LSO qualifications. LSO qualifications shall be submitted to the agency and shall include the following:

(1) educational courses related to laser radiation safety or a laser safety officer course; or

(2) experience in the use and familiarity of the type of equipment or services registered for; and

(3) knowledge of potential laser radiation hazards and laser emergency situations.

(q) LSO duties. Specific duties of the LSO shall include, but not be limited to the following:

(1) ensuring that users of lasers are trained in laser safety, as applicable for the class and type of lasers the individual uses;

(2) assuming control and having the authority to institute corrective actions including shutdown of operations when necessary in emergency situations or unsafe conditions; and

(3) specifying whether any changes in control measures are required following:

(A) any service and maintenance of lasers that may affect the output power or operating characteristics; or

(B) whenever deliberate modifications are made that could change the laser class and affect the output power or operating characteristics.

(4) ensuring maintenance and other practices required for safe operation of the laser(s) are performed;

(5) ensuring the proper use of protective eyewear and other safety measures; and

(6) ensuring compliance with the requirements in this section and with any engineering or operational controls specified by the registrant.

(r) Requirements for protection against Class 3b or 4 lasers and IPL device radiation. These requirements are for Class 3b or 4 lasers and IPL devices in their intended mode of operation and include special requirements for service, testing, maintenance, and modification. During some operations, certain engineering controls may be inappropriate. In situations where an engineering control may be inappropriate, for example, during medical procedures or surgery, the LSO shall specify alternate controls to obtain equivalent safety protection.

(1) MPE. Each registrant or user of any laser shall not permit any individual to be exposed to levels of laser or collateral radiation higher than are specified in ANSI Z136.1-2000, Safe Use of Lasers and Title 21, CFR, §1040.10 respectively.

(2) Instructions to personnel. Personnel operating each laser presently being used or listed on the registrant's current inventory, shall be provided with written instructions for safe use, including clear warnings and precautions to avoid possible exposure to laser and collateral radiation in excess of the MPE, as delineated in ANSI Z136.1-2000, Safe Use of Lasers and the collateral limits listed in Title 21, CFR, §1040.10. The instructions to personnel shall be maintained in accordance with subsection (ee) of this section for inspection by the agency.

(3) Engineering controls.

(A) Protective housing.

(i) Each laser shall have a protective housing that prevents human access during the operation to laser and to collateral radiation that exceeds the limits of Class 1 lasers as delineated in ANSI Z136.1-2000, Safe Use of Lasers and Title 21, CFR, Part 1040.10, respectively, wherever and whenever such human access is not necessary in order for the laser to perform its intended function.

(ii) Wherever and whenever human access to laser radiation levels that exceed the limits of Class 1 is necessary, these levels shall not exceed the limits of the lowest laser class necessary to perform the intended function(s).

(B) Safety interlocks.

(i) A safety interlock, that shall ensure that radiation is not accessible above MPE limits as delineated in ANSI Z136.1-2000, Safe Use of Lasers, shall be provided for any portion of the protective housing that by design can be removed or displaced during normal operation or maintenance, and thereby allows access to radiation above the MPE limits.

(ii) Adjustment during operation, service, testing, or maintenance of a laser containing interlocks shall not cause the interlocks to become inoperative or the radiation to exceed MPE limits outside protective housing except where a laser controlled area as specified in subparagraph (E) of this paragraph is established.

(iii) For pulsed lasers, interlocks shall be designed so as to prevent firing of the laser; for example, by dumping the stored energy into a dummy load.

(iv) For continuous wave lasers, the interlocks shall turn off the power supply or interrupt the beam; for example, by means of shutters.

(v) An interlock shall not allow automatic accessibility of radiation emission above MPE limits when the interlock is closed.

(vi) Either multiple safety interlocks or a means to preclude removal or displacement of the interlocked portion of the protective housing upon interlock failure shall be provided, if failure of a single interlock would allow the following:

(I) human access to levels of laser radiation in excess of the accessible emission limit of Class 3a laser radiation; or

(II) laser radiation in excess of the accessible emission limits of Class 2 to be emitted directly through the opening created by removal or displacement of that portion of the protective housing.

(C) Viewing optics and windows.

(i) All viewing ports, viewing optics, or display screens included as an integral part of an enclosed laser or laser product shall incorporate suitable means, (such as interlocks, filters, or attenuators, to maintain the laser radiation at the viewing position at or below the applicable MPE as delineated in ANSI Z136.1-2000, Safe Use of Lasers and the collateral limits listed in Title 21, CFR, §1040.10, under any conditions of operation of the laser.

(ii) All collecting optics, such as lenses, telescopes, microscopes, endoscopes, etc., intended for viewing use with a laser shall incorporate suitable means, such as interlocks, filters, or attenuators, to maintain the laser radiation transmitted through the collecting optics to levels at or below the appropriate MPE, as delineated in ANSI Z136.1-2000, Safe Use of Lasers. Normal or prescription eyewear is not considered collecting optics.

(D) Warning systems. Each Class 3b or 4 laser or laser product shall provide visual or audible indication during the emission of accessible laser radiation. In the case of Class 3b lasers, except those that allow access only to less than 5 milliwatt (mW) peak visible laser radiation, and Class 4 lasers, this indication shall be sufficient prior to emission of such radiation to allow appropriate action to avoid exposure. Any visual indicator shall be clearly visible through protective eyewear designed specifically for the wavelength(s) of the emitted laser radiation. If the laser and laser energy source are housed separately and can be operated at a separation distance of greater than two meters, both laser and laser energy source shall incorporate visual or audible indicators. The visual indicators shall be positioned so that viewing does not require human access to laser radiation in excess of the MPE, as delineated in ANSI Z136.1-2000, Safe Use of Lasers.

(E) Controlled area. With a Class 3b laser, except those that allow access only to less than 5 mW visible peak power, or Class 4 laser, a controlled area shall be established when exposure to the laser radiation in excess of the MPE, as delineated in ANSI Z136.1-2000, Safe Use of Lasers or the collateral limits listed in Title 21, CFR, §1040.10 is possible. The controlled area shall meet the following requirements, as applicable.

(i) The area shall be posted as required by subsection (v) of this section.

(ii) Access to the controlled area shall be restricted.

(iii) For Class 4 indoor controlled areas, latches, interlocks, or other appropriate means shall be used to prevent unauthorized entry into controlled areas.

(I) Such measures shall be designed to allow rapid egress by the laser personnel at all times and admittance to the controlled area in an emergency condition. For such emergency conditions, a control-disconnect switch or equivalent device (panic button) shall be available for deactivating the laser.

(II) Where safety latches or interlocks are not feasible or are inappropriate, for example during medical procedures, such as surgery, the following shall apply.

(-a-) All authorized personnel shall be trained in laser safety and appropriate personal protective equipment shall be provided upon entry.

(-b-) A door, blocking barrier, screen, or curtains shall be used to block, screen, or attenuate the laser radiation at the entryway. The level at the exterior of these devices shall not exceed the applicable MPE, as delineated in ANSI Z136.1-2000, Safe Use of Lasers, nor shall personnel experience any exposure above the MPE immediately upon entry.

(-c-) At the entryway there shall be a visible or audible signal indicating that the laser is energized and operating at Class 4 levels. A lighted laser warning sign, flashing light (visible through laser protective eyewear), and other appropriate signage are some of the methods to accomplish this requirement. Alternatively, an entryway warning light assembly may be interfaced to the laser in such a manner that one light will indicate when the laser is not operational (high voltage off) and by an additional light when the laser is powered up (high voltage applied, but no laser emission) and by an additional (flashing optional) light that activates when the laser is operating.

(iv) For Class 4 indoor controlled areas, during tests requiring continuous operation, the individual in charge of the controlled area shall be permitted to momentarily override the safety interlocks to allow access to other authorized personnel if it is clearly evident that there is no optical radiation hazard at the point of entry, and if the necessary protective devices are being worn by the entering personnel.

(v) For Class 4 indoor controlled areas, optical paths (for example, windows) from an indoor facility shall be controlled in such a manner as to reduce the transmitted values of the laser radiation to levels at or below the appropriate ocular MPE, as delineated in ANSI Z136.1-2000, Safe Use of Lasers and the collateral limits listed in Title 21, CFR, §1040.10. When the laser beam must exit the indoor controlled area (as in the case of exterior atmospheric beam paths), the operator shall be responsible for ensuring that air traffic is protected from any laser projecting into navigable air space (contact Federal Aviation Administration (FAA) or other appropriate agencies, as necessary) or controlled ground space when the beam irradiance or radiant exposure is above the appropriate MPE, as delineated in ANSI Z136.1-2000, Safe Use of Lasers.

(vi) When the removal of panels or protective covers and/or overriding of interlocks becomes necessary, such as for servicing, testing, or maintenance, and accessible laser radiation exceeds the MPE, as delineated in ANSI Z136.1-2000, Safe Use of Lasers and the collateral limits listed in Title 21, CFR, §1040.10, a temporary controlled area shall be established and posted.

(4) Key control. Each Class 3b or 4 laser and IPL device shall incorporate a key-actuated or computer-actuated master control. The key shall be removable and the Class 3b or 4 laser or IPL device shall not be operable when the key is removed. When not being prepared for operation or is unattended, the key will be removed from the device and stored in a location away from the machine.

(s) Additional requirements for special lasers and applications.

(1) Infrared laser. The beam from a laser shall be terminated in fire-resistant material where necessary. Inspection intervals of absorbent material and actions to be taken in the event or evidence of degradation shall be specified in the operating and safety procedures.

(2) Laser optical fiber transmission system.

(A) Laser transmission systems that employ optical cables shall be considered enclosed systems with the optical cable forming part of the protective housing.

(B) Disconnection of a connector resulting in access to radiation in excess of the applicable MPE limits, as delineated in ANSI Z136.1-2000, Safe Use of Lasers and the collateral limits listed in Title 21, CFR, §1040.10, shall take place in a controlled area. Except for medical lasers whose manufacture has been approved by the FDA, the use of a tool shall be required for the disconnection of a connector for service and maintenance purposes when the connector is not within a secured enclosure. All connectors shall bear the appropriate label or tag specified in subsection (v)(3) of this section.

(t) Additional requirements for safe operation.

(1) Eye protection. Protective eyewear shall be worn by all individuals with access to Class 3b and/or Class 4 levels of laser radiation. Protective eyewear devices shall meet the following requirements:

(A) provide a comfortable and appropriate fit all around the area of the eye;

(B) be in proper condition to ensure the optical filter(s) and holder provide the required optical density or greater at the desired wavelengths, and retain all protective properties during its use;

(C) be suitable for the specific wavelength of the laser and be of optical density adequate for the energy involved;

(D) have the optical density or densities and associated wavelength(s) permanently labeled on the filters or eyewear; and

(E) be examined, at intervals not to exceed 12 months, to ensure the reliability of the protective filters and integrity of the protective filter frames. Unreliable eyewear shall be discarded. Documentation of the examination shall be made and maintained in accordance with subsection (ee) of this section for inspection by the agency.

(2) Skin protection. When there is a possibility of exposure to laser radiation that exceeds the MPE limits for skin as specified in ANSI Z136.1-2000 Safe Use of Lasers, the registrant shall require the appropriate use of protective gloves, clothing, or shields.

(u) NHZ. Where applicable, in the presence of unenclosed Class 3b and Class 4 laser beam paths, an NHZ shall be established. If the beam of an unenclosed Class 3b and Class 4 laser is contained within a region by adequate control measures to protect personnel from exposure to levels of radiation above the appropriate MPE, as delineated in ANSI Z136.1-2000, Safe Use of Lasers, that region may be considered to be the NHZ. The NHZ may be determined by information supplied by the laser manufacturer, by measurement, or by using the appropriate laser range equation or other equivalent assessment.

(v) Caution signs, labels, and posting for lasers and IPL devices.

(1) General requirements. Except as otherwise authorized by the agency, signs, symbols, and labels prescribed by this section shall use the design and colors specified in subsection (dd) of this section.

(2) Posting. The laser controlled area shall be conspicuously posted with a sign or signs as specified in paragraph (3) of this subsection and subsection (dd) of this section.

(3) Labeling lasers and posting laser facilities. All signs and labels associated with Class 2, 3a, 3b, and 4 lasers shall contain the following wording.

(A) The signal word "CAUTION" shall be used with all signs and labels associated with all Class 2 lasers and all Class 3a lasers that do not exceed the appropriate MPE, as designated in ANSI Z136.1-2000, Safe Use of Lasers. This signal word is used in accordance with the sign in subsection (dd)(1) of this section.

(B) The signal word "DANGER" shall be used with all Class 3a lasers that exceed the appropriate MPE, as designated in ANSI Z136.1-2000, Safe Use of Lasers, and all Class 3b and 4 lasers. This signal word is used in accordance with the sign in subsection (dd)(2) of this section.

(C) Position 1 in the signs in subsection (dd)(1) and (dd)(2) of this section shall contain the following information, as applicable:

(i) for all Class 2 lasers, the words "LASER RADIATION - DO NOT STARE INTO BEAM";

(ii) for Class 3a lasers that do not exceed the appropriate MPE, as designated in ANSI Z136.1-2000, Safe Use of Lasers, the words "LASER RADIATION - DO NOT STARE INTO BEAM OR VIEW DIRECTLY WITH OPTICAL INSTRUMENTS";

(iii) for all other Class 3a lasers, the words "LASER RADIATION - AVOID DIRECT EYE EXPOSURE";

(iv) for all Class 3b lasers, the words "LASER RADIATION - AVOID DIRECT EYE EXPOSURE"; or

(v) for Class 4 lasers, the words "LASER RADIATION - AVOID EYE or SKIN EXPOSURE to DIRECT or SCATTERED RADIATION".

(D) Positions 2 and 3 in the signs in subsections (dd)(1) and (2) of this section shall contain the following information, as applicable.

(i) Position 2 shall contain the type of laser or the emitted wavelength, pulse duration (if appropriate), or maximum output.

(ii) Position 3 shall contain the class of laser.

(E) Lasers, except lasers used in the practice of medicine, shall have a label(s) in close proximity to each aperture through which is emitted accessible laser or collateral radiation in excess of the limits specified in ANSI Z136.1-2000, Safe Use of Lasers and the collateral limits listed in Title 21, CFR, §1040.10, with the following wording as applicable.

(i) "AVOID EXPOSURE - Laser radiation is emitted from this aperture," if the radiation emitted through such aperture is laser radiation.

(ii) "AVOID EXPOSURE - Hazardous electromagnetic radiation is emitted from this aperture," if the radiation emitted through such aperture is collateral radiation.

(iii) "AVOID EXPOSURE - Hazardous x-rays are emitted from this aperture," if the radiation emitted through such aperture is collateral x-ray radiation.

(F) Each noninterlocked or defeatably interlocked portion of the protective housing or enclosure that is designed to be displaced or removed during normal operation or servicing, and that would permit human access to laser or collateral radiation, shall have labels as follows:

(i) for Class 3b accessible laser radiation the wording, "DANGER - LASER RADIATION WHEN OPEN. AVOID DIRECT EXPOSURE TO BEAM";

(ii) for Class 4 accessible laser radiation the wording, "DANGER - LASER RADIATION WHEN OPEN. AVOID EYE OR SKIN EXPOSURE TO DIRECT OR SCATTERED RADIATION"; or

(iii) for collateral radiation in excess of the emission limits as described in Title 21, CFR, §1040.10, "CAUTION - HAZARDOUS ELECTROMAGNETIC RADIATION WHEN OPEN" and "CAUTION - HAZARDOUS X-RAY RADIATION" as applicable.

(G) For protective housing or enclosures that provide a defeatable interlock, the words "and interlock defeated" shall be included in the labels specified in subparagraph (F)(i) and (ii) of this paragraph.

(H) Other required information.

(i) The word "invisible" shall immediately precede the word "radiation" on labels and signs required by this subparagraph for wavelengths of laser and collateral radiation that are outside of the range of 400 to 700 nm.

(ii) The words "visible and invisible" shall immediately precede the word "radiation" on labels and signs required by this subparagraph for wavelengths of laser and collateral radiation that are both within and outside the range of 400 to 700 nm.

(I) Labels required by this subparagraph shall be clearly visible, legible, and permanently attached to the laser or facility. Signs required by this subparagraph shall be clearly visible, legible, and securely attached to the facility.

(4) In lieu of the requirements in paragraphs (1)-(3) of this subsection and subsection (dd) of this section, the agency will accept labeling and signage designated by the following:

(A) Title 21, CFR, §1040.10;

(B) ANSI Z136.1-2000, Safe Use of Lasers; and

(C) IEC standards 60825-1 and 60601-2-22.

(w) Surveys. Each registrant shall make or cause to be made such surveys as may be necessary to comply with this section and maintain records of the surveys in accordance with subsection (ee) of this section for inspection by the agency. Surveys shall be performed at intervals not to exceed 12 months, to include but not be limited to the following:

(1) a determination that all laser and IPL protective devices are labeled correctly, functioning within the design specifications, and properly chosen for lasers and IPL devices in use;

(2) a determination that all warning devices are functioning within their design specifications;

(3) a determination that the controlled area is properly controlled and posted with accurate warning signs in accordance with subsection (v) of this section;

(4) a re-evaluation of potential hazards from surfaces that may be associated with beam paths; and

(5) additional surveys that may be required to evaluate the primary and collateral radiation hazard incident to the use of lasers and IPL devices.

(x) Records/documents. Each registrant shall maintain current records/documents required by this subsection in accordance with subsection (ee) of this section for inspection by the agency.

(y) Measurements and instrumentation. Each determination requiring a measurement for compliance with this section shall use instrumentation that is calibrated and designed for use with the laser or IPL device that is to be tested.

(z) Notification of injury other than a medical event.

(1) Each registrant of Class 3b or 4 lasers or user of an IPL device shall immediately seek appropriate medical attention for the individual and notify the agency by telephone of any injury involving a laser possessed by the registrant or an IPL device, other than intentional exposure of patients for medical purposes, that has or may have caused:

(A) an injury to an individual that involves the partial or total loss of sight in either eye; or

(B) an injury to an individual that involves intentional perforation of the skin or other serious injury exclusive of eye injury.

(2) Each registrant of Class 3b or 4 lasers or user of an IPL device shall, within 24 hours of discovery of an injury, report to the agency each injury involving any laser possessed by the registrant or IPL device possessed by a user, as applicable, other than intentional exposure of patients for medical purposes, that may have caused, or threatens to cause, an exposure to an individual with second or third-degree burns to the skin or potential injury and partial loss of sight.

(aa) Reports of injuries.

(1) Each registrant of Class 3b or 4 lasers or user of an IPL device shall make a report in writing, or by electronic transmittal, within 30 days to the agency of any injury required to be reported in accordance with subsection (z) of this section.

(2) Each report shall describe the following:

(A) the extent of injury to individuals from radiation from lasers or IPL devices;

(B) power output of laser or IPL device involved;

(C) the cause of the injury; and

(D) corrective steps taken or planned to be taken to prevent a recurrence.

(3) Any report filed with the agency in accordance with this subsection shall include the full name of each individual injured and a description of the injury. The report shall be prepared so that this information is stated in a separate part of the report.

(4) When a registrant or user of an IPL device is required in accordance with paragraphs (1)-(3) of this subsection to report to the agency any injury of an individual from radiation from lasers or IPL devices, the registrant or user of an IPL device shall also notify the individual. Such notice shall be transmitted to the individual at a time not later than the transmittal to the agency.

(bb) Medical event.

(1) The registrant of Class 3b or 4 lasers or user of an IPL device shall notify the agency, by telephone or electronic transmittal, within 24 hours of discovery of a medical event or of any injury to or death of a patient. Within 30 days after a 24 hour notification is made, the registrant of Class 3b or 4 lasers or user of an IPL device shall submit a written report to the agency of the event.

(2) The written report shall include the following:

(A) the registrant's or user's name;

(B) a brief description of the event;

(C) the effect on the patient;

(D) the action taken to prevent recurrence; and

(E) whether the registrant or user informed the patient or the patient's responsible relative or guardian.

(3) When a medical event occurs, the registrant or user shall promptly investigate its cause, make a record for agency review, and retain the records as stated in subsection (ee) of this section.

(cc) Reports of stolen, lost, or missing Class 3b or 4 lasers and IPL devices.

(1) Each registrant of Class 3b or 4 lasers or user of an IPL device shall report to the agency by telephone a stolen, lost, or missing laser or IPL device within 24 hours after its occurrence becomes known to the registrant or IPL device user.

(2) Each person required to make a report in accordance with paragraph (1) of this subsection shall, within 30 days after making the telephone report, make a written report to the agency that includes the following information:

(A) a description of the laser or IPL device involved, including the manufacturer, model, serial number, and class;

(B) a description of the circumstances under which the loss or theft occurred;

(C) a statement of disposition, or probable disposition, of the laser or IPL device involved;

(D) actions that have been taken, or will be taken, to recover the laser or IPL device; and

(E) procedures or measures that have been taken to prevent a recurrence of the loss or theft of lasers or IPL devices.

(dd) Caution and danger signs. The following contains signs required in accordance with subsection (v)(3) of this section.

(1) This sign shall be used with all Class 2 lasers and Class 3a lasers that do not exceed the appropriate MPE, as designated in ANSI Z.136-2000, Safe Use of Lasers.
Figure: 25 TAC §289.301(dd)(1) (No change.)

(2) This sign shall be used with all Class 3a lasers that exceed the appropriate MPE, as designated in ANSI Z.136-2000, Safe Use of Lasers, and all Class 3b and Class 4 lasers.
Figure: 25 TAC §289.301(dd)(2) (No change.)

(ee) Keeping records/documents. The following chart contains time requirements for keeping records/documents:
Figure: 25 TAC §289.301(ee)

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

Filed with the Office of the Secretary of State on September 22, 2008.

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General Counsel
Department of State Health Services
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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 122. COMPENSATION PROCEDURE--CLAIMANTS

SUBCHAPTER B. CLAIMS PROCEDURE FOR BENEFICIARIES OF INJURED EMPLOYEES

28 TAC §122.100

The Commissioner of Workers' Compensation ("Commissioner"), Texas Department of Insurance, Division of Workers' Compensation ("Division") adopts amendments to §122.100 of this title (relating to Claim for Death Benefits). These amendments are adopted with changes to the proposed text published in the August 1, 2008, issue of the *Texas Register* (33 TexReg 6056).

The adopted amendments to §122.100 of this title are necessary in order to implement amendments made by House Bill (HB) 724, enacted by the 80th Legislature, Regular Session, effective September 1, 2007, to Labor Code provisions governing death benefits, specifically Labor Code §408.182 and §408.183.

HB 724 amends Labor Code §408.182 and §408.183 by adding "eligible parents" to the class of legal beneficiaries entitled to receive death benefits under the Texas Workers' Compensation Act (the "Act"). Labor Code §408.182(f)(4), added by HB 724, defines "eligible parent" as the mother or the father of a deceased employee, including an adoptive parent or a stepparent, who receives burial benefits under Labor Code §408.186. A parent whose parental rights have been terminated is specifically excluded from this definition of "eligible parent." Labor Code §408.182(d-1), added by HB 724, provides that if there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased, the death benefits shall be paid in equal shares to surviving eligible parents of the deceased. Labor Code §408.183(f-1), added by HB 724, provides that an eligible parent is entitled to receive death benefits until the earlier of the date the eligible parent dies or the date of the expiration of 104 weeks of death benefit payments. The payment of death benefits to an eligible parent(s) may not, according to Labor Code §408.182(d-1), exceed one payment per household and may not exceed 104 weeks.

HB 724 added Labor Code §408.182(d-2) which provides that in order to be eligible to receive death benefits, an eligible parent must file a claim with the Division not later than the first anniversary of the date of the injured employee's death. This subsection further provides that a claim for death benefits must designate all eligible parents and necessary information for payment to the eligible parents. An insurance carrier will not be liable for payment to any eligible parent who is not designated on the claim. Finally, Labor Code §408.182(d-2) permits the Commissioner to extend the time period for filing a claim for death benefits by an eligible parent if the eligible parent submits proof satisfactory to the Commissioner of a compelling reason for the delay.

Also published in this issue of the *Texas Register* are adopted amendments to §§132.6, 132.9, and 132.11 of this title (relating to Eligibility of Other Surviving Dependents To Receive Death Benefits, Duration of Death Benefits for an Eligible Grandchild and any Other Eligible Dependents, and Distribution of Death Benefits, respectively). Those rules also incorporate and reflect the HB 724 amendments to the Labor Code discussed above regarding "eligible parents".

Section 122.100 of this title governs how a legal beneficiary initiates a claim for death benefits and is amended in order to implement the provisions of HB 724. Section 122.100 of this title requires a legal beneficiary, which will include an eligible parent, seeking death benefits under the Act to file a written claim for death benefits with the Division. Section 122.100(b) and (c) of this title sets out the necessary information that is to be included in the claim.

This section further requires a claim for death benefits to be filed no later than one year from the date of the injured employee's death. It also provides that failure to file a claim for death benefits within one year of the date of the employee's death bars the claim of the legal beneficiary, unless the legal beneficiary is a minor or otherwise legally incompetent, or good cause exists for failure to file the claim in a timely manner. The adopted amendments to §122.100(e) of this title incorporate into that section the compelling reason exception to the one year filing deadline prescribed by Labor Code §408.182(d-2) for eligible parents. These adopted amendments provide that the good cause exception applies to legal beneficiaries other than eligible parents. The good cause exception will not apply to an eligible parent because it is a lesser standard than the compelling reason standard and Labor Code §408.182(d-2) specifically prescribes the compelling reason standard for eligible parents. These adopted amendments further provide that an eligible parent's failure to file a claim for death benefits within the one year time period will not bar the claim if the eligible parent submits proof satisfactory to the Commissioner of a compelling reason for the delay in filing the claim.

As stated above, Labor Code §408.182(d-2) requires a claim for death benefits to designate all eligible parents. An insurance carrier will not be liable for payment to any eligible parent who is not designated on the claim. Section 122.100(d) of this title requires each beneficiary to file a separate claim for death benefits, unless the claim expressly includes or is made on behalf of another person. An eligible parent who is designated on a claim for death benefits filed by another eligible parent is considered expressly included under §122.100(d) of this title.

These adopted amendments to §122.100 of this title also replace all references to the "commission" in that section with references to the "Division." These adopted amendments are due to HB 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005, which abolished the Texas Workers' Compensation Commission and transferred the powers and duties of that former agency to the Division of Workers' Compensation of the Texas Department of Insurance. The proposed text did not replace the reference to "commission" in §122.100(c)(1) with "Division." These adopted amendments make this change in §122.100(c)(1). This change, however, does not introduce new subject matter or affect persons in addition to those subject to the proposal as published.

The adopted amendments amend §122.100(e)(2) to state that the good cause exception to the one year filing deadline applies to a legal beneficiary other than an eligible parent.

The adopted amendments add §122.100(e)(3) which provides that an eligible parent's failure to file a claim for death benefits within the one year time period does not bar the parent's claim if the parent submits proof satisfactory to the Commissioner of a compelling reason for the delay in filing the claim for death benefits.

The adopted amendments replace "commission" in §122.100(a), (b), (c), and (c)(1) of this title with "Division."

Comment: A commenter recommends that the Division define the phrase "submits proof satisfactory to the Commissioner of Workers' Compensation of a compelling reason for the delay in filing the claim for death benefits" in §122.100(e)(3). The commenter argues that a further definition is necessary in order to provide guidance to potential "eligible parent" beneficiaries on the showing they would have to make and the evidence they could submit to extend the one year filing deadline.

Agency Response: The Division does not agree that a definition for this provision is necessary. This provision, which mirrors the provision in Tex. Labor Code §408.182(d-2), is not vague. It uses words of common understanding and thus provides eligible parents with clear notice of what they have to provide and prove to the Commissioner in order to obtain an extension of the one year filing deadline. Reasons for delay in filing a claim for death benefits and the proof available to support such reasons for delay will vary greatly from case to case. These decisions by the Commissioner will therefore have to be made on a case by case basis. Tex. Labor Code §408.182(d-2) and §122.100(e)(3) provides a clear standard upon which the Commissioner can determine these types of requests for a filing extension.

For: The Boeing Company

For with changes: None

Against: None

Neither for nor against, with recommended changes: Office of Injured Employee Counsel

These amendments are adopted under Labor Code §§402.00111, 402.061, 408.181, 408.182, and 408.183.

Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under Labor Code Title 5. Labor Code §402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act. Labor Code §408.181 requires an insurance carrier to pay death benefits to the legal beneficiary if a compensable injury results in death. Labor Code §408.182 requires death benefits to be paid to surviving eligible parents of the deceased employee if there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased. Labor Code §408.183 provides that an eligible parent is entitled to receive death benefits until the earlier of the date the eligible parent dies or the date of the expiration of 104 weeks of death benefit payments.

§122.100. Claim for Death Benefits.

(a) In order for a legal beneficiary, other than the subsequent injury fund, to receive the benefits available as a consequence of the death of an employee which results from a compensable injury, a person shall file a written claim for compensation with the Division within one year after the date of the employee's death.

(b) The claim should be submitted to the Division either on paper or via electronic transmission, in the form, format, and manner prescribed by the Division, and should include the following:

(1) the claimant's name, address, telephone number (if any), social security number, and relationship to the deceased employee;

(2) the deceased employee's name, last address, social security number (if known) and workers' compensation claim number (if any); and

(3) other information, as follows:

(A) a description of the circumstances and nature of the injury (if known);

(B) the name and location of the employer at the time of the injury;

(C) the date of the compensable injury, and date of death; and

(D) other known legal beneficiaries.

(c) A claimant shall file with the Division a copy of the deceased employee's death certificate and any additional documentation or other evidence that establishes that the claimant is a legal beneficiary of the deceased employee.

(1) If the claim is filed with the Division in paper format, the additional evidence regarding legal beneficiary status shall be filed at the same time as the claim.

(2) If the claim is filed via electronic transmission, the additional evidence regarding legal beneficiary status may be filed separately in paper format and sent either by mail, facsimile, or hand delivery.

(d) Each person must file a separate claim for death benefits, unless the claim expressly includes or is made on behalf of another person.

(e) Failure to file a claim for death benefits within one year after the date of the employee's death shall bar the claim of a legal beneficiary, other than the subsequent injury fund, unless:

(1) that legal beneficiary is a minor or otherwise legally incompetent;

(2) for a legal beneficiary other than an eligible parent, good cause exists for failure to file the claim in a timely manner; or

(3) for a legal beneficiary who is an eligible parent, the parent submits proof satisfactory to the Commissioner of Workers' Compensation of a compelling reason for the delay in filing the claim for death benefits.

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

Filed with the Office of the Secretary of State on September 22, 2008.

TRD-200805106
Stanton K. Strickland
Deputy Commissioner, Legal Services
Texas Department of Insurance, Division of Workers' Compensation
Effective date: October 12, 2008
Proposal publication date: August 1, 2008
For further information, please call: (512) 804-4715

♦ ♦ ♦

CHAPTER 132. DEATH BENEFITS--DEATH AND BURIAL BENEFITS

28 TAC §§132.6, 132.9, 132.11

The Commissioner of Workers' Compensation ("Commissioner"), Texas Department of Insurance, Division of Workers' Compensation ("Division") adopts amendments to §§132.6, 132.9, and 132.11 of this title (relating to Eligibility of Other Surviving Dependents To Receive Death Benefits, Duration of Death Benefits for an Eligible Grandchild and any Other Eligible Dependents, and Distribution of Death Benefits, respectively). These amendments are adopted without changes to the proposed text published in the August 1, 2008, issue of the *Texas Register* (33 TexReg 6058).

These adopted amendments are necessary in order to implement amendments made by House Bill (HB) 724, enacted by the 80th Legislature, Regular Session, effective September 1, 2007, to Labor Code provisions governing death benefits, specifically Labor Code §408.182 and §408.183.

HB 724 adds "eligible parents" to the class of legal beneficiaries entitled to receive death benefits under the Texas Workers' Compensation Act (the "Act"). Labor Code §408.182(f)(4), added by HB 724, defines "eligible parent" to mean the mother or the father of a deceased employee, including an adoptive parent or a stepparent, who receives burial benefits under Labor Code §408.186. A parent whose parental rights have been terminated is specifically excluded from this definition of "eligible parent." Labor Code §408.182(d-1), added by HB 724, provides that if there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased, the death benefits shall be paid in equal shares to surviving eligible parents of the deceased. Labor Code §408.183(f-1), added by HB 724, provides that an eligible parent is entitled to receive death benefits until the earlier of the date the eligible parent dies or the date of the expiration of 104 weeks of death benefit payments. The payment of death benefits to an eligible parent(s), according to Labor Code §408.182(d-1), may not exceed one payment per household and may not exceed 104 weeks.

HB 724 also added Labor Code §408.182(d-2) which provides that in order to be eligible to receive death benefits, an eligible parent must file a claim with the Division not later than the first anniversary of the date of the injured employee's death. This subsection further provides that a claim for death benefits must designate all eligible parents and necessary information for payment to the eligible parents. An insurance carrier will not be liable for payment to any eligible parent who is not designated on the claim. Finally, Labor Code §408.182(d-2) permits the Commissioner to extend the time period for filing a claim for death benefits by an eligible parent if the eligible parent submits proof satisfactory to the Commissioner of a compelling reason for the delay.

Chapter 132 of this title (relating to Death Benefits--Death and Burial Benefits) contains the Division's rules that govern death benefits for all legal beneficiaries. These adopted amendments to §§132.6, 132.9, and 132.11 of this title incorporate HB 724's provisions regarding an eligible parent's entitlement to death benefits into Chapter 132 of this title. Published elsewhere in this issue of the *Texas Register* are adopted amendments to

§122.100 of this title (relating to Claim for Death Benefits). Section 122.100 of this title governs how a legal beneficiary initiates a claim for death benefits under the Act. Section 122.100 of this title will also apply to eligible parents.

The adopted amendments to §132.6 of this title incorporate into that rule the definition of "eligible parent" and the conditions that must be met in order for an eligible parent to be entitled to death benefits under the Act. The title of this rule is also amended to add "eligible parents". These adopted amendments define "eligible parent" to mean the mother or the father of a deceased employee, including an adoptive parent or a stepparent, who receives burial benefits under §132.13 of this title (relating to Burial Benefits), but does not include a parent whose parental rights have been terminated. These adopted amendments further provide that an eligible parent is entitled to death benefits only if there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased. These adopted amendments are consistent with provisions of HB 724 that define "eligible parent" and that set out when an eligible parent is entitled to death benefits under the Act.

The adopted amendments to §132.6 of this title also require a person seeking entitlement to death benefits as an eligible parent to submit proof of eligible parent status. This proof of eligible parent status is necessary in order to allow for a determination of whether the person seeking death benefits qualifies as an eligible parent. These adopted amendments require the person seeking entitlement as an eligible parent to provide proof of the relationship to the deceased. This proof shall consist of certified copies of applicable birth certificates, decrees of adoption, or proof of marriage. If this evidence does not exist, baptismal records, court orders establishing paternity, voluntary admissions of paternity, or affidavits of persons who have personal knowledge of the relationship to the deceased qualify as sufficient proof of relationship. These adopted amendments also require the eligible parent to designate all eligible parents on the claim for death benefits as required by HB 724. An insurance carrier will not be liable for payment to an eligible parent who is not designated on the claim for death benefits.

Finally, the adopted amendments to §132.6 of this title require a person seeking entitlement as an eligible parent to submit proof of receipt of burial benefits. This proof will not be required if the eligible parent files the claim for burial benefits with the insurance carrier at the same time the parent files the claim for death benefits with the Division or the eligible parent has filed a claim for burial benefits and that claim is still pending at the time the parent files the claim for death benefits. Allowing a parent to file the claim for death benefits simultaneously with the claim for burial benefits or while the claim for burial benefits is pending is necessary because both claims have the same filing deadline, within one year of the date of the deceased employee's death. There are foreseeable situations where a claim for burial benefits filed with the insurance carrier will not be finally determined before the expiration of the filing deadline for the claim for death benefits. For example, a claim for burial benefits may be filed one day before one year filing deadline but not finally decided before the one year filing deadline for the claim for death benefits. In such a situation, the parent will be permitted to file the claim for death benefits at the same time the claim for burial benefits is filed in order to meet the filing deadline for the death benefits claim.

The adopted amendment to §132.9 of this title sets forth the duration of death benefits to be paid to an eligible parent. It provides that death benefits are to be paid to the eligible parent until the earlier of the date of the eligible parent's death or the date of the expiration of 104 weeks of death benefit payments. This adopted amendment also amends the title of this section to reflect its applicability to eligible parents. This adopted amendment to §132.9 of this title is consistent with provisions of HB 724 governing the duration of death benefits for eligible parents.

The adopted amendments to §132.11 of this title provide that death benefits shall be paid in equal shares to surviving eligible parents if there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased. These adopted amendments also provide that the amount paid may not exceed one payment per household and may not exceed 104 weeks. These adopted amendments to §132.11 of this title are consistent with provisions of HB 724 governing the distribution of death benefits to eligible parents. The adopted amendments to §132.6 of this title amends the title of this section to reflect its applicability to eligible parents. These adopted amendments redesignate subsection (b) of §132.6 of this title as subsection (c) and adds a new subsection (b). Subsequent subsections are redesignated accordingly. New §132.6(b) defines "eligible parent" and provides when an "eligible parent" is entitled to receive death benefits. The adopted amendment to §132.6(c) requires a person applying for death benefits as an "eligible parent" to submit proof of relationship to the deceased. It also requires the person to submit proof of receipt of burial benefits unless the claim for death benefits is filed at the same time as the claim for burial benefits or the claim for burial benefits is pending at the time the claim for death benefits is filed.

The adopted amendment to §132.9 of this title adds subsection (d) which sets out the duration of death benefits that are to be paid to an eligible parent. This adopted amendment also amends the title of this section to reflect its applicability to eligible parents.

The adopted amendments to §132.11 of this title amend subsection (d) of that section to clarify that subsection (d) applies to legal beneficiaries who are surviving dependents of the deceased. These adopted amendments redesignate subsection (e) and (f) as subsection (f) and (g), respectively, and creates a new subsection (e). New subsection (e) provides for how death benefits are to be distributed to eligible parents.

Comment: A commenter states that §132.6 improperly interprets the definition of "eligible parent" set out in Tex. Labor Code §408.182(f)(4). This commenter states that the definition of "eligible parent" should be interpreted to require only adoptive parents and stepparents to receive burial benefits in order to establish entitlement to death benefits. The commenter interprets the "eligible parent" definition to not require a biological parent to receive burial benefits in order to establish entitlement to death benefits.

Agency Response: The Division disagrees with this commenter's interpretation of "eligible parent" in Tex. Labor Code §408.182(f)(4). Tex. Labor Code §408.182(f)(4) defines "eligible parent" as "the mother or the father of a deceased employee, including an adoptive parent or a stepparent, who receives burial benefits under Section 408.186." This statute then goes on to specifically exclude parents whose parental rights have been terminated. Tex. Labor Code §408.182(f)(4) clearly sets out two requirements a person must meet in order to qualify as

an "eligible parent." First, the person must be the mother or the father of the deceased employee. Adoptive parents and stepparents qualify as a mother or father. Parents whose parental rights have been terminated do not qualify. Second, the parent must receive burial benefits under Tex. Labor Code §408.186. The phrase "including adoptive parents and stepparents" in Tex. Labor Code §408.182(f)(4) must be interpreted to mean "mother" and "father" includes adoptive parents and stepparents in addition to biological parents. According to the Code Construction Act, specifically Tex. Gov't Code §311.005(13), "'[i]ncludes' and 'including' are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded." "Including adoptive parents and stepparents" should not be read to mean that only adoptive parents and stepparents must receive burial benefits in order to qualify as an eligible parent.

Comment: A commenter recommends that the term "eligible parent" be more clearly defined. The commenter also requests clarification on whether the stepparent is required to be married to the natural or adoptive parent at the time of the injured employee's death in order to be considered an "eligible parent."

Agency Response: The Division does not agree that a further definition of "eligible parent" is necessary. The definition of "eligible parent" in §132.6(b) tracks the definition of "eligible parent" in Tex. Labor Code §408.182(f)(4). This definition is not vague. It uses terms of common understanding. "Eligible parent" is the mother or the father of the deceased employee, including an adoptive parent or a stepparent, who receives burial benefits. A parent whose parental rights have been terminated is not an "eligible parent." With regard to the commenter's request for clarification regarding stepparents, the Division does not agree that any further definition or clarification of stepparent in this rule is necessary. Stepparent is a term that has a commonly accepted meaning. A stepparent is the spouse of a person's mother or father by a later marriage. If a person is not married to the deceased employee's biological or adoptive parent by a later marriage at the time of the employee's death, then that person is not the stepparent of the deceased employee.

For: The Boeing Company

For with changes: None

Against: None

Neither for nor against, with recommended changes: Office of Injured Employee Counsel

These amendments are adopted under Labor Code §§402.00111, 402.061, 408.181, 408.182, and 408.183.

Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under Labor Code Title 5. Labor Code §402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act. Labor Code §408.181 requires an insurance carrier to pay death benefits to the legal beneficiary if a compensable injury results in death. Labor Code §408.182 requires death benefits to be paid to surviving eligible parents of the deceased employee if there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased. Labor Code §408.183 provides that an eligible parent is entitled to receive death benefits until the earlier of the date the eligible parent dies or the date of the expiration of 104 weeks of death benefit payments.

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

Filed with the Office of the Secretary of State on September 22, 2008.

TRD-200805107
Stanton K. Strickland
Deputy Commissioner, Legal Services
Texas Department of Insurance, Division of Workers' Compensation
Effective date: October 12, 2008
Proposal publication date: August 1, 2008
For further information, please call: (512) 804-4715

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 5. BOARDS FOR LEASE OF STATE-OWNED LANDS

CHAPTER 201. OPERATIONS OF THE TEXAS PARKS AND WILDLIFE DEPARTMENT AND TEXAS DEPARTMENT OF CRIMINAL JUSTICE BOARD FOR LEASE

31 TAC §§201.3 - 201.5

The Texas General Land Office (GLO) and the Texas Parks and Wildlife Department and the Texas Department of Criminal Justice Boards for Lease adopt without changes to the proposed text the amendments to §201.3, relating to Filing in General Land Office, §201.4, relating to Deposits, and §201.5, relating to Provisions. The amendments were published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6741). The Board voted to adopt these amendments at its regularly scheduled meeting on July 21, 2008. The adopted amendments would update the legal reference relating to Royalty and Reporting Obligation to the State and Discontinuing the Leasehold Relationship.

No comments were received regarding any of the adopted amendments to §§201.3 - 201.5.

The amendments were adopted under the Texas Natural Resource Code §34.065 which grants the Texas Department of Criminal Justice and Texas Parks and Wildlife Department boards for lease rulemaking authority.

Texas Natural Resources Code §§32.110, 34.002, 34.011 - 34.014, 34.055, 34.057, and 34.064 are affected by this action.

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

Filed with the Office of the Secretary of State on September 22, 2008.

TRD-200805097

Trace Finley
Deputy Commissioner, Policy and Governmental Affairs, General Land Office
Boards for Lease of State-Owned Lands
Effective date: October 12, 2008
Proposal publication date: August 22, 2008
For further information, please call: (512) 475-1859

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.365

The Comptroller of Public Accounts adopts an amendment to §3.365, concerning sales of clothing and footwear during a three-day period in August, without changes to the proposed text as published in the August 1, 2008, issue of the *Texas Register* (33 TexReg 6060).

This rule is being amended pursuant to House Bill 3314, 80th Legislature, 2007, which changed the timing of the three-day exemption period and expanded the exemption to include backpacks purchased for use by public elementary or secondary school students. The title of the existing rule has been amended to reflect the expansion of the exemption to an item other than clothing and footwear. Subsection (a) of the rule has been amended to provide the definition of "school backpack" and to add a generic term, "eligible item," that encompasses any item that is exempt from sales tax during the exemption period under this section. Subsection (b) has been amended to change the beginning of the three-day exemption period from the first Friday in August to the third Friday of the month. Subsection (c) of the rule is amended to exclude from the exemption backpacks that are not purchased for use by elementary or secondary school students. Subsection (o) has been amended to provide that a retailer who sells more than 10 school backpacks to a customer at the same time must obtain an exemption certificate from the customer verifying that the backpacks are being purchased for use by elementary or secondary school students. Conforming changes are made throughout the rule.

No comments were received regarding adoption of the amendment.

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, §151.326 and §151.327.

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

Filed with the Office of the Secretary of State on September 16, 2008.

TRD-200805042
Martin Cherry
General Counsel
Comptroller of Public Accounts
Effective date: October 6, 2008
Proposal publication date: August 1, 2008
For further information, please call: (512) 475-0387

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SUBCHAPTER HH. MIXED BEVERAGE TAX

34 TAC §3.1001

The Comptroller of Public Accounts adopts amendments to §3.1001, concerning mixed beverage gross receipts tax, without changes to the proposed text as published in the August 1, 2008, issue of the *Texas Register* (33 TexReg 6063). The amendments change the name of this section, make consistent definitions that apply to both mixed beverage gross receipts tax under this section and the taxability of gratuities as provided by §3.337 of this title and clarify the taxability of cover charges, door charges, entry fees or admission fees.

Related to gratuities, subsection (a)(3) amends the definition of mandatory gratuity charge, subsection (a)(6) amends the definition of permittee, and new subsections (a)(7), (8), (11), and (12) are added to define qualified employees, reasonable mandatory gratuity charge, total direct compensation and voluntary gratuity. The amendment to subsection (c)(5) makes only that portion of a reasonable mandatory gratuity charge that is not distributed to qualified employees taxable instead of the entire amount of the mandatory gratuity charge. The amendment to subsection (c)(6) makes clear that the entire amount of mandatory gratuity charges when in excess of 20% is taxable. The amendments to subsections (f)(4) and (f)(5) make reference to voluntary and reasonable mandatory gratuity charges, which by amendment are more clearly defined. New subsection (i) summarizes the taxability of mandatory gratuity charges.

Related to the taxability of cover charges, door charges, entry fees or admission fees, the amendments to subsections (c)(3) and (l)(8) clarify that a cover charge, door charge, entry fee or admission fee is subject to mixed beverage gross receipts tax only when the collection of the charge or fee is in violation of the Texas Alcoholic Beverage Commission rules or regulations. Subsections (c)(4) and (f)(8) are deleted because an alternative method for calculating the mixed beverage gross receipts tax on cover charges is no longer necessary. The amendment to new subsection (c)(4) replaces the word 'promotional' with 'reduced'. The amendment to subsection (l)(8) deletes a reference to 16 TAC §45.103, and restates that a cover charge, door charge, entry fee or admission fee is subject to sales tax unless the fee or charge is in violation of a Texas Alcohol Beverage Commission rule or regulation.

New subsection (e) summarizes the tax responsibilities of non-profit organizations holding fundraising or special events.

The amendment to subsection (j) deletes a reference to Tax Code, §183.001 because mixed beverage permittees are defined in subsection (a) of this section. The amendment to subsection (f)(9) deletes a reference to August 28, 1995, the first date mixed beverage permittees could make a deduction for a bad debt. The amendment to subsection (g) clarifies the taxability of alcohol loss due to spillage or breakage. The amendment

to subsection (h) clarifies the inventory records required for alcohol used in cooking.

No comments were received regarding adoption of the amendment.

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, §183.021.

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

Filed with the Office of the Secretary of State on September 16, 2008.

TRD-200805041
Martin Cherry
General Counsel
Comptroller of Public Accounts
Effective date: October 6, 2008
Proposal publication date: August 1, 2008
For further information, please call: (512) 475-0387

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.

Adopted Rule Review

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 157, Hearings and Appeals, Subchapter AA, General Provisions for Hearings Before the Commissioner of Education; Subchapter BB, Specific Appeals to the Commissioner; Subchapter CC, Hearings of Appeals Arising Under Federal Law and Regulations; and Subchapter DD, Hearings Conducted by Independent Hearing Examiners, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 157, Subchapters AA - DD, in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7085).

The TEA finds that the reasons for adopting 19 TAC Chapter 157, Subchapters AA - DD, continue to exist and readopts the rules. As a result of the review the TEA plans to propose changes that would include, but not be limited to, dealing with confidential information as evidence in a hearing, making terminology consistent throughout the chapter, and updating the data requirements of independent hearing examiners.

The TEA received no comments related to the review of 19 TAC Chapter 157, Subchapters AA - DD.

This concludes the review of 19 TAC Chapter 157.

TRD-200805137
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: September 24, 2008

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 1 TAC §371.214(r)(2)(B)

$$Error\ Rate(ER) = \left[\frac{(Total\ Actual\ Dollars\ Overpaid - Total\ Actual\ Dollars\ Underpaid)}{Total\ Actual\ Dollars\ Sampled} \right]$$

Figure: 25 TAC §289.232(c)(17)

$$C = \frac{s}{\overline{X}} = \frac{1}{\overline{X}} \left[\sum_{i=1}^{n} \frac{(X_i - \overline{X})^2}{n-1} \right]^{1/2}$$

Where:
- s = estimated standard deviation of the population
- $\overline{X}$ = mean value of observations in sample
- X_i = ith observation in sample
- n = number of observations in sample

Figure: 25 TAC §289.232(i)(5)(B)(iii)
BRC FORM 232-1

Department of State Health Services
1100 West 49th Street
P.O. Box 149347
Austin, Texas 78714-9347

NOTICE TO EMPLOYEES

TEXAS REGULATIONS FOR CONTROL OF RADIATION

The Department of State Health Services has established standards for your protection against radiation hazards, in accordance with the Texas Radiation Control Act, Health and Safety Code, Chapter 401.

YOUR EMPLOYER'S RESPONSIBILITY
Your employer is required to-
1. Apply these rules to work involving sources of radiation.
2. Post or otherwise make available to you a copy of the Department of State Health Services rules, certificates of registration, notices of violations, and operating procedures that apply to your work, and explain their provisions to you.

YOUR RESPONSIBILITY AS A WORKER
You should familiarize yourself with those provisions of the rules and the operating procedures that apply to your work. You should observe the rules for your own protection and protection of your co-workers.

WHAT IS COVERED BY THESE RULES
1. Limits on exposure to sources of radiation in restricted and unrestricted areas;
2. Measures to be taken after accidental exposure;
3. Individual monitoring devices, surveys, and equipment;
4. Caution signs, labels, and safety interlock equipment;
5. Exposure records and reports;
6. Options for workers regarding agency inspections; and
7. Related matters.

REPORTS ON YOUR RADIATION EXPOSURE HISTORY
1. The rules require that your employer give you a written report if you receive an exposure in excess of any applicable limit set forth in the rules or in the certificate of registration. The basic limits for exposure to employees are set forth in 25 Texas Administrative Code (TAC) §289.232(i)(4)(A)-(C) of this title (relating to Radiation Control Regulations for Dental Radiation Machines.) This subsection specifies limits on exposure to radiation.
2. If you work where individual monitoring devices are provided in accordance with 25 TAC §289.231 of this title (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation);
(a) your employer must furnish to you, upon your written request, an annual written report of your exposure to radiation.
(b) your employer must give you a written report, upon termination of your employment, of your radiation exposures if you request the information on your radiation exposure in writing.

INSPECTIONS
All licensed or registered activities are subject to inspection by representatives of the Department of State Health Services. In addition, any worker or representative of the workers, who believes that there is a violation of the Texas Radiation Control Act, the rules issued there under, or the terms of the employer's license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by sending a notice of the alleged violation to the Department of State Health Services. The request must state the specific grounds for the notice, and must be signed by the worker or the representative of the workers. During inspections, agency inspectors may confer privately with workers, and any worker may bring to the attention of the inspectors any past or present condition that the individual believes contributed to or caused any violations as described above.

POSTING REQUIREMENTS

Copies of this notice shall be posted in a sufficient number of places in every establishment where employees are employed in activities registered, in accordance with 25 TAC §289.232 (relating to Radiation Control Regulations for Dental Radiation Machines), to permit employees to observe a copy on the way to or from their place of employment.

Figure: 25 TAC §289.232(i)(6)(E)(i)(I)

TABLE I. HALF-VALUE LAYER FOR SELECTED KILOVOLT PEAK

X-ray Tube Voltage (kilovolt peak)		**Measured Half-Value Layer (millimeters of aluminum)**
Designed operating range	**Measured operating potential**	
Below 51 --------	30	1.5
	40	1.5
	50	1.5
51 to 70 --------	51	1.5
	60	1.5
	70	1.5
Above 70 --------	71	2.1
	80	2.3
	90	2.5
	100	2.7
	110	3.0
	120	3.2
	130	3.5
	140	3.8

Figure: 25 TAC §289.232(j)(1)(L)(i)(II)

"INFORMATION FALLING WITHIN EXCEPTION OF THE TEXAS PUBLIC INFORMATION ACT, GOVERNMENT CODE, CHAPTER 552----CONFIDENTIAL

This document contains information submitted to the Department of State Health Services, Radiation Control by

_____

(Name of Company)(Name of Submitter)

that is claimed to fall within the following exception to the Texas Public Information Act, Government Code, Chapter 552, Subchapter C _____

(Appropriate Subsection)

WITHHOLD FROM PUBLIC DISCLOSURE

_____

(Signature and Title) (Office) (Date)"

Figure: 25 TAC §289.233(c)(18)

$$C = \frac{s}{\overline{X}} = \frac{1}{\overline{X}} \left[\sum_{i=1}^{n} \frac{(X_i - \overline{X})^2}{n-1} \right]^{1/2}$$

Where: s = estimated standard deviation of the population
$\overline{X}$ = mean value of observations in sample
X_i = ith observation in sample
n = number of observations in sample

Figure: 25 TAC §289.233(i)(3)(F)(vii)

BRC Form 233-1 — Department of State Health Services/Radiation Control

OCCUPATIONAL EXPOSURE RECORD FOR A MONITORING PERIOD

1. NAME (LAST, FIRST, MIDDLE INITIAL)	2. IDENTIFICATION NUMBER	3. ID TYPE	4. SEX ☐ MALE ☐ FEMALE	5. DATE OF BIRTH

6. MONITORING PERIOD	7. LICENSEE OR REGISTRANT NAME	8. LICENSE OR REGISTRATION NUMBER(S)	9A. ☐ RECORD ☐ ESTIMATE	9B. ☐ ROUTINE ☐ PSE

INTAKES

10A. RADIONUCLIDE	10B. CLASS	10C. MODE	10D. INTAKE IN µCi

DOSES (in rem)

DEEP DOSE EQUIVALENT (DDE)	11.
EYE DOSE EQUIVALENT TO THE LENS OF THE EYE (LDE)	12.
SHALLOW DOSE EQUIVALENT, WHOLE BODY (SDE,WB)	13.
SHALLOW DOSE EQUIVALENT, MAX EXTREMITY (SDE,ME)	14.
COMMITTED EFFECTIVE DOSE EQUIVALENT (CEDE)	15.
COMMITTED DOSE EQUIVALENT, MAXIMALLY EXPOSED ORGAN (CDE)	16.
TOTAL EFFECTIVE DOSE EQUIVALENT ***(BLOCKS 11+15) (TEDE)***	17.
TOTAL ORGAN DOSE EQUIVALENT, MAX ORGAN ***(BLOCKS 11+16) (TODE)***	18.

19. COMMENTS

20. SIGNATURE -- LICENSEE OR REGISTRANT	21. DATE PREPARED

INSTRUCTIONS AND ADDITIONAL INFORMATION PERTINENT TO THE COMPLETION OF BRC FORM 233-1
(All doses should be stated in rems)

1. Type or print the full name of the monitored individual in the order of last name (include "Jr," "Sr," "III," etc.), first name, middle initial (if applicable).

2. Enter the individual's identification number, including punctuation. This number should be the 9-digit social security number if at all possible. If the individual has no social security number, enter the number from another official identification such as a passport or work permit.

3. Enter the code for the type of identification used as shown below:

CODE	ID TYPE
SSN	U.S. Social Security Number
PPN	Passport Number
CSI	Canadian Social Insurance Number
WPN	Work Permit Number
IND	INDEX Identification Number
OTH	Other

4. Check the box that denotes the sex of the individual being monitored.

5. Enter the date of birth of the individual being monitored in the format MM/DD/YY.

6. Enter the monitoring period for which this report is filed. The format should be MM/DD/YY - MM/DD/YY.

7. Enter the name of the licensee or registrant.

8. Enter the Agency license or registration number or numbers.

9A. Place an "X" in Record or Estimate. Choose "Record" if the dose data listed represent a final determination of the dose received to the best of the licensee's or registrant's knowledge. Choose "Estimate" only if the listed dose data are preliminary and will be superseded by a final determination resulting in a subsequent report. An example of such an instance would be dose data based on self-reading dosimeter results and the licensee intends to assign the record dose on the basis of TLD results that are not yet available.

9B. Place an "X" in either Routine or PSE. Choose "Routine" if the data represent the results of monitoring for routine exposures. Choose "PSE" if the listed dose data represents the results of monitoring of planned special exposures received during the monitoring period. If more than one PSE was received in a single year, the licensee or registrant should sum them and report the total of all PSEs.

10A. Enter the symbol for each radionuclide that resulted in an internal exposure recorded for the individual, using the format "Xx-###x," for instance, Cs-137 or Tc-99m.

10B. Enter the lung clearance class as listed in Appendix B to Part D (D, W, Y, V, or O for other) for all intakes by inhalation.

10C. Enter the mode of intake. For inhalation, enter "H." For absorption through the skin, enter "B." For oral ingestion, enter "G." For injection, enter "J."

10D. Enter the intake of each radionuclide in µCi.

11. Enter the deep dose equivalent (DDE) to the whole body.

12. Enter the eye dose equivalent (LDE) recorded for the lens of the eye.

13. Enter the shallow dose equivalent recorded for the skin of the whole body (SDE,WB).

14. Enter the shallow dose equivalent recorded for the skin of the extremity receiving the maximum dose (SDE,ME).

15. Enter the committed effective dose equivalent (CEDE) or "NR" for "Not Required" or "NC" for "Not Calculated".

16. Enter the committed dose equivalent (CDE) recorded for the maximally exposed organ or "NR" for "Not Required" or "NC" for "Not Calculated".

17. Enter the total effective dose equivalent (TEDE). The TEDE is the sum of items 11 and 15.

18. Enter the total organ dose equivalent (TODE) for the maximally exposed organ. The TODE is the sum of items 11 and 16.

19. COMMENTS.
In the space provided, enter additional information that might be needed to determine compliance with limits. An example might be to enter the note that the SDE,ME was the result of exposure from a discrete hot particle. Another possibility would be to indicate that an overexposed report has been sent to the Agency in reference to the exposure report.

20. Signature of the person designated to represent the licensee or registrant.

21. Enter the date this form was prepared.

Figure: 25 TAC §289.233(i)(4)(B)(iii)
BRC FORM 233-2

Department of State Health Services
1100 West 49th Street
P.O. Box 149347
Austin, Texas 78714-9347

NOTICE TO EMPLOYEES

TEXAS REGULATIONS FOR CONTROL OF RADIATION

The Department of State Health Services has established standards for your protection against radiation hazards, in accordance with the Texas Radiation Control Act, Health and Safety Code, Chapter 401.

YOUR EMPLOYER'S RESPONSIBILITY

Your employer is required to-

1. Apply these rules to work involving sources of radiation.
2. Post or otherwise make available to you a copy of the Department of State Health Services rules, certificates of registration, notices of violations, and operating procedures that apply to your work, and explain their provisions to you.

YOUR RESPONSIBILITY AS A WORKER

You should familiarize yourself with those provisions of the rules and the operating procedures that apply to your work. You should observe the rules for your own protection and protection of your co-workers.

WHAT IS COVERED BY THESE RULES

1. Limits on exposure to sources of radiation in restricted and unrestricted areas;
2. Measures to be taken after accidental exposure;
3. Individual monitoring devices, surveys and equipment;
4. Caution signs, labels, and safety interlock equipment;
5. Exposure records and reports;
6. Options for workers regarding agency inspections; and
7. Related matters.

REPORTS ON YOUR RADIATION EXPOSURE HISTORY

1. The rules require that your employer give you a written report if you receive an exposure in excess of any applicable limit as set forth in the rules or in the certificate of registration. The basic limits for exposure to employees are set forth in 25 Texas Administrative Code (TAC) §289.233(i)(3)(A) of this title (relating to Radiation Control Regulations for Radiation Machines Used in Veterinary Medicine). This subsection specifies limits on exposure to radiation.

2. If you work where individual monitoring devices are provided in accordance with 25 TAC §282.233(i)(3)(B) of this title;
(b) your employer must furnish to you, upon your written request, an annual written report of your exposure to radiation; and
(a) your employer must give you a written report, upon termination of your employment, of your radiation exposures if you request the information on your radiation exposure in writing.

INSPECTIONS

All licensed or registered activities are subject to inspection by representatives of the Department of State Health Services. In addition, any worker or representative of the workers who believes that there is a violation of the Texas Radiation Control Act, the rules issued there under, or the terms of the employer's license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by sending a notice of the alleged violation to the Department of State Health Services. The request must state the specific grounds for the notice, and must be signed by the worker or the representative of the workers. During inspections, agency inspectors may confer privately with workers, and any worker may bring to the attention of the inspectors any past or present condition that the individual believes contributed to or caused any violation as described above.

POSTING REQUIREMENT

Copies of this notice shall be posted in a sufficient number of places in every establishment where employees are employed in activities registered, in accordance with 25 TAC §289.233 (relating to Radiation Control Regulations for Radiation Machines Used in Veterinary Medicine), to permit employees to observe a copy on the way to or from their place of employment.

Figure: 25 TAC §289.233(j)(1)(K)(i)(II)

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_____
(Name of Company)(Name of Submitter)

which is claimed to fall within the following exception to the Texas Public Information Act, Government Code, Chapter 552, Subchapter C _____
(Appropriate Subsection)

WITHHOLD FROM PUBLIC DISCLOSURE

_____
(Signature and Title) (Office) (Date)"

Figure: 25 TAC §289.301(ee)

Specific Subsection	Name of Record	Time Interval Required for Record Keeping
(a)(1)	Current Certificate of Laser Registration	Until termination of Certificate of Laser Registration
(b)(5)	Current 25 TAC §§289.203, 289.204, 289.205, 289.231, 289.301	Until termination of Certificate of Laser Registration
(j)(8)	Receipt, transfer, and disposal	Until termination of Certificate of Laser Registration
(r)(2)	Operator instructions for safe use for laser machines being used at present time	Until termination of Certificate of Laser Registration
(t)(1)(E)	Eye protection	5 years
(y)	Measurements and instrumentation	5 years
(z)	Notification of injury other than a medical event	5 years
(aa)	Reports of injuries	5 years
(bb)	Medical event	5 years
(cc)	Reports of stolen, lost, or missing lasers or IPL devices	Until termination of Certificate of Laser Registration or 5 years for IPL devices

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Central Texas Council of Governments

Public Notice

In accordance with the Public Participation Plan that was adopted and approved by the Killeen-Temple Urban Transportation Study (K-TUTS), the following 45 day notice is hereby set for public comment from September 18, 2008 through November 1, 2008.

The K-TUTS Policy Board approved changes to the Public Participation Plan regarding number of public hearings necessary for amendments to the Metropolitan Transportation Plan (MTP) and the Transportation Improvement Plan (TIP). Currently, there are five public hearings required to be held in the K-TUTS region when MTP and/or TIP amendments are approved by the K-TUTS Policy Board. The K-TUTS Policy Board approved changing the number of public hearings to two and clearly stating that there would be one public hearing on the east side of the K-TUTS boundary (in the city of Temple or Belton) and the second public hearing should be held on the west side (in the city of Harker Heights, Killeen, or Copperas Cove). The change also reflected that the public hearing locations should be altered regularly between the cities on the east and west, however, amendments to the TIP or MTP will require a public hearing in a location close to the affected area if possible and appropriate.

Please submit public comments to this public notice to K-TUTS Staff, Central Texas Council of Governments, P.O. Box 729, Belton, Texas 76513, or contact Annette Shepherd, K-TUTS MPO Director, at (254) 770-2200.

To view the Public Participation Plan that is in its 45-day public comment period, please go to the K-TUTS website at www.ktuts.org.

TRD-200805084
Annette Shepherd
K-TUTS MPO Director
Central Texas Council of Governments
Filed: September 18, 2008

♦ ♦ ♦

Comptroller of Public Accounts

Revised Notice of Contract Awards

Pursuant to Chapter 403, Chapter 2254, Subchapter A, Texas Government Code, and Chapter 111 Texas Tax Code, the Comptroller of Public Accounts (Comptroller) announces this notice of contract awards.

The Comptroller's Request for Qualifications 183b (RFQ) related to these contract awards was published in the April 25, 2008, *Texas Register* (33 TexReg 3459).

The contractors will provide Professional Contract Auditing Services as authorized by Subchapter A, Chapter 111, §111.0045 of the Texas Tax Code as described in the Comptroller's RFQ.

The Comptroller announces that eleven (11) contracts were awarded on August 13, 14 and 15, 2008 as follows:

A contract is awarded to Jacqueline A. Muhammad d/b/a Alexander Consulting, 11303 Chimney Rock Road, Suite 109, Houston, Texas 77035. Examinations will be assigned in $33,000 increments or packages but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is August 13, 2008 through August 31, 2009, with two (2) one (1) year options to renew.

A contract is awarded to Energy Network, Inc., 4646 Hwy 6 South, PMB #135, Sugar Land, Texas 77478-5214. Examinations will be assigned in $33,000 increments or packages but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is August 13, 2008 through August 31, 2009, with two (2) one (1) year options to renew.

A contract is awarded to Dorothea Brooks, CPA, 1203 South Houston Ave, Humble, Texas 77338. Examinations will be assigned in $33,000 increments or packages but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is August 13, 2008 through August 31, 2009, with two (2) one (1) year options to renew.

A contract is awarded to Charles Neira, 6001 Cattail, Corpus Christi, Texas 78414. Examinations will be assigned in $33,000 increments or packages but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is August 13, 2008 through August 31, 2009, with two (2) one (1) year options to renew.

A contract is awarded to Joe Wamp, 6606 Mapleshade Lane, #21F, Dallas, Texas 75252. Examinations will be assigned in $33,000 increments or packages but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is August 14, 2008 through August 31, 2009, with two (2) one (1) year options to renew.

A contract is awarded to Mark Steven Swinney d/b/a The Davis Swinney Group, 8301 North Ware Road, Suite 61, McAllen, Texas 78504. Examinations will be assigned in $33,000 increments or packages but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is August 14, 2008 through August 31, 2009, with two (2) one (1) year options to renew.

A contract is awarded to Nolton Consulting, LLC, 200 Creekside Park Drive, Johns Creek, Georgia 30022. Examinations will be assigned in $33,000 increments or packages but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is August 14, 2008 through August 31, 2009, with two (2) one (1) year options to renew.

A contract is awarded to Sandra Forbes, 19019 Neath Street, Humble, Texas 77346. Examinations will be assigned in $33,000 increments or packages but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is August 18, 2008 through August 31, 2009, with two (2) one (1) year options to renew.

A contract is awarded to State and Local Tax Group, 308 Cooper Dr., Hurst, Texas 76053. Examinations will be assigned in $33,000 increments or packages but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is August 18, 2008 through August 31, 2009, with two (2) one (1) year options to renew.

A contract is awarded to Tarrant & Bulgherini, P.C., 7109 Yucca Dr., Galveston, Texas 77551-1725. Examinations will be assigned in $33,000 increments or packages but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is August 18, 2008 through August 31, 2009, with two (2) one (1) year options to renew.

A contract is awarded to Willie L. Sullivan, Jr., 4530 Brookren Ct., Pearland, Texas 77584. Examinations will be assigned in $33,000 increments or packages but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is August 18, 2008 through August 31, 2009, with two (2) one (1) year options to renew.

TRD-200805101
Pamela G. Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: September 22, 2008

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/29/08 - 10/05/08 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 09/29/08 - 10/05/08 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 10/01/08 - 10/31/08 is 5.00% for Consumer/Agricultural/Commercial/credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 10/01/08 - 10/31/08 is 5.00% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200805136
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 24, 2008

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Texas Education Agency

Request for Applications Concerning Texas High School Redesign and Restructuring Grant, Cycle 5

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-09-101 from school districts and open-enrollment charter schools that include a Grades 9-12 campus of at least 125 students that received a final rating of *Academically Unacceptable* under the state accountability rating system for the 2007-2008 school year. A district or open-enrollment charter school must submit a separate application on behalf of each eligible high school. A high school that is eligible to participate in the Texas High School Redesign and Restructuring Grant, Cycle 5, shall serve students in two or more of Grades 9, 10, 11, or 12; have at least 50 percent of its student population in Grade 9 or higher; and serve at least 125 students in Grades 9-12. Additional eligibility requirements apply, as specified in the RFA.

Description. The purpose of the Texas High School Redesign and Restructuring Grant, Cycle 5, is to provide high school campuses rated *Academically Unacceptable* under the standard accountability procedures of the state accountability rating system with the resources to build capacity for implementing innovative, schoolwide initiatives designed to improve student performance on the campus. Additionally, this grant seeks to create a demonstration project that will provide case studies and models for successful practices in turning around *Academically Unacceptable* high schools. The goals of the program are to correct the specific area of unacceptable performance identified in the final campus accountability data tables; demonstrate innovative management and instructional practices; develop district leadership capacity; develop leadership capacity in principals and other campus leaders; improve the instructional capacity and effectiveness of the school; increase overall student achievement; raise academic standards and expectations for all students; and improve the overall climate and culture of the campus.

Dates of Project. The Texas High School Redesign and Restructuring Grant, Cycle 5, will be implemented during the 2008-2009, 2009-2010, and 2010-2011 school years. Applicants should plan for a starting date of no earlier than March 1, 2009, and an ending date of no later than February 28, 2011.

Project Amount. Funding will be provided for approximately 18 projects. Each project will receive a maximum of $200,000 for the grant period. Project funding in subsequent periods will be based on satisfactory progress of the first-period objectives and activities, on general budget approval by the commissioner of education, and on appropriations by the state legislature.

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. 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.

Requesting the Application. Due to the high cost of printing and mailing RFAs, they will no longer be available in print. 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 Donnell Bilsky, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries 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, November 20, 2008, to be eligible to be considered for funding.

TRD-200805138
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: September 24, 2008

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Employees Retirement System of Texas

Request for Proposals

Employees Group Benefits Program Qualified Third Party Administrator to Administer a Self-Funded Dental Indemnity Plan, and/or Fully Insured Dental Health Maintenance Organization Plan

In accordance with Texas Insurance Code, Chapter 1551, the Employees Retirement System of Texas ("ERS") is issuing a Request for Proposals ("RFP") for qualified third party administrators ("TPA") and/or qualified dental health maintenance organizations ("DHMO") to provide administrative services for: a self-funded Dental Indemnity Plan, and fully insured DHMO Plan throughout Texas under the Texas Employees Group Benefits Program ("GBP") beginning September 1, 2009 through August 31, 2013. Qualified Vendors must provide the level of benefits required in the RFP and meet other requirements that are in the best interest of the GBP participants and ERS and shall be required to execute a Contractual Agreement ("Contract") provided by and satisfactory to ERS. It is ERS' intent to provide a dental program to satisfy the needs of GBP participants which may or may not include a DHMO or dental discount services option.

A Vendor wishing to respond to this request must: 1) maintain its principal place of business in the United States of America and shall have a Certificate of Authority and/or license to do business in Texas from the Texas Department of Insurance, 2) have been providing dental administrative services, and dental benefits and services in Texas at least since March 1, 2008, 3) demonstrate that it has a provider network as of the due date of the proposal response adequate throughout the state of Texas to provide access to dental care for a minimum of 125,000 Indemnity and/or 200,000 DHMO GBP dental participants, and 4) have a current net worth of $5 million as evidenced by a 2007 audited financial statement and a minimum of at least $2 million of cash and cash equivalents available, on average, throughout its 2007 financial period. While the RFP does not require the Vendor to provide DHMO services for all Texas counties, preferential consideration will be given to qualified Vendors providing the most significant network coverage for the entire state of Texas. Qualified Vendors may submit a proposal and bid response materials to provide services for one, or both dental benefit plans.

The RFP will be available in mid-October from ERS' website and will include documents for the Vendor's review and response. To access the secured portion of the RFP website, interested Vendors must email their request to the attention of IVendor Mailbox at: ivendorquestions@ers.state.tx.us. The email request must include the Vendor's legal name, street address, phone and fax numbers, and email address for the organization's direct point of contact. Upon receipt of your emailed request, a user ID and password will be issued to the requesting organization that will permit access to the secured RFP. General questions concerning the RFP should be sent to the IVendor Mailbox as well. Inquires and responses, if applicable, are updated frequently. The RFP will be discussed at a mandatory web conference on November 12, 2008, beginning at 2:00 p.m. (CT). Vendors are required to register for participation in the web conference no later than 4:00 p.m. (CT) on November 7, 2008, by emailing an acknowledgment to the IVendor Mailbox as referenced above.

To be eligible for consideration, the Vendor is required to submit a sealed proposal as more fully specified in the RFP. Vendor is required to submit a total of seven (7) sets of the proposal. One (1) "Original" with the fully executed Business Associate Agreement ("BAA"), **signed in blue ink**, and without amendment or revision and an additional three (3) bound duplicates of the proposal, including all required exhibits must be provided in printed format. The remaining three complete copies shall be submitted on three (3) separate CD-ROMs in Excel or Word format. No PDF documents (with the exception of sample marketing materials and financial materials) may be reflected on the CD-ROMs. All materials must be executed as noted above and must be received by ERS no later than 12:00 Noon (CT) on November 25, 2008.

ERS will base its evaluation and selection of a Vendor on factors including, but not limited to the following, which are not necessarily listed in order of priority: compliance with the RFP, ability to meet minimum requirements, preferred criteria, references, operating requirements, provider network and discounts, experience serving large group programs, administrative quality, program fees and other relevant criteria. Each proposal will be evaluated both individually and relative to the proposal of other qualified Vendors. Complete specifications will be included with the RFP.

ERS reserves the right to reject any and/or all proposals and/or call for new proposals if deemed by ERS to be in the best interests of the GBP, its participants or ERS. ERS also reserves the right to reject any proposal submitted that does not fully comply with the RFP's instructions and criteria. ERS is under no legal requirement to execute a Contractual Agreement on the basis of this notice or upon issuance of the RFP and will not pay any costs incurred by any entity in responding to this notice or the RFP or in connection with the preparation thereof. ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where ERS deems it to be in the best interest of the GBP, its participants or ERS.

TRD-200805098
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: September 22, 2008

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that, before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 3, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 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 November 3, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: 1403, INC dba On the Move 9; DOCKET NUMBER: 2008-0488-PST-E; IDENTIFIER: RN102272408; LOCATION: Austin, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §115.222(3) and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with control requirements for emission limitation; 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the underground storage tanks (USTs); and 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; PENALTY: $8,000; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(2) COMPANY: Aqua Utilities, Inc.; DOCKET NUMBER: 2008-0842-MWD-E; IDENTIFIER: RN101513729; LOCATION: Hays County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013293001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted limits for total suspended solids (TSS); and 30 TAC §305.125(17) and TPDES Permit Number WQ0013293001, Monitoring and Reporting Requirements, by failing to submit monitoring results; PENALTY: $5,850; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(3) COMPANY: City of Bellevue; DOCKET NUMBER: 2008-0352-MWD-E; IDENTIFIER: RN101720779; LOCATION: Clay County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.65 and §305.125(2) and the Code, §26.121(a), by failing to maintain authorization for the discharge of wastewater; PENALTY: $20,100; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: City of Burkburnett; DOCKET NUMBER: 2008-0689-MWD-E; IDENTIFIER: RN101920452; LOCATION: Wichita County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(5) and TPDES Permit Number WQ0010002001, Operational Requirements Number 1, by failing to properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) installed or used by the permittee to achieve compliance; 30 TAC §305.125(1), TPDES Permit Number WQ0010002001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the effluent permit limits for TSS and fecal coliform bacteria; and 30 TAC §305.125(1), TPDES Permit Number WQ0010002001, Effluent Limitations and Monitoring Requirements Number 4, Permit Conditions 2.d., and the Code, §26.121(a), by failing to prevent an estimated 775,000 gallon discharge of domestic sludge; PENALTY: $23,800; Supplemental Environmental Project (SEP) offset amount of $23,800 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Household Hazardous Waste Clean-Up; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: CFF Recycling USA, Inc.; DOCKET NUMBER: 2008-0675-AIR-E; IDENTIFIER: RN104772967; LOCATION: Houston, Harris County; TYPE OF FACILITY: metal recycling plant; RULE VIOLATED: 30 TAC §§106.4(c), 106.261(a)(2), 106.262(a)(2), and 116.110(a)(4) and THSC, §382.085(b), by failing to include the type of contaminant released and the estimated total quantity released in the final record for each event; and 30 TAC §205.6 and the Code, §5.702, by failing to pay general permits storm water fees and applicable late fees; PENALTY: $11,550; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Charles Clarkson; DOCKET NUMBER: 2008-1331-WOC-E; IDENTIFIER: RN105549729; LOCATION: Erath County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Cliff Lewis Custom Homes, LLC; DOCKET NUMBER: 2008-0996-WQ-E; IDENTIFIER: RN105205975; LOCATION: Southlake, Denton County; TYPE OF FACILITY: residential construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $800; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Currey Decatur Truckstop, Inc. dba Currey Decatur Truckstop; DOCKET NUMBER: 2008-0959-PST-E; IDENTIFIER: RN101898872; LOCATION: Decatur, Wise County; TYPE OF FACILITY: truckstop and convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors; and 30 TAC §334.48(c), by failing to conduct

effective manual or automatic inventory control procedures for all USTs; PENALTY: $11,096; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: City of Dallas Parks & Recreation Department; DOCKET NUMBER: 2008-1338-WQ-E; IDENTIFIER: RN105492193; LOCATION: Dallas County; TYPE OF FACILITY: recreational; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Explorer Pipeline Company; DOCKET NUMBER: 2008-1073-AIR-E; IDENTIFIER: RN101954394; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum storage; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit (FOP) Number O-02780, General Terms and Conditions, and THSC, §382.085(b), by failing to submit an annual compliance certification; PENALTY: $2,850; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: Ben Gregory; DOCKET NUMBER: 2008-0659-MSW-E; IDENTIFIER: RN105444525; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: composting and hybrid plant farm; RULE VIOLATED: 30 TAC §§328.4, 328.5, and 330.11, by failing to submit a notice of intent or obtain other authorization for the storage and processing of compost; PENALTY: $1,000; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Hartmut Mueller dba Hofbrau RV Park; DOCKET NUMBER: 2008-1007-PWS-E; IDENTIFIER: RN105502793; LOCATION: Round Mountain, Blanco County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(c), by failing to obtain commission approval prior to construction of a public water supply; and 30 TAC §290.42(b)(1), by failing to provide disinfection facilities for microbiological control and distribution protection; PENALTY: $600; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(13) COMPANY: City of Huntsville; DOCKET NUMBER: 2008-0740-MWD-E; IDENTIFIER: RN101609568; LOCATION: Walker County; TYPE OF FACILITY: wastewater collection system and wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0010781004, Operational Requirements Number 1, by failing to properly operate and maintain the facility; and 30 TAC §305.125(4), TPDES Permit Number WQ0010781004, Permit Conditions Number 2.g., and the Code, §26.121, by failing to prevent unauthorized discharges from the collection system; PENALTY: $8,675; SEP offset amount of $6,940 applied to RC&D ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Billy Jones; DOCKET NUMBER: 2008-1335-WOC-E; IDENTIFIER: RN105552814; LOCATION: Kosse, Limestone County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Kleberg County; DOCKET NUMBER: 2008-0481-MLM-E; IDENTIFIER: RN102761442; LOCATION: Kleberg County; TYPE OF FACILITY: citizen's collection station; RULE VIOLATED: 30 TAC §§330.15, 330.209(a), and 330.213(a), by failing to operate the site as outlined in the notice of intent; the Code, §26.121(a)(1), by discharging wastewater into or adjacent to any water in the state without authorization; and 30 TAC §21.4 and §303.71 and the Code, §5.702, by failing to pay consolidated water quality fees and water master assessment fee; PENALTY: $3,150; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 6300 Ocean Drive, Suite 2500, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(16) COMPANY: Roberto Mendez and Zoila Mendez; DOCKET NUMBER: 2008-0708-PWS-E; IDENTIFIER: RN105473599; LOCATION: San Isidro, Starr County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(A) and (D), by failing to locate a well site for public drinking water at least 150 feet from a septic tank drainfield and ensure livestock are not allowed within 50 feet of the well; 30 TAC §290.41(c)(3)(O), by failing to provide an intruder-resistant fence or lockable building to protect the water system well; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device; 30 TAC §290.41(c)(3)(J), by failing to provide the well with a concrete sealing block; 30 TAC §290.42(b)(1), by failing to provide disinfection facilities for all ground water supplies; 30 TAC §290.46(f), by failing to compile and maintain records of water works operation and maintenance activities; 30 TAC §290.41(c)(1)(F), by failing to secure sanitary control easements; 30 TAC §290.41(c)(3)(K), by failing to properly seal the well head and provide a well casing vent with an opening that is covered with a 16-mesh or finer corrosion resistant screen; 30 TAC §290.39(m), by failing to provide written notification of the reactivation of an existing public water system to the commission; and 30 TAC §290.41(c)(3)(A), by failing to submit well completion data; PENALTY: $2,250; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247.

(17) COMPANY: Martin Muniz and Emma Muniz; DOCKET NUMBER: 2008-0529-WQ-E; IDENTIFIER: RN105378962; LOCATION: Odessa, Ector County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

(18) COMPANY: Northwest Harris County Municipal Utility District Number 20; DOCKET NUMBER: 2008-0841-MWD-E; IDENTIFIER: RN103907002; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013625001, Interim II Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for carbonaceous biochemical oxygen demand, ammonia nitrogen, and TSS; PENALTY: $9,525; SEP offset amount of $7,620 applied to Gulf Coast Waste Disposal Authority ("GCWDA") - River, Lakes, Bay 'N Bayous Trash Bash; ENFORCEMENT COORDINATOR: Mark Oliver, (512) 239-3308; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: Race 4 Time, Inc.; DOCKET NUMBER: 2008-0887-SLG-E; IDENTIFIER: RN105499206; LOCATION: Higgins, Lipscomb County; TYPE OF FACILITY: sludge transporting operation; RULE VIOLATED: 30 TAC §312.142(a), by failing to

apply for and receive a sludge transporter registration; and 30 TAC §312.143 and the Code, §26.121(a), by failing to deposit wastes at a facility designated by or acceptable to the generator; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(20) COMPANY: Range Resources Corporation; DOCKET NUMBER: 2008-1339-WR-E; IDENTIFIER: RN105295463; LOCATION: Tarrant County; TYPE OF FACILITY: natural gas drilling; RULE VIOLATED: 30 TAC §11.081 and §11.121, by impounding, diverting, or using state water without a required permit; PENALTY: $350; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Rhodia Inc.; DOCKET NUMBER: 2008-0817-AIR-E; IDENTIFIER: RN100211317; LOCATION: Baytown, Harris County; TYPE OF FACILITY: sulfuric acid manufacturing plant; RULE VIOLATED: 30 TAC §§106.454(1)(E), 115.412(1)(C), and 122.143(4), FOP Number O-01610, Special Terms and Condition (STC) Number 6, and THSC, §382.085(b), by failing to post signage summarizing proper operating procedures to minimize emissions on or near the degreaser; 30 TAC §116.115(b)(2)(E)(i) and §122.143(4), New Source Review (NSR) Permit Number 56534, General Condition Number 7, FOP Number O-01610, STC Number 6, and THSC, §382.085(b), by failing to provide sufficient documentation to demonstrate compliance; 30 TAC §117.354(b) (formerly 30 TAC §117.520(c)(2)), and §122.143(4), FOP Number O-01610, STC Number 10A, and THSC, §382.085(b), by failing to submit a final control plan for nitrogen oxide; and 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Number 9565/PSD-TX-695M2, Special Condition (SC) Number 8, and THSC, §382.085(b), by failing to conduct stack test to demonstrate compliance; PENALTY: $7,564; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: Rhodia Inc.; DOCKET NUMBER: 2008-0888-PWS-E; IDENTIFIER: RN100211317; LOCATION: Baytown, Harris County; TYPE OF FACILITY: chemical company with a public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the maximum contaminant level for total trihalomethanes; PENALTY: $937; ENFORCEMENT COORDINATOR: Amanda Henry (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: Jimmy L. Rodriguez; DOCKET NUMBER: 2008-1330-WOC-E; IDENTIFIER: RN103364360; LOCATION: Ellis County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Samy Retail Services Inc. dba Stop & Go 10; DOCKET NUMBER: 2008-1357-PST-E; IDENTIFIER: RN102379443; LOCATION: Laredo, Webb County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), by failing to provide release detection; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(25) COMPANY: Smith & Coffman, Limited dba Running W Truck Stop; DOCKET NUMBER: 2008-0768-IWD-E; IDENTIFIER: RN104435821; LOCATION: Lindale, Smith County; TYPE OF FACILITY: commercial truck stop; RULE VIOLATED: 30 TAC §305.125(1), TPDES General Permit Number TXG830129 Part III Section A Effluent Limitations, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for total benzene, toluene, ethylbenzene, and total xylenes; 30 TAC §305.125(1) and §319.5(b) and TPDES General Permit Number TXG830129 Part III Section A Effluent Limitations, by failing to collect and analyze samples for a required parameter at the minimum frequency specified in the permit; and 30 TAC §305.125(17) and TPDES General Permit Number TXG830129 Part IV Standard Permit Condition 7(f), by failing to submit the discharge monitoring report results; PENALTY: $11,503; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(26) COMPANY: Gerardo Romero dba Sol Y Mar; DOCKET NUMBER: 2008-0848-PWS-E; IDENTIFIER: RN105377410; LOCATION: Hidalgo County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(A), by failing to locate the public water system's well at least 150 feet of a septic tank perforated drainfield; 30 TAC §290.41(c)(1)(F), by failing to secure a sanitary control easement; 30 TAC §290.41(c)(3)(A), by failing to submit well completion data; 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block; 30 TAC §290.41(c)(3)(K), by failing to seal the water system's wellhead with a gasket or sealing compound and by failing to provide a well casing vent covered with a 16-mesh or finer corrosion-resistant screen; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for the water system's well; 30 TAC §290.41(c)(3)(O), by failing to provide a properly constructed intruder-resistant fence; 30 TAC §290.42(b)(1), by failing to provide disinfection facilities for microbiological control and distribution protection; 30 TAC §290.39(e)(1) and §290.46(a), by failing to submit plans and specifications to the executive director for review and approval; and 30 TAC §290.46(f), by failing to maintain a record of water works operation and maintenance activities and periodic operating reports; PENALTY: $2,850; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(27) COMPANY: Texas Business Networks Inc. dba Country Store 2; DOCKET NUMBER: 2008-0725-PST-E; IDENTIFIER: RN102716875; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; and 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; PENALTY: $2,200; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(28) COMPANY: The Imaging Bureau, Inc.; DOCKET NUMBER: 2008-1024-AIR-E; IDENTIFIER: RN100777648; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: commercial printing business; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 47553, SC Numbers 2, 11, and 15, and THSC, §382.085(b), by failing to post required information on all equipment; 30 TAC §115.442(1)(F)(ii) and §116.115(c), Permit Number 47553, SC Numbers 5B, 26A, and 26C, and THSC, §382.085(b), by failing to use cleaning solutions with a volatile organic compound content less than 70% and store waste ink, solvents, printing oil, and cleanup cloths in closed containers; 30 TAC §116.115(c), Permit Number 47553, SC Number 9, and THSC, §382.085(b), by failing to cease operation of the heatset press and dryer; 30 TAC §116.115(c), Permit Number 47553, SC Numbers 12, 13, 18, and 22, and THSC, §382.085(b),

by failing to perform required inspections; 30 TAC §115.446(1) and §116.115(c), Permit Number 47553, SC Numbers 10 and 20, and THSC, §382.085(b), by failing to equip the catalytic oxidizer with a continuous temperature recorder and calibrate the thermal oxidizer continuous temperature recorder; 30 TAC §116.115(c) and §115.446(7), Permit Number 47553, SC Numbers 25C, D, and I, and THSC, §382.085(b), by failing to maintain complete records; and 30 TAC §116.115(c), Permit Number 47553, SC Number 24C(1), and THSC, §382.085(b), by failing to submit proposed sampling methods within 30 days after the printing press, dryer, and the catalytic oxidizer reaches normal operating conditions; PENALTY: $6,290; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: Top Gun Gunite Company-GP LLC; DOCKET NUMBER: 2008-0381-AIR-E; IDENTIFIER: RN105376057; LOCATION: Houston, Harris County; TYPE OF FACILITY: bulk material handling plant; RULE VIOLATED: 30 TAC §116.110(a)(1) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization prior to operating a plant; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(30) COMPANY: UMER INTERNATIONAL, INC. dba Ellington Food Store; DOCKET NUMBER: 2008-0892-PST-E; IDENTIFIER: RN100876333; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(1)(C) and THSC, §382.085(b), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible systems; PENALTY: $950; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(31) COMPANY: Rhonda C. Vanover; DOCKET NUMBER: 2008-1332-WOC-E; IDENTIFIER: RN103270385; LOCATION: Wolfforth, Lubbock County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(32) COMPANY: City of Walnut Springs; DOCKET NUMBER: 2008-0548-MWD-E; IDENTIFIER: RN101918472; LOCATION: Walnut Springs, Bosque County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(4), TPDES Permit Number WQ0013436001, Standard Provisions Number 2.b., and the Code, §26.121(a), by failing to prevent the unauthorized discharge of wastewater; PENALTY: $1,250; SEP offset amount of $1,000 applied to RC&D; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(33) COMPANY: City of Windthorst; DOCKET NUMBER: 2008-0825-MWD-E; IDENTIFIER: RN101512747; LOCATION: Archer County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.65 and §305.125(2) and the Code, §26.121(a), by failing to maintain authorization for the discharge of wastewater via irrigation; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(34) COMPANY: W M Group, LP dba R&W Sand and Gravel; DOCKET NUMBER: 2008-1336-WQ-E; IDENTIFIER: RN104876529; LOCATION: San Jacinto County; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(35) COMPANY: Zion Lutheran Church of Mission Valley, Texas; DOCKET NUMBER: 2008-0987-PWS-E; IDENTIFIER: RN105518682; LOCATION: Victoria County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(e)(3), by failing to provide disinfection equipment; and 30 TAC §290.39(m), by failing to provide notification to the commission of the startup of a new public water supply system; PENALTY: $325; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-200805110
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 23, 2008

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Enforcement Orders

An agreed order was entered regarding Chilton Water Supply and Sewer Service Corporation, Docket No. 2005-887-MWD-E on September 12, 2008 assessing $22,750 in administrative penalties with $19,150 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Neptune International, Inc. dba Pick N Pay, Docket No. 2005-0961-PST-E on September 12, 2008 assessing $19,950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MarioYague dba Arvey Park, Docket No. 2005-1018-PWS-E on September 12, 2008 assessing $2,745 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding SAO Traders, Inc. dba Stop N Drive 2, Docket No. 2005-1174-PST-E on September 12, 2008 assessing $9,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Meadows at Quail Run GP, LLC, Docket No. 2005-1956-MWD-E on September 12, 2008 assessing $27,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Waste Control Specialists LLC, Docket No. 2006-0796-MLM-E on September 12, 2008 assessing $151,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Mosley, Staff Attorney at (512) 239-0627, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2006-0875-AIR-E on September 12, 2008 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Oloko, Staff Attorney at (713) 422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding New Progress Water Supply Corporation dba Enchanted Oaks Subdivision, Spring Valley Estates, Highland Lakes Subdivision and Ponderosa Hills Subdivision, Docket No. 2006-1037-MLM-E on September 12, 2008 assessing $20,945 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ya Razzak Inc. dba Fast Track, Docket No. 2006-1371-AIR-E on September 12, 2008 assessing $1,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FPN Enterprises, Inc. dba Kuykendahl Valero, Docket No. 2006-2257-PST-E on September 12, 2008 assessing $4,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jesus Marroquin, Docket No. 2007-0301-MSW-E on September 12, 2008 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Michael Lantz O'Neill dba Frontier Park Marina, Docket No. 2007-0712-PWS-E on September 12, 2008 assessing $6,670 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding R & S Concrete, L.L.C., Docket No. 2007-0882-IWD-E on September 12, 2008 assessing $4,560 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham Richard, Staff Attorney at (512) 239-0107, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Webb County, Docket No. 2007-1035-PWS-E on September 12, 2008 assessing $5,980 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bill Phillips Scrub-A-Dub Barrel Company, Docket No. 2007-1088-IHW-E on September 12, 2008 assessing $10,350 in administrative penalties with $2,070 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator at (512) 239-0086, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2007-1188-AIR-E on September 12, 2008 assessing $51,984 in administrative penalties with $10,396 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Murphy Oil USA, Inc. dba Murphy Oil, Docket No. 2007-1242-AIR-E on September 12, 2008 assessing $7,520 in administrative penalties with $1,504 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Chemical LP, Docket No. 2007-1472-AIR-E on September 12, 2008 assessing $70,415 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Belvan Corp., Docket No. 2007-1548-AIR-E on September 12, 2008 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Aaron Houston, Enforcement Coordinator at (409) 899-8784, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Oil Company, Docket No. 2007-1789-AIR-E on September 12, 2008 assessing $80,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Juan Antonio Diaz dba Tony's Tire Service, Docket No. 2007-1821-MSW-E on September 12, 2008 assessing $12,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 767-3500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shirley Creek Marina, Inc., Docket No. 2007-1849-MWD-E on September 12, 2008 assessing $13,338 in administrative penalties with $2,668 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sam Cicalo dba Sam's Horse and Stock Trailers, Docket No. 2007-1979-AIR-E on September 12, 2008 assessing $6,300 in administrative penalties with $1,260 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North Texas Municipal Water District, Docket No. 2007-1998-MLM-E on September 12, 2008 assessing $58,475 in administrative penalties with $11,695 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 50'S Group Properties, Ltd. dba LONE STAR BEEF PROCESSORS, Docket No. 2008-0041-MLM-E on September 12, 2008 assessing $2,850 in administrative penalties with $570 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Richard Martini, Docket No. 2008-0042-WOC-E on September 12, 2008 assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator at (512) 239-2563, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Wortham, Docket No. 2008-0044-PWS-E on September 12, 2008 assessing $5,301 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sabina Petrochemicals LLC, Docket No. 2008-0095-AIR-E on September 12, 2008 assessing $19,400 in administrative penalties with $3,880 deferred.

Information concerning any aspect of this order may be obtained by contacting Aaron Houston, Enforcement Coordinator at (409) 899-8784, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Moore's Water System Of Beaver Lake, Inc., Docket No. 2008-0105-PWS-E on September 12, 2008 assessing $577 in administrative penalties with $115 deferred.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KBEC Corporation dba Phillips 66 27502, Docket No. 2008-0138-PST-E on September 12, 2008 assessing $2,040 in administrative penalties with $408 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Development II Partners, Inc. dba Exxon on the Run, Docket No. 2008-0150-PST-E on September 12, 2008 assessing $5,625 in administrative penalties with $1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding La Porte Methanol Company, L.P., Docket No. 2008-0157-AIR-E on September 12, 2008 assessing $3,925 in administrative penalties with $785 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Faith West, Inc., Docket No. 2008-0171-PWS-E on September 12, 2008 assessing $1,920 in administrative penalties with $384 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Petrochemicals LP, Docket No. 2008-0182-AIR-E on September 12, 2008 assessing $7,300 in administrative penalties with $1,460 deferred.

Information concerning any aspect of this order may be obtained by contacting Aaron Houston, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brothers Materials, Ltd., Docket No. 2008-0188-AIR-E on September 12, 2008 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Blooming Grove, Docket No. 2008-0195-MWD-E on September 12, 2008 assessing $6,402 in administrative penalties with $1,280 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3048, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Seminole Pipeline Company, Docket No. 2008-0200-AIR-E on September 12, 2008 assessing $10,500 in administrative penalties with $2,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Tech University, Docket No. 2008-0206-PWS-E on September 12, 2008 assessing $306 in administrative penalties with $61 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Homes Unique, Inc., Docket No. 2008-0207-WQ-E on September 12, 2008 assessing $1,425 in administrative penalties with $285 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CRVC Via Bayou, LLC, Docket No. 2008-0213-MWD-E on September 12, 2008 assessing $20,660 in administrative penalties with $4,132 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County, Docket No. 2008-0227-MWD-E on September 12, 2008 assessing $6,490 in administrative penalties with $1,298 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Roxton, Docket No. 2008-0251-MWD-E on September 12, 2008 assessing $12,595 in administrative penalties with $2,519 deferred.

Information concerning any aspect of this order may be obtained by contacting Lauren Smitherman, Enforcement Coordinator at (512) 239-5223, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Diamond Shamrock Refining Company, L.P., Docket No. 2008-0276-AIR-E on September 12, 2008 assessing $15,352 in administrative penalties with $3,070 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ranger Utility Company, Docket No. 2008-0346-PWS-E on September 12, 2008 assessing $2,030 in administrative penalties with $406 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3100, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lees United Construction Services, Inc., Docket No. 2008-0361-AIR-E on September 12, 2008 assessing $2,700 in administrative penalties with $540 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 15010, INC dba On The Move 5, Docket No. 2008-0366-PST-E on September 12, 2008 assessing $4,000 in administrative penalties with $800 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Columbia-Brazoria Independent School District, Docket No. 2008-0368-MWD-E on September 12, 2008 assessing $8,640 in administrative penalties with $1,728 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Motiva Enterprises LLC, Docket No. 2008-0389-AIR-E on September 12, 2008 assessing $9,350 in administrative penalties with $1,870 deferred.

Information concerning any aspect of this order may be obtained by contacting Aaron Houston, Enforcement Coordinator at (409) 899-8784, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fernco Development, Ltd., Lenco Development, Ltd., and Norco Development, Ltd., Docket No. 2008-0392-MWD-E on September 12, 2008 assessing $15,080 in administrative penalties with $3,016 deferred.

Information concerning any aspect of this order may be obtained by contacting Lauren Smitherman, Enforcement Coordinator at (512) 239-5223, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KM Aviation, Inc., Docket No. 2008-0396-AIR-E on September 12, 2008 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Sidney Wheeler, Enforcement Coordinator at (512) 239-4969, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Newark, Docket No. 2008-0464-PWS-E on September 12, 2008 assessing $1,130 in administrative penalties with $226 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3100, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oxbow Carbon & Minerals LLC, Docket No. 2008-0468-IWD-E on September 12, 2008 assessing $4,030 in administrative penalties with $806 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Elm Creek Water Supply Corporation, Docket No. 2008-0485-PWS-E on September 12, 2008 assessing $472 in administrative penalties with $94 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Drennan Day Custom Homes, Inc., Docket No. 2008-0491-EAQ-E on September 12, 2008 assessing $26,000 in administrative penalties with $5,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Lauren Smitherman, Enforcement Coordinator at (512) 239-5223, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Troy T. Hunt Management Corporation, Docket No. 2008-0492-WQ-E on September 12, 2008 assessing $1,650 in administrative penalties with $330 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Apple Springs Independent School District, Docket No. 2008-0510-MWD-E on September 12, 2008 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Owens Corning Composite Materials, LLC, Docket No. 2008-0547-AIR-E on September 12, 2008 assessing $14,900 in administrative penalties with $2,980 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Charles R. Brown, Docket No. 2008-0554-PST-E on September 12, 2008 assessing $4,750 in administrative penalties with $950 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Weatherford Brothers, Docket No. 2008-0566-WQ-E on September 12, 2008 assessing $1,050 in administrative penalties with $210 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bruni Rural Water Supply Corporation, Docket No. 2008-0595-MWD-E on September 12, 2008 assessing $210 in administrative penalties with $42 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Maud, Docket No. 2008-0603-MWD-E on September 12, 2008 assessing $9,400 in administrative penalties with $1,880 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 284 San Gabriel, L.L.C., Docket No. 2008-0610-WQ-E on September 12, 2008 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eastern Cass Water Supply Corporation, Docket No. 2008-0619-PWS-E on September 12, 2008 assessing $347 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Safety-Kleen Systems, Inc., Docket No. 2008-0620-IWD-E on September 12, 2008 assessing $4,070 in administrative penalties with $814 deferred.

Information concerning any aspect of this order may be obtained by contacting Lauren Smitherman, Enforcement Coordinator at (512) 239-5223, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Miller Breweries West Limited Partnership, Docket No. 2008-0633-AIR-E on September 12, 2008 assessing $1,975 in administrative penalties with $395 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M.R. Gonzalez, Docket No. 2008-0669-WQ-E on September 12, 2008 assessing $1,050 in administrative penalties with $210 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chesapeake Energy Marketing, Inc., Docket No. 2008-0684-WR-E on September 12, 2008 assessing $575 in administrative penalties with $115 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding USA Idol Inc. dba Stop & Go 5, Docket No. 2008-0247-PST-E on September 12, 2008 assessing $2,625 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding May Man Corp. dba Nevon Food, Docket No. 2008-0245-PST-E on September 12, 2008 assessing $3,500 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Entergy Gulf States, Inc., Docket No. 2008-0246-PST-E on September 12, 2008 assessing $875 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Bruce's, Inc., Docket No. 2007-0119-WQ-E on September 12, 2008 assessing $3,950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490 Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200805145
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 24, 2008

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Notice of Completion of Technical Review on Proposed Radioactive Material License

The following notice was issued during the period of September 18, 2008.

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, NOTICE OF THE COMPLETION OF TECHNICAL REVIEW WILL CONTAIN THE DEADLINE FOR SUBMITTING PUBLIC COMMENTS AND REQUESTS FOR A CONTESTED CASE HEARING.

INFORMATION SECTION

NOTICE OF DECLARATION OF ADMINISTRATIVE COMPLETENESS RADIOACTIVE MATERIAL LICENSE NUMBER R04971 APPLICATION. Waste Control Specialists (WCS) has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to Radioactive Material License R04971. Radioactive Material License R04971 authorizes radioactive waste storage and processing. The amendment application requests that the United States Environmental Protection Agency (EPA) be designated as an Authorized Federal Agency for purposes of interim storage of material derived from decommissioning the Safety Light corporation facilities located at 4150-A Old Berwick Road in Bloomsburg, Pennsylvania. The facility is located one mile north of State Highway 176, 250 feet east of the Texas and New Mexico State Line (30 miles west of Andrews, TX) in Andrews County, Texas. The application was submitted to the TCEQ on August 11, 2008. The license application is available for viewing and copying at the TCEQ's central office in Austin, Texas and at the Andrews County Library located at 109 Northwest First Street in Andrews, Texas.

ADDITIONAL NOTICE. The Executive Director of the TCEQ has determined that the application is administratively complete and will conduct a technical review of the application. After completion of the technical review, the Executive Director may prepare a draft license, technical summary, compliance summary, and if applicable, an environmental analysis and submit them to the chief clerk of the TCEQ for issuance of additional public notice. Notice of the Completion of Technical Review will be published and mailed to adjacent landowners, those who are on the county-wide mailing list, and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments and requests for a contested case hearing.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments.

OPPORTUNITY FOR A CONTESTED CASE HEARING. A contested case hearing is a legal proceeding similar to a civil trial in a state district court. The TCEQ may grant a contested case hearing on this application if a written hearing request is timely submitted.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and license number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and license number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. If you need more information about this application or the licensing process, please call TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al

1-800-687-4040. General information about TCEQ can be found at our web site at www.tceq.state.tx.us.

Further information may also be obtained from Waste Control Specialists LLC at Three Lincoln Center, 5430 LBJ Freeway, Suite 1700, Dallas, TX 75240 or by contacting Mr. Tim Greene at (888) 789-2783.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200805144
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 24, 2008

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

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 3, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 3, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: 4200 Rosedale LLC; DOCKET NUMBER: 2007-1259-PST-E; TCEQ ID NUMBER: RN101554012; LOCATION: 4200 East Rosedale Street, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: automotive repair garage with an underground storage tank (UST); 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, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.7(d)(3), by failing to notify the TCEQ of any change or additional information regarding the USTs within 30 days of the occurrence of the change; PENALTY: $3,675; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: BASF FINA Petrochemicals Limited Partnership; DOCKET NUMBER: 2005-1862-AIR-E; TCEQ ID NUMBER: RN100216977; LOCATION: 2700 Highway 366, Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petrochemical plant; RULES VIOLATED: 30 TAC §101.20(1) and §115.352(4), 40 Code of Federal Regulations (CFR) §60.482-6(a)(2), and Texas Health and Safety Code (THSC), §382.085(b), by failing to seal two open-ended valves or lines which resulted in volatile organic compound (VOC) emissions to the atmosphere; and 30 TAC §§101.20(1) and (3), 115.355(1), and 116.115(c), Air Permit Number 36644/PSD-TX-903, Special Condition (SC) Number 9F, and THSC, §382.085(b), by failing to follow 40 CFR Part 60, Appendix A, Method 21, when conducting fugitive emission monitoring; PENALTY: $59,800; Supplemental Environment Project (SEP) offset amount of $29,900 applied to South East Texas Regional Planning Commission West Port Arthur Home Energy Efficiency Project; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2005-0859-AIR-E; TCEQ ID NUMBER: RN103919817; LOCATION: 9500 Interstate 10 East, Baytown, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §101.20(3) and §116.115(c), Air Permit Number 1504A PSD-TX-748, SC Number One and THSC, §382.085(b), by failing to prevent unauthorized emissions during an October 25, 2004 emissions event; 30 TAC §116.115(c), Air Permit Number 37063, SC Number One, and THSC, §382.085(b), by failing to prevent unauthorized emissions during an emissions event that was discovered on November 29, 2004 and determined to have started on November 18, 2004; and 30 TAC §101.20(3) and §116.115(c), Air Permit Number 1504A PSD-TX-748, SC Number One, and THSC §382.085(b), by failing to prevent unauthorized emissions during a November 16, 2004 emissions event; PENALTY: $20,200; SEP offset amount of $10,100 applied to Texas Association of Resource Conservation and Development (RC and D) - Clean School Buses; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(4) COMPANY: City of Cisco; DOCKET NUMBER: 2007-1123-MLM-E; TCEQ ID NUMBERS: RN102186533 and RN101389104; LOCATION: approximately 1,900 feet east and 4,500 feet north of the intersection of United States (US) Highway 183 and US Highway 80, Eastland County, Texas (Facility A) and 400 feet west of State Highway 6 and approximately 800 feet downstream of Lake Cisco Dam, and approximately 3.5 miles north of the intersection of US Highway 80 and State Highway 6, Eastland, County, Texas (Facility B); TYPE OF FACILITIES: wastewater treatment facility (Facility A) and a public water supply (Facility B); RULES VIOLATED: 30 TAC §305.125(2) and §305.65 and Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10424001, Permit Condition Number 4.c, by failing to maintain authorization to discharge wastewater at Facility A under TPDES Permit Number 10424001; TWC, §26.121(a), by failing to prevent the unauthorized discharge of wastewater into or adjacent to water in the state from Facility A; 30 TAC §305.125(1), TWC, §26.121(a), and TPDES Permit Number 10424001, Effluent Limitations and Monitoring Requirements Number One, by failing to comply with its permitted effluent limitations at Facility A; and 30 TAC §290.110(b)(1) and (f)(4) and §290.111(b)(1)(A)(i) and (ii)

and THSC, §341.0315(c), by failing to maintain at Facility B, the turbidity level of the combined filter effluent so as not to exceed 1.0 Nephelometric Turbidity Unit (NTU), to maintain the turbidity level of the combined filter effluent so as not to exceed 0.3 NTU in at least 95% of the samples tested each month, and to meet the requirements of the disinfection protocol used by the public water system for a period longer than four consecutive hours; PENALTY: $29,235; SEP offset amount of $29,235 applied to Texas Association of RC and D - Cleanup of Unauthorized Trash Dumps; STAFF ATTORNEY: Mary R. Risner, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: Ernesto Siller; DOCKET NUMBER: 2008-0231-MSW-E; TCEQ ID NUMBER: RN105194641; LOCATION: approximately one mile south of the intersection of Farm-to-Market Road 1847 and State Highway 100, legally described as Fresnos Land and Irrg Co Subdivision 36.6 acres out of block 218, Los Fresnos, Cameron County, Texas; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the disposal of municipal solid waste at an unauthorized facility; PENALTY: $1,050; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(6) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2007-0214-AIR-E; TCEQ ID NUMBER: RN102579307; LOCATION: 2800 Decker Drive, Baytown, Harris County, Texas; TYPE OF FACILITY: oil refining and supply company; RULES VIOLATED: 30 TAC §101.222 and §116.715(a), Flexible Permit Number 18287, SC Number One, and THSC, §382.085(a), by failing to prevent unauthorized emissions and by failing to meet the demonstrations necessary for an affirmative defense; and 30 TAC §101.22 and §116.715(a), Flexible Permit Number 18287, SC Number One, and THSC, §382.085(a), by failing to prevent unauthorized emissions and by failing to meet the demonstrations necessary for an affirmative defense; PENALTY: $40,000; SEP offset amount of $20,000 applied to Houston-Galveston Area Emission Reduction Credit Organization (AERCO) Clean Cities/Clean Vehicles Program; STAFF ATTORNEY: Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(7) COMPANY: I.M.C. Waste Disposal, Inc.; DOCKET NUMBER: 2007-1176-MSW-E; TCEQ ID NUMBER: RN101306082; LOCATION: 1908 Waurika Freeway, Wichita Falls, Wichita County, Texas; TYPE OF FACILITY: municipal solid waste processing facility; RULES VIOLATED: 30 TAC §330.201(b), by failing to submit a permit modification application to incorporate the 2006 rule revisions to 30 TAC Chapter 330; PENALTY: $1,050; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: JKD Builder, LLC; DOCKET NUMBER: 2007-1672-WQ-E; TCEQ ID NUMBER: RN105360093; LOCATION: 14300 Flat Top Ranch Road, Austin, Travis County, Texas; TYPE OF FACILITY: residential construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; and TWC, §26.121(a), by failing to prevent the unauthorized discharge of sediment into or adjacent to water in the state; PENALTY: $3,600; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(9) COMPANY: Ken Jenkines; DOCKET NUMBER: 2008-0441-EAQ-E; TCEQ ID NUMBER: RN105415178; LOCATION: 3215 River Road, Comal County, Texas; TYPE OF FACILITY: approximately 9.7 acres of land; RULES VIOLATED: 30 TAC §213.4(a)(1), by failing to file and obtain approval of an Edwards Aquifer protection plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $13,500; STAFF ATTORNEY: Mary R. Risner, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: Lutenbaker-Coleman, Ltd. dba Sandy Hill Concrete fka Sandy Hill Redi-Mix, Inc.; DOCKET NUMBER: 2005-0869-WQ-E; TCEQ ID NUMBER: RN100802206; LOCATION: 3812 US Highway 287 South, Wise County, Texas; TYPE OF FACILITY: ready-mixed concrete facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a), and General Permit Number TXG110311, Part I, Section C, General Permit Limits, by failing to comply with the permitted total suspended solids daily maximum limitation of 65 milligrams per liter during February 2004 and October 2004; 30 TAC §305.125(1) and General Permit Number TXG110311, Part II, Section C.5., Monitoring Procedures, by failing to comply with the 15-minute maximum hold time to analyze for pH during February 2004 and October 2004; 30 TAC §305.125(1) and General Permit Number TXG110311, Part II, Section C.2., representative sampling, by failing to sample and analyze storm and waste water discharges in accordance with permit requirements during January, March, November, and December 2004; and 30 TAC §305.125(1) and General Permit Number TXG110311, Part I, Section E, pollution prevention plan, by failing to meet the minimum requirements of the pollution prevention plan by not including a narrative description of the activity that is a storage practice for the solid waste dredged from the washout pits, not identifying the stored dredged materials from the washout pits on the site map, and not developing and implementing measures or controls which address the storage activity of the dredged solids from the washout pits; PENALTY: $5,945; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Mannesmann DMV Stainless USA, Inc.; DOCKET NUMBER: 2007-1260-AIR-E; TCEQ ID NUMBER: RN100210962; LOCATION: 12050 West Little York Road, Houston, Harris County, Texas; TYPE OF FACILITY: steel pipe and tube manufacturing plant; RULES VIOLATED: 30 TAC §101.10(e) and THSC, §382.085(b), by failing to submit the 2002, 2003, and 2005 Annual Emissions Inventory Updates; PENALTY: $4,020; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(12) COMPANY: Shell Chemical LP and Shell Oil Company; DOCKET NUMBER: 2007-0837-AIR-E; TCEQ ID NUMBER: RN100211879; LOCATION: 5900 Highway 225, Deer Park, Harris County, Texas; TYPE OF FACILITY: petroleum refinery and a chemical plant; RULES VIOLATED: 30 TAC §106.262(a)(3) and THSC, §382.085(b), by failing to submit a PI-7 Form within 10 days following modification of the three storage tanks; 30 TAC §§115.122(a)(2)(A), 116.115(c), and 122.143(4), THSC, §382.085(b), 40 CFR §63.113(a)(2), Air Permit Number O-01945, Special Terms and Conditions Numbers 1A and 21 and Air Permit Number 3179, SC Number 2, by failing to comply with the 20 parts per million (ppm) hazardous air pollutant (HAP) limit for Spent Air Incinerator H9200;

30 TAC §§115.122(a)(2)(A), 116.115(c), and 122.143(4), THSC, §382.085(b), 40 CFR §63.113(a)(2), Air Permit Number O-01945, Special Terms and Conditions Numbers 1A and 21 and Air Permit Number 3179, SC Number 2, by failing to comply with the 20 ppm HAP limit for Spent Air Incinerator H9200; 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), Air Permit Number O-01945, Special Terms and Condition Number 21 and Air Permit Number 3179, SC Number 1, by failing to comply with the 9.0 pounds per hour actetone emissions limit for Spent Air Incinerator H9200; 30 TAC §115.122(a)(2)(A) and §122.143(4), THSC, §382.085(b) and Air Permit Number O-01945, Special Terms and Condition Number 1A, by failing to comply with the 20 ppm VOC emissions limit for Spent Air Incinerator H9200; 30 TAC §§115.352(4), 116.115(c), and 122.143(4), THSC, §382.085(b), 40 CFR §63.167(a)(1), Air Permit Number O-01945, Special Terms and Condition Numbers 1A and 21 and Air Permit Number 3179, SC Number 21E, by failing to maintain a cap, plug, or blind flange on all open-ended lines; 30 TAC §§115.354(5), 116.115(c), and 122.143(4), THSC, §382.085(b), Air Permit Number O-01945, Special Terms and Condition Numbers 1A and 21, Air Permit Number 3179, SC Number 21H and 40 CFR §63.162(f)(1), by failing to maintain a leaking component tag on leaking components until the component is repaired; 30 TAC §115.352(2) and §122.143(4), THSC, §382.085(b), Air Permit Number O-01945, Special Terms and Condition Number 1A, and 40 CFR §63.163(c)(2), by failing to make a first attempt to repair a leaking component within five days after discovery; 30 TAC §122.143(4) and §122.144(1)(E), THSC, §382.085(b) and Air Permit Number O-01945, General Terms and Conditions, by failing to maintain all required monitoring analysis data; 30 TAC §116.115(c) and §122.142(4), THSC, §382.085(b), 40 CFR §§63.11(b)(5), 63.113(a)(1)(i), 63.114(a)(2), and 63.118(a)(1), Air Permit Number O-01945, Special Terms and Condition Numbers 1A and 21, Air Permit Number 3179, SC Number 14, by failing to perform continuous monitoring of the flare pilot flame; 30 TAC §§122.143(4), 122.145(2)(C), and 122.146(2), THSC, §382.085(b) and Air Permit Number O-01945, General Terms and Conditions, by failing to submit an annual compliance certification and deviation report with 30 days after the reporting period; 30 TAC §116.715(a), THSC, §382.085(b) and Air Permit Number 21262, SC Number One, by failing to prevent unauthorized emissions during an emissions event that started on December 5, 2005; 30 TAC §116.115(b)(2)(F), THSC, §382.085(b), Air Permit Number 3219 and PSD-TX-974, by failing to prevent unauthorized emissions during a December 14, 2006 emissions event; and 30 TAC §116.115(b)(2)(F), THSC, §382.085(b), Air Permit Number 3219 and PSD-TX-974, by failing to prevent unauthorized emissions during a February 1, 2007 emissions event; PENALTY: $166,530; SEP offset amount of $83,265 applied to Houston-Galveston AERCO Clean Cities/Clean Vehicles Program; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200805113
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 23, 2008

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

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 3, 2008**. 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 November 3, 2008**. 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: Ali Shahjhan dba Brownies Convenience; DOCKET NUMBER: 2007-2035-PST-E; TCEQ ID NUMBER: RN101557205; LOCATION: 501 Bedford Road, Bedford, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by timely and proper submission of a completed UST registration and self-certification form to the agency at least 30 days before the expiration dated of the delivery certificate; 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 USTs; and 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification; PENALTY: $5,821; 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.

(2) COMPANY: Circle K Stores Inc.; DOCKET NUMBER: 2007-1914-AIR-E; TCEQ ID NUMBERS: RN101695716, RN102706314, RN101962066, RN101695765, RN102777497, and RN101695740; LOCATIONS: 10744 Vista Del Sol Drive (Circle K Stores 2700020), 6095 Montana Avenue (Circle K Stores 2705306), 10616 McCombs Street (Circle K Stores 2700481), 650 North Resler Drive (Circle K Stores 2701534), 1500 George Dieter Drive (Circle K Stores 2701506), and 11096 Pebble Hills Boulevard (Circle K Stores 2700213); TYPE OF FACILITY: convenience stores with retail sales of gasoline, El Paso, El Paso County, Texas; RULES VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to meet the minimum oxygen content of 2.7% by weight for gasoline during the

control period of October 1 through March 31 at Circle K Stores 2700020, Circle K Stores 2705306, Circle K Stores 2700481, Circle K Stores 2701534, Circle K Stores 2701506, and Circle K Stores 2700213; PENALTY: $8,040; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(3) COMPANY: FKD Enterprises Inc. dba Lucky Seven Food Mart; DOCKET NUMBER: 2007-0728-PST-E; TCEQ ID NUMBER: RN101765089; LOCATION: 5925 South Flores Street, San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to monitor the UST system at a frequency of at least once every month (not to exceed 35 days between each monitoring) in a manner which would detect a release; 30 TAC §334.10(b), by failing to maintain records pertaining to the UST system and to provide those records to commission personnel upon request; 30 TAC §334.48(c) and TCEQ Agreed Order Docket Number 2002-1035-PST-E, Section IV, Paragraphs 2.a.i. and 2.b., by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substance used as a motor fuel; and 30 TAC §334.49(c)(4), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: $14,300; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Messer Construction Company, Inc.; DOCKET NUMBER: 2007-1331-AIR-E; TCEQ ID NUMBER: RN105240550; LOCATION: Parker Ranch, 5 1/2 miles south of the intersection of United States 60 and County Road BB, Dawn, Deaf Smith County, Texas; TYPE OF FACILITY: rock crusher facility; RULES VIOLATED: 30 TAC §116.110(a), THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization to construct and operate a rock crusher; PENALTY: $50,000; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(5) COMPANY: Mike Walsh dba The Pier; DOCKET NUMBER: 2005-0253-PWS-E; TCEQ ID NUMBER: RN101259653; LOCATION: 1703 North River Hills Road, Austin, Travis County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(3)(A)(ii), by failing to collect and submit repeat samples in October 2003, and April, May and June 2004, following a coliform-positive sample; 30 TAC §290.109(c)(2)(F), by failing to collect and submit the required number of additional routine samples following a month in which a coliform-positive sample was obtained; 30 TAC §290.109(c)(1)(A) and THSC, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis for the months of May 2003, and August and September 2004; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(B), by failing to collect and submit the required number of additional routine samples following a month in which a coliform-positive sample was obtained and failed to post public notice for this noncompliance; 30 TAC §290.109(f)(1)(B) and THSC, §341.031(a), by exceeding the acute maximum contaminant level for total fecal coliform bacteria in April 2005; and 30 TAC §290.109(f)(3) and THSC, §341.031(a), by exceeding the maximum contaminant level for total coliform bacteria in May 2005; PENALTY: $4,688; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(6) COMPANY: Patrick H. Hetherly; DOCKET NUMBER: 2008-0357-PST-E; TCEQ ID NUMBER: RN101788958; LOCATION: South Highway 8, Maud, Bowie County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days from the date of occurrence of the change or addition; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account Number 0040830U for Fiscal Years 1988 - 2007; PENALTY: $8,925; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Rodolfo Ruiz; DOCKET NUMBER: 2007-0866-MSW-E; TCEQ ID NUMBER: RN104747639; LOCATION: 31875 Farm-to-Market Road 3069, Los Fresnos, Cameron County, Texas; TYPE OF FACILITY: an unauthorized tire storage/disposal site; RULES VIOLATED: 30 TAC §328.60(a), by failing to obtain a scrap tire storage site registration for storing more than 500 used/scrap tires on the ground; PENALTY: $5,250; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(8) COMPANY: Sixto Nava Alvarado dba Alvarado's Lawn and Maintenance Service; DOCKET NUMBER: 2007-1797-LII-E; TCEQ ID NUMBER: RN105300594; LOCATION: 1919 Walnut Plaza, Apartment 236, Carrollton, Dallas County, Texas; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §30.5(b), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required when not possessing a current license or registration; PENALTY: $262; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200805114
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 23, 2008

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Notice of Opportunity to Comment on Shut Down/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The com-

mission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with 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 **November 3, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/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 S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/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 S/DO shall be sent to the attorney designated for the S/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 November 3, 2008**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DO and/or the comment procedure at the listed phone numbers; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: Chantron Patrick Tes dba 34 Express; DOCKET NUMBER: 2007-1577-PST-E; TCEQ ID NUMBER: RN101435444; LOCATION: 1706 State Highway 34 South, Terrell, Kaufman County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.226(1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage I records at the station; 30 TAC §115.222(1) and THSC, §382.085(b), by failing to ensure that the gasoline container is equipped with a submerged fill pipe; 30 TAC §115.222(5) and THSC, §382.085(b), by failing to ensure that the only atmospheric emission during gasoline transfer into the storage container is through a storage container vent line equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch; 30 TAC §334.7(d)(3), by failing to provide an amended UST registration to the commission for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.8(c)(4)(B), by failing to ensure that the UST registration and self-certification form is fully and accurately completed and submitted to the agency in a timely manner; 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 USTs; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the USTs; 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 percent of the total substance flow-through for the month plus 130 gallons; 30 TAC §334.50(d)(1)(B)(iii)(I) and TWC, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §334.49(a)(4) and TWC, §26.3475(d), by failing to provide corrosion protection to all underground components of a UST system which is used to convey or contain regulated substances; PENALTY: $26,800; 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.

TRD-200805115
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 23, 2008

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Notice of Opportunity to Request a Public Meeting for Development Permit for Construction Over a Closed Municipal Solid Waste Landfill

APPLICATION. LCSWS INV LP has applied to the Texas Commission on Environmental Quality (TCEQ) for a development permit for construction over a closed municipal solid waste landfill (Proposed Permit No. CP-62023). The proposed development concerns a tract of land of about 1.377 acres located at 10341 Finnell Street, Dallas, Dallas County, Texas, and consists of an enclosed 1-story office/warehouse building, with a total footprint of about 23,380 square feet, associated driveways and parking areas, and support utilities. The development permit, if issued, will allow the applicant to build the above mentioned building over the closed municipal solid waste landfill, and to operate it in accordance with the permit. A copy of the permit application is available for public viewing at the Bachman Recreation Center, 2750 Bachman Drive, Dallas, TX 75220 between the hours of 8:30 a.m. and 8:45 p.m., Monday through Friday.

PUBLIC COMMENT/PUBLIC MEETING. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below, within 30 days from the date of newspaper publication of this Notice. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing.

If a public meeting is to be held, a public notice shall be published in a newspaper that is generally circulated in the county in which the proposed development is located. All the individuals on the adjacent landowners list shall also be notified at least 15 days prior to the meeting.

EXECUTIVE DIRECTOR ACTION. The Executive Director will issue his decision to either approve or deny the development permit application approximately 5 days following the public meeting or the ending of public comments period. Notice of decision will be mailed to the owner and to each person that requested notification of the executive director's decision. If an affected person wishes to appeal the Executive Director's decision, they may do so by filing a written Petition for

Review with the Chief Clerk of the Commission no later than 10 days after the date on which notice of the decision is mailed to the applicant and to each person who requested notification. Written Petition for Review should include: (1) your name, mailing address and daytime phone number; and (2) the permit number or other recognizable reference to this application.

INFORMATION. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-30887. Individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200805143
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 24, 2008

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Notice of Receipt of Application for a Municipal Solid Waste Management Facility

NOTICE OF RECEIPT OF APPLICATION AND INTENT TO OBTAIN A MUNICIPAL SOLID WASTE PERMIT, PERMIT NO. 2358 APPLICATION. Sanitation Solutions - Blossom Prairie Landfill, 1802 South Church Street, Paris, Lamar County, Texas 75460, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new Type I permit. The proposed Type I municipal solid waste landfill permit is requesting a permit in order to accept household waste, yard waste, commercial waste, and industrial non-hazardous waste. The facility will be located southeast of Blossom, Texas approximately one-mile southeast of the intersection of Farm-to-Market (FM-194) and County Road 15100, Lamar County, Texas. The TCEQ received the application on August 22, 2008. The permit application is available for viewing and copying at the Paris Public Library, 326 South Main Street, Paris, Lamar County, Texas.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. If you need more information about this permit application or the permitting process, please call TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about TCEQ can be found at our web site at www.tceq.state.tx.us.

Further information may also be obtained from Sanitation Solutions - Blossom Prairie Landfill at the address stated above or by calling Mr. Josh Bray, Owner at (903) 784-0124.

TRD-200805142
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 24, 2008

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Notice of Water Quality Applications

The following notices were issued during the period of September 11, 2008 through September 18, 2008.

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

CHISHOLM TRAIL SPECIAL UTILITY DISTRICT has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Permit No. WQ0014371001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 138,000 gallons per day via public access subsurface drip irrigation system with a minimum area of 31.7 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located approximately 200 feet west of Farm-to-Market Road 2338 and approximately 750 feet north of County Road 248 in Williamson County, Texas. The disposal site will be located in three areas: the primary area will be immediately north of County Road 248 and west of Farm-to-Market Road 2338 (Area 1). The secondary areas will be located immediately north of County Road 248, approximately 1,800 feet west of Farm-to-Market Road 2338 (Area 2), and immediately east of County Road 248, approximately 3,500 feet west of Farm-to-Market Road 2338 (Area 3) in Williamson County, Texas.

CITY OF HOUSTON has applied to the TCEQ for a renewal of TPDES Permit No. WQ0010495075, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,140,000 gallons per day. The facility is located approximately 0.25 miles south of the intersection of Sageville Drive and South Belt Drive and approximately 0.5 miles west of Interstate Highway 45 in southeast Houston in Harris County, Texas.

CITY OF SNYDER has applied for a renewal of TPDES Permit No. WQ0010056001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,310,000 gallons per day. The facility is located southeast of the City of Snyder, at a point approximately 5/8 mile south of Farm-to-Market Road 1605 and one mile east of State Highway 350 in Scurry County, Texas.

CLEAR LAKE CITY WATER AUTHORITY has applied for a major amendment to TPDES Permit No. WQ0010539001 to authorize the reclassification of the treatment facility from Category 'A' to Category 'B' based on 30 TAC Chapter 350, Subchapter E. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 10,000,000 gallons per day. The facility is located at 14210 Middlebrook Drive, approximately one mile northeast of the intersection of Bay Area Boulevard and Space Center Boulevard, southeast of Horsepen Bayou and adjacent to the northernmost part of the Lyndon B. Johnson Space Center in Harris County, Texas.

FIVE NINE SEVEN LIMITED PARTNERSHIP has applied for a renewal of TPDES Permit No. WQ0011038001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 32,000 gallons per day. The facility is located on the southeast side of Leonard Road (Farm-to-Market Road 1688), approximately two miles southwest of the City of Bryan in Brazos County, Texas.

FORESTAIRE ESTATES has applied for a renewal of TPDES Permit No. WQ0014500001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located on the west side of Sralla Road, approximately 1,750 feet north of the intersection of Farm-to-Market Road 1942 and Sralla Road in Harris County, Texas.

GERBEN LEYENDEKKER has applied for a Major Amendment of and conversion to a Texas Pollution Discharge Elimination System individual permit, State Registration No. WQ0003259000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to expand an existing dairy cattle facility from 700 head to a maximum capacity of 999 head, of which 999 head are milking cows. The facility is located on the south side of County Road 261 approximately 3 miles east of its intersection with Farm-to-Market Road 219 in Erath County, Texas.

R & L INVESTMENT PROPERTY LLC has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014859001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility will be located approximately 3,000 feet south of the intersection of Farm-to-Market Road 751 and Farm-to-Market Road 35 in Hunt County, Texas.

SP UTILITY COMPANY INC has applied for a renewal of TPDES Permit No. WQ0014149001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located approximately 1.69 miles southwest of the intersection of Parker Road and Stringtown Road, and approximately 2.56 miles northwest of Stringtown Road and State Highway 35 in Brazoria County, Texas.

THE 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 miles 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.

US ARMY CORPS OF ENGINEERS has applied for a renewal of TPDES Permit No. WQ0012087001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,000 gallons per day. The facility is located at Whitney Lake Dam Powerhouse, approximately 1.0 mile east of the intersection of State Highway 22 and Farm-to-Market Road 56 in Bosque County, Texas.

US ARMY CORPS OF ENGINEERS has applied for a renewal of Permit No. WQ0012254001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 3,600 gallons per day via evaporation in a 1.73 acre evaporation pond. TCEQ received this application on June 12, 2008. The wastewater treatment facility and disposal site are located Friendship Park on the north side of Granger Lake, approximately 1 mile due southeast of the eastbound extension of Farm-to-Market Road 971 in Williamson County, Texas.

WASTE MANAGEMENT OF TEXAS INC which operates Coastal Plains RDF, a Type I municipal solid waste landfill and recycling facility, has applied for a renewal of TPDES Permit No. WQ0003416000, which authorizes the discharge of groundwater from dewatering wells and non-contaminated storm water runoff from cell construction areas on an intermittent and flow variable basis via Outfall 001 and groundwater from dewatering wells and storm water on an intermittent and flow variable basis via Outfall 101. The facility is located north of State Highway 6 and south of Farm-to-Market Road 517, approximately two miles east of the intersection of State Highway 6 and State Highway 35, east of the City of Alvin, Galveston County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200805140
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 24, 2008

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Notice of Water Rights Application

Notice issued September 17, 2008.

APPLICATION NO. 14-1071A; Patrick and Sharon Lange, Applicants, P.O. Box 67, Rowena, Texas 76875, have acquired Certificate of Adjudication No. 14-1071 and have applied for an amendment to move the diversion point to a downstream location on Valley Creek, Colorado River Basin, to change the place of use for agricultural (irrigation) purposes in Runnels County, and to decrease the maximum diversion rate. More information on the application and how to participate in the permitting process is given below. The application and fees were received on February 13, 2008, and additional information was received on April 29, May 30, and July 14, 2008. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on August 13, 2008. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address.

For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200805141
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 24, 2008

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on September 17, 2008, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Hunter Webb; SOAH Docket No. 582-08-1450; TCEQ Docket No. 2007-0539-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Hunter Webb on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-200805146
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 24, 2008

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on October 21, 2008, at 9:00 a.m. to receive public comment on proposed rates for Hospice routine home, continuous home, inpatient respite, and general inpatient care. The Medicaid Hospice program is operated by the Texas Department of Aging and Disability Services. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Lone Star Conference Room of the Texas Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disability Act accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1438, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Briefing Package. A briefing package describing the proposed payment rates will be available on October 6, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1438; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Texas Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box

85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, Texas Health and Human Services Commission, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200805083
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: September 17, 2008

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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 Texas" 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
Burleson	Rajanarender R. Cholleti, M.D P.A	L06175	Burleson	00	08/29/08
Corpus Christi	Citgo Refining and Chemicals Company LP	L06183	Corpus Christi	00	09/15/08
Farmers Branch	Gemclear LP	L06189	Farmers Branch	00	09/09/08
Houston	Texas Steel Conversion	L06185	Houston	00	09/03/08
Orange	Miguel Castellanos M.D. P.A.	L06184	Orange	00	09/08/08

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	Abilene Diagnostic Clinic PLLC	L05101	Abilene	15	09/08/08
Alvin	Solutia, Inc.	L00219	Alvin	84	09/09/08
Arlington	William D. English II, M.D.	L06011	Arlington	01	09/04/08
Austin	Heart Hospital IV LP dba Heart Hospital of Austin	L05215	Austin	30	08/29/08
Austin	Texas Cardiovascular Consultants PA	L05246	Austin	31	09/03/08
Austin	Texas Oncology PA dba Positron Imaging of Austin	L05696	Austin	06	09/15/08
Beaumont	ExxonMobil Oil Corporation	L00603	Beaumont	87	09/04/08
Beaumont	RTPS Acquisition Company LLC dba Southeast Tx Cardiology Assoc II LLP	L05204	Beaumont	13	09/08/08
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	97	08/29/08
Corpus Christi	EOG Resources, Inc.	L05818	Corpus Christi	02	09/11/08
Corpus Christi	M. Ayman Ghraowi M.D. P.A. dba South Texas Institute of Cancer	L05652	Corpus Christi	07	09/12/08
Dallas	Tenet Hospitals Limited dba Doctors Hospital at White Rock Lake	L01366	Dallas	51	09/02/08
Dallas	Methodist Hospitals of Dallas Radiology Svcs.	L00659	Dallas	57	09/04/08
El Paso	Tenet Hospitals Limited dba Sierra Providence East Medical Center	L06152	El Paso	03	09/03/08
El Paso	Tenet Hospitals Limited dba Sierra Providence East Medical Center	L06152	El Paso	03	09/08/08
Ft Worth	Ft. Worth Heart P.A.	L05480	Ft Worth	25	09/10/08
Ft Worth	Weatherford International, Inc.	L00747	Ft Worth	82	09/10/08
Galveston	The University of Texas Medical Branch Office of Environmental Health and Safety	L01299	Galveston	77	09/04/08
Georgetown	St. David's Georgetown Hospital	L03152	Georgetown	40	09/12/08
Graham	Graham Regional Medical Center	L03271	Graham	21	08/29/08
Houston	Nuclear Scanning Services, Inc.	L04339	Houston	21	09/02/08
Houston	Ben Taub General Hospital Nuclear Medicine	L01303	Houston	67	09/03/08
Houston	Nuclear Imaging Services	L05775	Houston	45	09/03/08
Houston	UT M.D. Anderson Cancer Center	L00466	Houston	113	09/10/08
Houston	Red Oak Cardiovascular Center PA	L04159	Houston	15	09/12/08
Houston	Spectracell Laboratories, Inc.	L04617	Houston	13	09/05/08
Houston	River Oaks Imaging and Diagnostic	L04342	Houston	60	09/08/08
Houston	Comprehensive Heart Care PA	L05710	Houston	08	09/08/08
Houston	Okomed Downtown Imaging	L05966	Houston	02	09/08/08
Houston	Doctors Hospital 1997 LP dba Doctors Hospital Parkway	L01964	Houston	48	09/08/08
Houston	Hotwell US Ltd.	L06145	Houston	02	09/11/08

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Memorial Hermann Hospital System dba Memorial Hospital Memorial City	L01168	Houston	102	09/08/08
Houston	Domingo G Gonzalez Jr. M.D. PA dba Houston Metropolitan Cardiology Assoc.	L05283	Houston	08	09/05/08
Houston	Memorial Hermann Hospital System dba Memorial Hospital Southwest	L00439	Houston	138	09/12/08
Houston	Memorial Hermann Hospital System dba Memorial Hospital Memorial City	L01168	Houston	103	09/12/08
La Porte	Total Petrochemicals USA, Inc.	L04640	La Porte	22	09/12/08
Longview	Good Shepherd Medical Center	L02411	Longview	80	09/02/08
Lubbock	Grace Clinic	L06040	Lubbock	04	09/10/08
Lubbock	Lubbock Heart Hospital LP	L05742	Lubbock	06	09/05/08
McAllen	Rio Grande Heart Specialist of South Texas	L05509	McAllen	04	09/09/08
Mesquite	Saleem Mallick M.D. P.A.	L05132	Mesquite	14	09/04/08
Midland	American X-Ray and Inspection dba AXIS Inc.	L05974	Midland	14	09/10/08
Midlothian	Chaparral Steel Midlothian LP	L02015	Midlothian	32	09/12/08
New Braunfels	New Braunfels Cardiology	L05463	New Braunfels	09	09/10/08
Nocona	Nocona Hospital District dba Nocona General Hospital	L04977	Nocona	12	09/15/08
Odessa	Tx Oncology PA dba West Tx Cancer Center	L05140	Odessa	11	09/08/08
Palestine	Columbia Scientific Balloon Facility dba Physical Science Laboratory of New Mexico State University	L04717	Palestine	09	09/08/08
Paris	Heart Clinic of Paris PA	L06013	Paris	01	09/08/08
Pasadena	Basell USA, Inc.	L01854	Pasadena	38	09/02/08
Plainview	Plainview Cardiology PA	L05446	Plainview	08	09/08/08
Plano	Presbyterian Hospital of Plano	L04467	Plano	51	09/03/08
Plano	Columbia Medical Center of Plano Subsidiary LP dba Medical Center of Plano	L02032	Plano	89	09/11/08
Rowlett	Rowlett Cardiology Associates PA dba Texas Cardiac Associates	L05450	Rowlett	07	09/02/08
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	116	08/29/08
San Antonio	Methodist Healthcare System of San Antonio dba Methodist Hospital	L00594	San Antonio	246	08/29/08
San Antonio	Methodist Healthcare System of San Antonio dba Methodist Hospital	L00594	San Antonio	247	09/10/08
San Antonio	South Texas Radiology Imaging Centers	L03518	San Antonio	63	09/11/08
San Antonio	University of Texas Health Science Center at San Antonio	L01279	San Antonio	117	09/08/08
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	166	09/11/08
San Marcos	Central Texas Medical Center	L03133	San Marcos	24	09/10/08
San Marcos	Central Texas Center for Cancer Care	L05189	San Marcos	04	09/09/08
Sherman	Sherman Heart Group LLP	L05498	Sherman	11	09/10/08
The Woodlands	Opexa Therapeutics, Inc.	L05592	The Woodlands	09	09/10/08
The Woodlands	Memorial Hospital The Woodlands	L03772	The Woodlands	63	09/10/08
Three Rivers	Diamond Shamrock Refining Company LP dba Valero Three Rivers Refinery	L03699	Three Rivers	19	09/11/08
Throughout Tx	Enprotec, Inc.	L04266	Abilene	16	09/03/08
Throughout Tx	Desert Industrial X-Ray LP	L04590	Abilene	86	09/02/08
Throughout Tx	RSI Inspection LLC	L05624	Abilene	17	08/28/08
Throughout Tx	Desert Industrial X-Ray LP	L04590	Abilene	88	09/11/08
Throughout Tx	Desert Industrial X-Ray LP	L04590	Abilene	87	09/04/08
Throughout Tx	J-W Wireline Company	L06132	Addison	06	09/08/08
Throughout Tx	Recon Petrotechnologies, Inc.	L06026	Alvarado	07	09/10/08
Throughout Tx	Team Industrial Services, Inc.	L00087	Alvin	189	09/04/08

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	Team Industrial Services, Inc.	L00087	Alvin	190	09/05/08
Throughout Tx	Baker Tank Company	L02599	Arp	27	09/12/08
Throughout Tx	Lower Colorado River Authority	L02738	Austin	43	09/03/08
Throughout Tx	KXR Inspection, Inc.	L01074	Barker	108	09/02/08
Throughout Tx	Price Construction Ltd.	L05205	Big Spring	04	09/04/08
Throughout Tx	Mikell Clifton Gallagher dba Gallagher Materials Testing	L05897	Bryan	02	08/26/08
Throughout Tx	Chappell Hill Logging Systems, Inc.	L05374	Chappell Hill	08	09/10/08
Throughout Tx	Escot NDE, Inc. dba Basin Industrial X-Ray	L05002	Corpus Christi	28	08/27/08
Throughout Tx	National Inspection Services LLC	L05930	Crowley	19	08/21/08
Throughout Tx	Terracon Consultants, Inc.	L05268	Dallas	27	09/03/08
Throughout Tx	Irisndt, Inc.	L04769	Deer Park	63	09/04/08
Throughout Tx	IRISNDT, Inc.	L04769	Deer Park	64	09/08/08
Throughout Tx	Tucker Energy Services, Inc.	L06157	Denton	03	09/09/08
Throughout Tx	Tucker Energy Services, Inc.	L06157	Denton	03	09/09/08
Throughout Tx	Waggoner-Texas and Associates, Inc.	L06159	Flint	02	09/09/08
Throughout Tx	Kiewit Texas Construction LP	L04569	Ft Worth	23	09/10/08
Throughout Tx	Probe Technology Services, Inc.	L05112	Ft Worth	21	09/04/08
Throughout Tx	Bonded Inspections, Inc.	L00693	Garland	79	09/03/08
Throughout Tx	Vulcan Construction Materials LP	L05382	Helotes	07	09/08/08
Throughout Tx	General Inspection Services, Inc.	L02319	Hempstead	43	09/02/08
Throughout Tx	Metco	L03018	Houston	190	08/26/08
Throughout Tx	Material Inspection Technology, Inc.	L05672	Houston	28	08/26/08
Throughout Tx	Metco	L03018	Houston	191	09/09/08
Throughout Tx	Wood Group Logging Services, Inc.	L05262	Houston	29	09/12/08
Throughout Tx	Integrated Production Services, Inc.	L06051	Iowa Park	06	09/03/08
Throughout Tx	Marco Inspection Services LLC	L06072	Kilgore	14	09/15/08
Throughout Tx	Master Industries, Inc.	L05872	Liberty	17	08/26/08
Throughout Tx	Mas-Tek Engineering and Associates, Inc.	L04864	Longview	10	09/03/08
Throughout Tx	Eagle X-Ray, Inc.	L03246	Mont Belvieu	98	09/03/08
Throughout Tx	Black Warrior Wireline Corporation	L04473	Odessa	28	09/02/08
Throughout Tx	Celanese Ltd.	L04210	Pampa	20	09/09/08
Throughout Tx	Conam Inspection & Engineering, Inc.	L05010	Pasadena	147	09/09/08
Throughout Tx	Conam Inspection & Engineering, Inc.	L05010	Pasadena	148	09/15/08
Throughout Tx	Techcorr USA LLC	L05972	Pasadena	52	09/11/08
Throughout Tx	Midwest Inspection Services	L03120	Perryton	111	09/12/08
Throughout Tx	Globe Engineers, Inc.	L05527	Plano	03	08/26/08
Throughout Tx	Geotechnical Testing and Consulting LLC	L05828	Plano	02	09/11/08
Throughout Tx	Silva Contracting Company, Inc.	L05266	Richmond	05	09/10/08
Throughout Tx	Ludlum Measurements, Inc.	L01963	Sweetwater	82	09/05/08
Tyler	The University of Texas Health Center at Tyler	L04117	Tyler	40	09/09/08
Victoria	Victoria of Texas LP dba Detar Hospital Navarro	L01630	Victoria	46	09/10/08
Waco	Hillcrest Baptist Medical Center	L00845	Waco	81	09/15/08
Webster	River Oaks Imaging and Diagnostic	L05475	Webster	15	09/08/08
Weslaco	Knapp Medical Center	L03290	Weslaco	44	09/04/08
Weslaco	RGV Heart Specialist LLP	L05554	Weslaco	03	09/09/08

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Mineral Wells	Palo Pinto General Hospital	L01732	Mineral Wells	34	09/08/08
Queen City	International Paper Company	L01686	Queen City	33	09/03/08

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	Talon Drilling, Inc. dba Llano-Permian Environmental	L05641	Amarillo	05	08/25/08
Throughout Tx	H and G Inspection Company, Inc. dba Statewide Maintenance	L02181	Houston	228	08/26/08
Throughout Tx	Austin Bridge and Road	L04629	Irving	19	09/11/08
Throughout Tx	Infrastructure Services Public Works Division	L06099	San Antonio	01	09/02/08

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - MC 2835, PO Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-200805085
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: September 19, 2008

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Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of EMPLOYERS EDGE ADMINISTRATIVE SERVICES, INC., a domestic third party administrator. The home office is RICHARDSON, TEXAS.

Application of CHOICE ADMINISTRATORS, INC., as a foreign third party administrator. The home office is ORANGE, CALIFORNIA.

Application of CATALYST RX GOVERNMENT SERVICES, INC., as a foreign third party administrator. The home office is RENO, NEVADA.

Application to change the name of JHSC ENTERPRISES, LLC to JHSC ENTERPRISES, LLC (using the assumed names of J.T. PARKER & ASSOCIATES, L.L.C., and PARKER & ASSOCIATES, L.L.C.), as a domestic third party administrator. The home office is CARROLLTON, TEXAS.

Application to change the name of CORPHEALTH, INC. to CORPHEALTH, INC. (using the assumed name of LIFESYNCH), as a domestic third party administrator. The home office is FORT WORTH, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-200805147
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: September 24, 2008

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Public Utility Commission of Texas

Notice of Application for Designation as a Resale Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.419

Notice is given to the public of an application filed with the Public Utility Commission of Texas on September 18, 2008, for designation as a resale eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.419.

Docket Title and Number: Application of Connect I.T. for Designation as a Resale Eligible Telecommunications Provider. Docket Number 36165.

The Application: The company is requesting ETP designation in order to be eligible to receive funds from the Texas Universal Service Fund for reimbursement of discounts provided through the Lifeline program.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by October 23, 2008. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at

(512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 36165.

TRD-200805117
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 23, 2008

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Notice of Application for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on September 18, 2008, for designation as an eligible telecommunications provider (ETP) and eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.417 and §26.418, respectively.

Docket Title and Number: Application of True Wireless, LLC for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider. Docket Number 36164.

The Application: The company is requesting ETC/ETP designation in order to be eligible to receive federal and state universal service funding to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e) and P.U.C. Substantive Rule §26.417, the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs and ETPs for service areas set forth by the commission. True Wireless, LLC seeks ETC/ETP designation in the service area set out in Attachment C to its application.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by October 23, 2008. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 36164.

TRD-200805116
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 23, 2008

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Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on September 19, 2008, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) request for assignment of one growth block in the Cypress rate center.

Docket Title and Number: Petition of Southwestern Bell Telephone Company d/b/a AT&T Texas for Waiver of Denial of Numbering Resources, Docket Number 36169.

The Application: AT&T Texas submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 8, 2008. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36169.

TRD-200805118
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 23, 2008

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Public Notice of Change in Comment Deadlines and Public Hearing on Disclosures to Customers

The staff of the Public Utility Commission of Texas (commission) will hold a public hearing regarding Information Disclosures to Customers, at 9:30 a.m. on Wednesday, October 22, 2008, in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 35768, *Rulemaking Relating to Disclosures to Customers* has been established for this proceeding. Additionally, under the Commission's proposed rule, comments are due September 29, 2008 and reply comments are due October 13, 2008. Some parties have expressed a hardship in meeting this deadline due to Hurricane Ike; therefore, the commission will accept initial comments through Monday, October 6, 2008 and reply comments through Monday, October 20, 2008.

Questions concerning the workshop or this notice should be referred to Shawnee Claiborn-Pinto, Director, Retail Markets, Competitive Markets Division, (512) 936-7388. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200805131
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 23, 2008

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Request for Comments on a Landowner Brochure, Published Notice, and Landowner Notice for a Certificate of Convenience and Necessity for a Proposed Transmission Line Pursuant to P.U.C. Procedural Rule §22.52

The staff of the Public Utility Commission of Texas (commission) requests comments regarding the modification of a landowner brochure, published notice and landowner notice for a proposed transmission line pursuant to P.U.C. Procedural Rule §22.52 (relating to Notice in Licensing Proceedings). Comments will be received until 3:00 p.m., Friday, October 10, 2008, by the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78711-3326. Project Number 36044, *P.U.C. Development of Landowner and Transmission Line Cases at the P.U.C. Brochure for a Proposed Transmission Line Pursuant to P.U.C. Substantive Rule §25.174 and Transmission Line Pursuant to P.U.C. Substantive Rule §25.101*, has been established for this proceeding. The commission intends for the landowner brochure, published notice and landowner notice to be a guide to pro-

vide the information necessary to inform the public of the application for a Certificate of Convenience and Necessity (CCN) for transmission facilities identified by the commission in the Competitive Renewable Energy Zones (CREZ) order. Also, the landowner brochure, published notice and landowner notice for non-CREZ transmission CCN are being modified to more clearly explain the CCN process and procedures to landowners and other interested parties. The landowner brochure, published notice and landowner notice can be found on the project webpage or on the commission's Agency Information System (AIS) under Project Number 36044.

Responses may be filed by submitting 16 copies to the Filing Clerk no later than Friday, October 10, 2008. All responses should reference Project Number 36044.

Questions concerning Project Number 36044 should be referred to Mike Lee, Infrastructure and Reliability Division, (512) 936-7348 or Felipe Alonso, Legal Division, (512) 936-7275. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200805109
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 22, 2008

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Texas State Soil and Water Conservation Board

Request for Proposal

INTRODUCTION

This document provides instructions and guidance for applicants seeking funding under the Clean Water Act (CWA) §319(h) Agricultural and Silvicultural Nonpoint Source (NPS) Grant Program in Texas. The U.S. Environmental Protection Agency (EPA) distributes funds appropriated by Congress annually to the Texas State Soil and Water Conservation Board (TSSWCB) under the authorization of Clean Water Act §319(h). TSSWCB then administers/awards these federal funds as grants to cooperating entities for activities that address the goals and objectives stated in the Texas Nonpoint Source Management Program. This document can be accessed online at http://www.tsswcb.state.tx.us/files/docs/nps-319/npsmgmtplans/2005mgmtprogram.pdf.

The types of agricultural and silvicultural NPS pollution abatement activities that can be funded with §319(h) grants include the following: implementation of nine-element watershed protection plans (WPP) and the NPS portion of TMDL Implementation Plans (I-Plan), surface water quality monitoring, demonstration of innovative BMPs, technical assistance, public outreach/education, development of nine-element WPPs, and monitoring activities to determine the effectiveness of specific pollution prevention methods. Strictly research activities are not eligible for §319(h) grant funding.

The TSSWCB is requesting proposals for watershed assessment, planning, implementation, demonstration and education projects within the boundaries of impaired or threatened watersheds as well as projects in unimpaired watersheds. Up to $2 million of the TSSWCB's FY2009 CWA §319(h) grant will be eligible for this request for proposals (RFP). Approximately $1.2 million will be targeted to Implementation and Education and $800,000 will be targeted to Watershed Planning and Assessment. No more than ten percent of this RFP can be utilized for groundwater projects. A competitive proposal process will be used so that the most appropriate and effective projects are selected for funding.

Project proposals should, where applicable, stress interagency coordination, demonstrate new or innovative technologies, use comprehensive strategies that have statewide applicability, and stress public participation.

This RFP does not set a maximum or minimum amount for individual projects, however project funding generally ranges between $100,000 and $400,000. The TSSWCB CWA §319(h) NPS Grant Program has a 60/40% match requirement. The cooperating entity will be reimbursed 60% from federal funds and must contribute a minimum of 40% of the total costs to conduct the project. The 40% match must be from non-federal sources and should be described in the budget justification. Reimbursable indirect costs are limited to no more than 15% of total federal direct costs.

Quarterly and final project reports are the minimum reporting requirements. Deliverables for general distribution (i.e., videos, news releases, literature) will be submitted to EPA for approval through the TSSWCB. All projects that include an environmental data collection (water quality monitoring, modeling, bacterial source tracking, etc.) component must have a Quality Assurance Project Plan (QAPP), to be reviewed and approved by TSSWCB and EPA. Project budgets and timelines should account for the development and review of QAPPs accordingly. More information on QAPPs and the TSSWCB Environmental Data Quality Management Plan is available at http://www.tsswcb.state.tx.us/quality.

ELIGIBLE ORGANIZATIONS

Grants will be available to public and private entities such as local governments, educational institutions, non-profit organizations, and state agencies. Private organizations, for profit, may participate in projects as partners or contractors but may not apply directly for funding.

SELECTION PROCESS

Submitted proposals will be reviewed, scored, and ranked based on the evaluation and ranking criteria attached to this RFP. A minimum scoring requirement (70 points) is necessary for proposals to be eligible for consideration.

Applicants whose proposals are recommended for funding will be notified and will be assigned to a TSSWCB project manager. The project manager will work with the applicant to amend and finalize the proposal prior to submittal to EPA. EPA will review and approve all proposals prior to TSSWCB awarding grant funds.

SUBMISSION PROCESS

To obtain a complete copy of TSSWCB's proposal submission packet, please visit http://www.tsswcb.state.tx.us/managementprogram or contact TJ Helton at (254) 773-2250 ext. 234. Submit proposals electronically (MS Word) to thelton@tsswcb.state.tx.us and mail 8 hardcopies to the address below. Proposals must be received electronically by COB November 21, 2008 to be considered.

Address Proposals to:

Texas State Soil and Water Conservation Board

Attn: TJ Helton

Mailing Address:

P.O. Box 658, Temple, TX 76503-0658

Physical Address:

4311 South 31st Street, Suite 125, Temple TX 76502

FY2009 GRANT TIMELINE

Issuance of RFP, October 3, 2008

Deadline for Submission of Proposals, November 21, 2008

Proposal Evaluation, December - January 2009

Notification of Selected Proposals/Unsuccessful Applicant, January - February 2009

Begin working with applicants to finalize Proposal, January - February 2009

Submit Grant Application to EPA, March 2009

Contract Award, July - August 2009

Project Start Date, September 2009

TRD-200805099
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: September 22, 2008

♦ ♦ ♦

Supreme Court of Texas

Emergency Order on Enlargement of Time

Misc. Docket No. 08-9140

ORDERED that:

1. For reasons explained below, in determining a filing deadline under the Texas Rules of Civil Procedure and the Texas Rules of Appellate Procedure, including the time for filing a motion for new trial:

a. the closure of a clerk's office is good cause for an enlargement of time, but a court may also take into consideration whether alternative arrangements for conducting court proceedings were in place; and

b. a court should consider the dislocation and hardship of counsel in deciding whether to enlarge the applicable time period.

2. This Order expires October 31, 2008, unless extended by further Order of the Court.

3. The Clerk is directed to:

a. post a copy of this Order on the Court's internet website at www.courts.state.tx.us;

b. file a copy of this Order with the Secretary of State;

c. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

d. send a copy of this Order to each member of the Legislature; and

e. submit a copy of the Order for publication in the *Texas Register.*

SIGNED AND ENTERED this 17th day of September, 2008.

_____

Wallace B. Jefferson, Chief Justice

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Nathan L. Hecht, Justice

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Harriet O'Neill, Justice

_____

Dale Wainwright, Justice

_____

Scott Brister, Justice

_____

David M. Medina, Justice

_____

Paul W. Green, Justice

_____

Phil Johnson, Justice

_____

Don R. Willett, Justice

PER CURIAM

This past weekend, Texas was struck by Hurricane Ike, resulting in the closure or inaccessibility of court clerks' offices and lawyers' offices. The resulting exigencies should be considered in enlarging time periods prescribed by the Texas Rules of Civil Procedure and the Texas Rules of Appellate Procedure.

Rule 4.1(b), TEX. R. APP. P., provides for the extension of time for filing a document when "the clerk's office where the document is to be filed is closed or inaccessible during regular hours on the last day for filing the document". Rule 4, TEX. R. CIV P., provides for the extension of any time period when the last day is a "legal holiday", and for the calculation of other period that include "legal holidays". A "legal holiday" includes a day "on which the clerk's office for the court in which the case is pending is officially closed." *Miller Brewing Co. v. Villarreal,* 829 S.W.2d 770, 772 (Tex. 1992) (per curiam). Section 16.072, TEX. CIV. PRAC. & REM. CODE, extends limitation periods when the last day falls on a holiday. The word "holiday" in the statute has the same meaning as "legal holiday" in Rule 4, TEX. R. CIV. P. *Martinez v. Windsor Park Dev. Co.,* 833 S.W.2d 950, 951 (Tex. 1992) (per curiam). The Court has expressed no view on the application of Section 16.072 to other statutes of limitations and does not do so here. *Cf. Simmons v. Healthcare Ctrs. of Tex., Inc.,* 55 S.W.3d 674, 681 n.5 (Tex. App.--Texarkana 2001, no pet.) (health care liability claims); *Morin v. Helfrick,* 930 S.W.2d 733, 737 n.1 (Tex. App.-Houston [1st Dist.] 1996, no writ (health care liability claims); *Green v. Tex. Employment Comm'n,* 675 S.W.2d 809 (Tex. App.--El paso 1984, writ ref'd n.r.e.) (workers' compensation claims).

Rule 5, TEX. R. CIV. P., allows the court on motion for "good cause" to enlarge a time period after it has expired. Several provisions of the Texas Rules of Appellate Procedure allow an appellate court to enlarge time periods. To provide clarity to the judiciary and to the bar in this difficult period in the aftermath of a natural disaster, the Court orders that the closure of a court clerk's office is "good cause" for enlarging the time for filing any document within the meaning of Rule 5, TEX. R. CIV. P., and any other procedural rules that permit an enlargement of time on a showing of good cause, or a similar showing. Of course, there may be other good cause for an enlargement of time, including the dislocation of counsel. The Court further allows the deadline for filing a motion for new trial to be extended.

House Bill 1076, enacted in 2007, provides that in certain coastal counties, if a court cannot conduct proceedings at the county seat because of a disaster, the presiding judge of the administrative judicial region, with the approval of the judge of the affected court, may designate an alternative location in the judicial district at which the court may conduct proceedings. TEX. GOV'T CODE §§24.033, 25.0019, 25.0032, 26.009. *See id.* §418.004(1) (defining disaster); TEX. INS. CODE §2210.003(4), (11) (listing "first tier" and "second tier" coastal counties). Also, Section 74.094(e), of the TEX. GOV'T CODE, provides that "[a] judge who has jurisdiction over a suit pending in one county

may, unless objected to by any party, conduct any of the judicial proceedings except the trial on the merits in a different county." *See* TEX. CONST. art. V, §7. In deciding whether to extend a filing deadline, a court should also take into account whether arrangements have been made under these statutes.

It should be noted that the Court's Order does not affect a statutory deadline that cannot be enlarged by rule.

This Order is issued in response to a natural disaster and is temporary. It expires October 31, 2008, unless extended by further Order of the Court.

TRD-200805087
Kennon L. Peterson
Rules Attorney
Supreme Court of Texas
Filed: September 19, 2008

♦ ♦ ♦

Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Architectural/Engineering Services

The County of Nueces, Texas through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation architectural/engineering design services described below:

Airport Sponsor: Nueces County. TxDOT CSJ No. 09HGROBST. Scope: Provide architectural/engineering services for site development and associated appurtenances for a pre-engineered metal aircraft hangar building system or systems at the Nueces County Airport.

There is no DBE requirement for this project. TxDOT Project Manager is Charles Graham.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent airport layout plan are available online at **www.txdot.gov/avn/avninfo/notice/consult/index.htm** by selecting "Nueces County Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT, Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at **www.txdot.gov/services/aviation/consultant.htm.** The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than October 17, 2008, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of Aviation Division staff members. Attached is the criterion for evaluating architectural/engineering proposals. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager at 1-800-68-PILOT at extension 4518. For technical questions, please contact Charles Graham, at 1-800-68-PILOT at extension 4549.

CRITERIA FOR EVALUATING ARCHITECT/ENGINEER PROPOSALS

The TxDOT Selection Committee will use the following criteria to evaluate proposals.

1. Recent experience of the project team with comparable airport projects within the past five years (20 points)

Does the proposal indicate that the project team has recent direct experience on other general aviation airports designing similar improvements to those proposed at this location? (Sources of information: Aviation Project Design Team Form, Recent Relevant Airport Experience Form, and possibly the Proposal Summary.)

2. Proposed technical approach (20 points)

Does the architect/engineer provide evidence of understanding of the project; and any unique architectural/engineering aspects associated with the proposed project and how to address them? (Sources of information: Proposed Technical Approach to Project, and possibly the Proposal Summary.)

3. Ability to meet schedules and deadlines (20 points)

Does the proposed design team have sufficient time to work on this project? Has the firm demonstrated an ability to meet design schedules in the past? (Sources of information: Aviation Project Design Team Form, Recent Relevant Airport Experience Form, and possibly the Proposal Summary.)

4. Project design schedule (20 points)

Reasonableness of proposed schedule (Sources of information: Project Design Schedule Form and possibly the Proposal Summary.)

5. Construction Management Experience (20 points)

The consultant will oversee the airport construction. Therefore, it is critical that the architect/engineer be involved in the day-to-day construction activities through a full-time resident project representative and periodic site visits. What evidence does the proposal provide as to the architect's/engineer's commitment to proactive and consistent representation during construction? (Source of information: Relevant Airport Experience form; proposed Technical Approach to Project; and possibly the Proposal Summary.)

TRD-200805128

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 23, 2008

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Notice of Award

In accordance with Government Code, Chapter 2254, Subchapter B, the Texas Department of Transportation publishes this notice of a consultant contract award for providing Public Transportation Division State Safety and Security Review services. The request for proposal for Public Transportation Division services was published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1463).

The consultant will conduct an on-site review of the Galveston Island Trolley. At the conclusion of the on-site review, the consultant will prepare and issue a final report. The report shall contain findings and recommendations resulting from the review and an analysis of the effectiveness of the safety and the security plan and a determination of whether either should be updated.

The selected consultant for these services is Dovetail Consulting, 362 Valley Hill Road SW, Riverdale, Georgia 30274. The total value of the contract is $9,300 and the contract work period started on September 5, 2008, and will continue until January 20, 2009.

TRD-200805126
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 23, 2008

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Notice of Award

In accordance with Government Code, Chapter 2254, Subchapter B, the Texas Department of Transportation publishes this notice of a consultant contract award for providing Public Transportation Division State Safety and Security Review services. The request for proposal for Public Transportation Division services was published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1463).

The consultant will conduct on-site reviews of the Dallas Area Rapid Transit rail transit agency and the Metropolitan Transit Authority of Harris County rail transit agency. At the conclusion of the on-site reviews, the consultant will prepare and issue two final reports. These reports shall contain findings and recommendations resulting from the review and an analysis of the effectiveness of the safety and the security plan and a determination of whether either should be updated.

The selected consultant for these services is Transportation Resource Associates, Inc., 1606 Walnut Street, Suite 1602, Philadelphia, PA. 19103. The total value of the contract is $114,728.92 and the contract work period started on June 19, 2008, and will continue until November 14, 2008.

TRD-200805127
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 23, 2008

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Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and 43 Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

www.txdot.gov/about_us/public_hearings_and_meetings/aviation.htm

Or visit **www.txdot.gov,** click on Citizen, click on Public Hearings, and then click on Aviation.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-200805129
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 23, 2008

♦ ♦ ♦

University of North Texas

Invitation for Consultants to Provide Offers of Consulting Services Related to Public and Private-Sector Funding Sources for Research and Demonstration Activities

Pursuant to the provisions of Texas Government Code, Chapter 2254, the University of North Texas (UNT) extends this invitation (Invitation) to qualified and experienced consultants interested in providing the consulting services described in this Invitation to the University of North Texas.

Scope of Work:

The selected federal government relations consulting firm will be responsible for assisting UNT with assessment of, and to advise on, public and private-sector funding sources for research and demonstration activities; to assist and advise on development, presentation and negotiation of grants, contracts and other agreements; to assist and advise on the design and execution of a government affairs and external relations plan for UNT; and to assist with the assessment of, and to advise on, funding for the UNT Fundraising Campaign.

Specifications:

Any consultant submitting an offer in response to this Invitation must provide the following: (1) the consultant's legal name, including type of entity (individual, partnership, corporation, etc.) and address; (2) background information regarding the consultant, including the number of years in business and the number of employees; (3) information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services; (4) the hourly rate to be charged for each team member providing services; (5) the earliest date by which the consultant could begin providing the services; (6) a list of five client references, including any complex institutions or systems of higher education for which the consultant has provided similar consulting services; (7) a statement of the consultant's approach to providing the services described in the Scope of Work section of this Invitation, any unique benefits the consultant offers UNT, and any other information the consultant desires UNT to consider in connection with the consultant's offer; (8) information to assist UNT in assessing the consultant's demonstrated competence and experience providing consulting services similar to the services requested in this Invitation; (9) information to assist UNT in assessing the consultant's experience per-

forming the requested services for other complex institutions or systems of higher education; (10) information to assist UNT in assessing whether the consultant will have any conflicts of interest in performing the requested services; (11) information to assist UNT in assessing the overall cost to UNT for the requested services to be performed; and (12) information to assist UNT in assessing the consultant's capability and financial resources to perform the requested services.

Selection Process:

The consulting services sought herein do not relate to services previously provided to UNT. Unless a better offer (as determined by UNT) is received in response to this Invitation, UNT intends to award the contract for the consulting services to Strategic Partnerships, L.L.C.

Selection of the Successful Offer (defined below) submitted in response to this Invitation by the Submittal Deadline (defined below) will be made using the competitive process described below. After the opening of the offers and upon completion of the initial review and evaluation of the offers submitted, selected consultants may be invited to participate in oral presentations. The selection of the Successful Offer may be made by UNT on the basis of the offers initially submitted, without discussion, clarification or modification. In the alternative, selection of the Successful Offer may be made by UNT on the basis of negotiation with any of the consultants. At UNT's sole option and discretion, it may discuss and negotiate all elements of the offers submitted by selected consultants within a specified competitive range. For purposes of negotiation, a competitive range of acceptable or potentially acceptable offers may be established comprising the highest rated offers. UNT will provide each consultant within the competitive range with an equal opportunity for discussion and revision of its offer. UNT will not disclose any information derived from the offers submitted by competing consultants in conducting such discussions. Further action on offers not included within the competitive range will be deferred pending the selection of the Successful Offer; however, UNT reserves the right to include additional offers in the competitive range if deemed to be in its best interest. After the submission of offers but before final selection of the Successful Offer is made, UNT may permit a consultant to revise its offer in order to obtain the consultant's best final offer. UNT is not bound to accept the lowest priced offer if that offer is not in its best interest, as determined by UNT. UNT reserves the right to: (a) enter into agreements or other contractual arrangements for all or any portion of the Scope of Work set forth in this Invitation with one or more consultants; (b) reject any and all offers and re-solicit offers; or (c) reject any and all offers and temporarily or permanently abandon this procurement, if deemed to be in the best interest of UNT.

Criteria for Selection:

The successful offer (Successful Offer) must be submitted in response to this Invitation by the Submittal Deadline and will be the offer that is the most advantageous to UNT in UNT's sole discretion. Offers will be evaluated by University of North Texas personnel. The evaluation of offers and the selection of the Successful Offer will be based on the information provided to UNT by the consultant in response to the Specifications section of this Invitation. Consideration may also be given to any additional information and comments if such information or comments increase the benefits to UNT. The successful consultant will be required to enter into a contract acceptable to UNT.

Consultant's Acceptance of Offer:

Submission of an offer by a consultant indicates: (1) the consultant's acceptance of the Offer Selection Process, the Criteria for Selection, and all other requirements and specifications set forth in this Invitation and (2) the consultant's recognition that some subjective judgments must be made by UNT during this Invitation process.

Finding by President:

The President of the University of North Texas finds that the consulting services are necessary because the University of North Texas does not have the specialized experience or the staff resources available to support existing and proposed programs of the University of North Texas. The University of North Texas believes that such expert consulting services will be cost effective, as they will result in an expansion of research and other types of funding for the University of North Texas and an increase in grants and contracts involving the University of North Texas.

Submittal Deadline:

To respond to this Invitation, consultants must submit the information requested in the Specification section of this Invitation and any other relevant information in a clear and concise written format to: Carrie Stoeckert, Assistant Director of PPS, University of North Texas, 2310 North Interstate 35-E, 1155 Union Circle #310499, Denton, Texas 76203. Offers must be submitted in an envelope or other appropriate container and the name and return address of the consultant must be clearly visible. All offers must be received at the above address no later than 4:00 p.m., CST, Monday, November 3, 2008 (Submittal Deadline). Submissions received after the Submittal Deadline will not be considered.

Questions:

Questions concerning this Invitation should be directed to: Carrie Stoeckert, Assistant Director of PPS, University of North Texas, 2310 North Interstate 35-E, 1155 Union Circle #310499, Denton, Texas 76203, (940) 565-3200, carries@unt.edu. UNT may in its sole discretion respond in writing to questions concerning this Invitation. Only UNT's responses made by formal written addenda to this Invitation shall be binding. Oral or other written interpretations or clarifications shall be without legal effect.

TRD-200805139
Carrie Stoeckert
Assistant Director of PPS
University of North Texas
Filed: September 24, 2008

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University of North Texas System

Public Notice - Award of Major Consulting Contract

Description of Activities Consultant Will Conduct:

To assist University of North Texas System (UNT-System) and each institutional entity of which UNT-System is comprised to develop and execute a government relations plan to attract support for research facilities, equipment, technology, and programs through federal and other initiatives pertaining, but not limited to, the Congressional appropriations process and federal funding agencies. The agency shall also assist in, but not limited to the following areas: evaluating research resources; developing concepts and themes for agreed upon research initiatives; formulating strategies and timetables for presentation of research initiatives; assisting in preparation of supporting documentation; coordinating meetings with pertinent representatives and their staffs; serving as a liaison to funding agencies; preparing testimony for presentation; developing legislative and other strategies; and monitoring and reporting on government and other programs relevant to research initiatives and other areas of interest to UNT-System and Institutions.

Name and Business Address of Consultant:

Congressional Solutions, Inc.

1530 N. Key Blvd., Suite 523

Arlington, Virginia 22209

Total Value and Beginning and Ending Dates of Contract:

Value: $507,000.00

Beginning Date: September 1, 2008

Ending Date: August 31, 2009, with two additional renewal options of twelve months each

Dates on Which Documents, Films, Recordings, or Reports That Consultant is Required to Present Are Due:

Date: Various dates--as requested by Chancellor and in any event not less that quarterly.

TRD-200805100
Carrie Stoeckert
Assistant Director of PPS
University of North Texas System
Filed: September 22, 2008

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Texas Water Development Board

Notice of Public Hearing

The Texas Water Development Board (Board) will conduct a public hearing on November 24, 2008, in Room 170, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701 to receive public comments on proposed amendments to the 2007 State Water Plan, Water for Texas - 2007, in accordance with Tex. Water Code §16.053(r) and 31 TAC §358.3(a). The hearing will be conducted during the Board's regular November 24, 2008 public meeting at 11:00 a.m., in Room 170, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701.

After the public hearing, the Board will consider adopting the proposed amendments at its regular Board meeting on November 24, 2008.

The proposed amendments will incorporate into the State Water Plan two amendments to the 2006 Region G and 2006 Region I Regional Water Plans that have been adopted by the Brazos G (Region G) and East Texas (Region I) Regional Water Planning Groups and approved by the Board. The Region I amendment increases the groundwater availability from the Yegua-Jackson Aquifer in Angelina County to 6,472 acre-feet per year and recommends the water management strategy of installation of additional wells in the Yegua-Jackson Aquifer. The Region G amendment includes a surface water diversion of 76,270 acre-feet per year from Lake Granbury and pipeline as a recommended water management strategy to meet increased steam-electric generation needs for Somervell County.

Interested persons are encouraged to attend the hearing and to present relevant and material comments concerning the proposed amendments. In addition, persons may provide written comments on or before November 17, 2008 to Temple McKinnon, Water Resource Planning and Information, Texas Water Development Board, P.O. Box 13231, Capitol Station, Austin, Texas 78711 or by email to temple.mckinnon@twdb.state.tx.us. Copies of the proposed amendments are available for inspection in Room 439 of the Stephen F. Austin Building from the Water Resources Planning Division, Texas Water Development Board, 1700 North Congress Avenue, Austin, Texas 78701. If you want to view these documents, please call (512) 463-8043 for arrangements to view them. A copy of the proposed amendments will also be available on the Board's web site at http://www.twdb.state.tx.us.

The Board offers reasonable accommodations for persons attending meetings, hearings or educational events, as required by the Americans with Disabilities Act. If you require special accommodations, please contact Carla Daws, Public Information Officer, at (512) 463-8167.

TRD-200805130
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: September 23, 2008

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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 33 (2008) is cited as follows: 33 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 "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 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 through the Internet. The address is: 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 subscription 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 ***Table of TAC Titles Affecte***d. The table 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 one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).