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Kathy Cribbs
10th Grade

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

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IN THIS ISSUE

Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

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To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is http://www.oag.state.tx.us. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

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

THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Opinions

Opinion No. GA-0318

Mr. Paul Mallett

Executive Director, Commission on State Emergency Communications

333 Guadalupe Street, Suite 2-212

Austin, Texas 78701-3942

Re: Whether certain members of the Commission on State Emergency Communications are entitled to receive compensatory per diem (RQ-0288-GA)

S U M M A R Y

The five public members of the Commission on State Emergency Communications are not entitled to receive compensatory per diem.

Opinion No. GA-0319

The Honorable F. C. Schneider

Caldwell County Criminal District Attorney

Post Office Box 869

Lockhart, Texas 78644

Re: Application of Transportation Code chapter 253 to a subdivision road located partially within a city's boundaries and partially within the city's extraterritorial jurisdiction (RQ-0290-GA)

S U M M A R Y

Chapter 253 of the Transportation Code permits, but does not require a county to improve roads in a subdivision in the unincorporated area of the county and to assess the costs against property owners of the subdivision. Chapter 253 applies to the part of a road situated in the county's unincorporated area, even though the remainder of the road is situated within the boundaries of a city. Chapter 253 authorizes the county to improve subdivision roads to county standards. If the road is partly located within the extraterritorial jurisdiction of a municipality that has extended its road construction standards into its extraterritorial jurisdiction, the county may not maintain the road to the extent that city road construction standards are inconsistent with county standards. A county's interlocal agreement to maintain streets within a city's limits does not affect the application of chapter 253 to subdivision roads in the unincorporated part of the county.

Opinion No. GA-0320

The Honorable Todd Staples

Chair, Committee on Transportation and Homeland Security

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether the Athens Economic Development Corporation may expend funds for highway construction adjacent to an industrial park (RQ-0289-GA)

S U M M A R Y

An expenditure for road construction may qualify as a "project" under section 2(11)(A) of the Development Corporation Act of 1979, provided the board of directors of an industrial development corporation finds that the expenditure is "required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises." TEX. REV. CIV. STAT. ANN. art. 5190.6, §2(11)(A) (Vernon Supp. 2004-05). Section 4(A)(i) of the Act does not preclude a 4A corporation from providing a transportation facility that benefits property acquired for another authorized project.

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

TRD-200501801
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: May 4, 2005

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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 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. REGIONAL PLANS--STANDARDS

1 TAC §251.6

The Commission on State Emergency Communications (CSEC) proposes amendment to §251.6, concerning guidelines for submission requests from councils of governments on strategic plans, amendments and allocation of equalization surcharge funds.

In response to a previous posting of Rule 251.6, the Texas Association of Regional Councils (TARC) requested that CSEC staff examine industry trends and costs for recording equipment in today's environment. A Recorder Working Group was formed, consisting of CSEC staff and TARC representatives. The Group conducted an informal survey of the channel requirements for a typical PSAP, both in rural and more highly populated regions. The results showed that in today's environment, PSAPs require more channels to be recorded. Emergent technologies such as Voice Over Internet Protocol and telematics (GPS based vehicle emergency notification systems) deliver calls to PSAP administrative lines. PSAPs record their 9-1-1 lines, administrative lines, radio channels, fire, and EMS, in many cases with multiple channels for each. A typical 2 position PSAP requires 12 or more channels to be recorded. Larger PSAPs record up to 48 channels.

The amendment proposes to remove the number of channels restriction; raise the price cap to $15,000 for a two-position PSAP and $25,000 for PSAPs with three or more positions; and remove the requirement for submission of a recorder worksheet.

Paul Mallett, executive director, 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.

Mr. Mallett also has 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 improved system for funds allocation and implementation levels for the 9-1-1 program statewide. No historical data is available, however, there appears to be no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated local employment impact as a result of enforcing the section.

Comments on the amendment may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to Paul Mallett, Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

The amendment is proposed pursuant to the Texas Health and Safety Code, Chapter 771, §§771.051, 771.071, 771.0711, 771.072, and 771.075; and Title 1 Texas Administrative Code, Part 12, Chapter 251, Regional Plan Standards, which provide the Commission on State Emergency Communications with the authority to plan, develop, fund, and provide provisions for the enhancement of effective and efficient 9-1-1 service.

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

§251.6. Guidelines for Strategic Plans, Amendments, and Revenue Allocation.

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

(i) Funding Parameters. The Commission will look favorably on plan amendments for tandem and/or database service arrangements and ancillary equipment that will improve the effectiveness and reliability of 9-1-1 call delivery systems. This will include the following when the equipment is for 9-1-1 call delivery: surge protection devices, uninterrupted power source (UPS), power backup, voice recorders, paging systems for 9-1-1 call delivery, security devices, and other back-up communication services. Regions shall refer to the strategic planning guidelines for instructions as to the appropriate budget line item to which the costs for purchase and maintenance of these items should be assigned.

(1) (No change.)

(2) Voice Recording Equipment. Voice loggers may be approved when the primary use of the equipment is in support of the 9-1-1 call-taking and call-delivery function. Extra capacity on such systems may be used for other public safety functions (such as dispatch). [~~; however, 9-1-1 funding will not be authorized for systems whose capacity clearly exceed actual or anticipated 9-1-1 requirements. Shared funding of larger systems to accommodate both a 9-1-1 PSAP and a PSAP operating agency's other needs will be considered on a case-by-case basis. Other considerations include:~~]

(A) The Commission will normally fund voice recording capability in a PSAP to record the conversation on 9-1-1 lines and administrative or 10-digit emergency lines in order to also accommodate wireless, telematics, and Voice over IP 9-1-1 emergency calls. [~~each answering position used to answer emergency calls on a regular basis. (This means one recording channel per 9-1-1 answering position instead of one channel per incoming line.)~~]

(B) The Commission will also fund recording capability to record the transfer of an emergency call from the PSAP first answering the call to the agency that is responsible for providing the required emergency services. [~~This recording capability will be limited to the minimum amount required to record the transfer of the caller and relaying of information to the service provider.~~]

[~~(C) The Commission will fund the purchase of voice recorders as justified, to record 9-1-1 call delivery. Call volumes requiring recording in excess of 90 minutes per day will normally be required to justify larger systems.~~]

(C) [~~(D)~~] The funding of recording devices to transfer information from another recorder will be approved only upon specific justification of need.

[~~(E) Funding for search capability for recorders will be limited to the ability to locate an event by date and time.~~]

[~~(F) The Commission will not normally fund the purchase of both voice logging recorders and instant playback recorders in the same location.~~]

(D) [~~(G) When the operator of a 9-1-1 PSAP and the providers of emergency services desire to use the same recording equipment funded by regional strategic plan,~~] The [~~the~~] following guidelines will apply to determine the amount to be funded by the Commission: For a 2 position PSAP, the Commission will fund the actual cost of the recording system not to exceed $15,000. For PSAPs with 3 positions or more, the Commission will fund the actual cost of the recording system not to exceed $25,000.

[~~(i)~~ ~~When the minimum size of recorder that can be purchased to serve the PSAP provides more channels than are needed by the PSAP to record the delivery of 9-1-1 calls, the other agency may use the extra channels and all funding will be provided by the Commission.~~]

[~~(ii)~~ ~~When the PSAP requires a given size of recording equipment, and the other agency requires additional channels, the Commission will fund the size of recording equipment needed to record only the delivery of 9-1-1 calls, and the other agency will fund all additional equipment.~~]

[~~(iii)~~ ~~When the recording requirements of the other agency requires additional features or capabilities than would be required by the PSAP alone, the Commission will fund the equivalent amount of the system needed to serve the 9-1-1 functions of the PSAP alone. For instance, if the PSAP could use a recording system to record the delivery of 9-1-1 calls, but another agency needs to record a radio channel that requires the capacity of a larger recorder, the Commission will fund the equivalent cost of the smaller system.~~]

[~~(H) To assist the Commission in reviewing and approving requests for funding for voice recording devices for 9-1-1 call delivery, requests for funding should include a worksheet, provided by the Commission , for each PSAP location.~~]

[~~(I) In reviewing requests for recording systems, the Commission will award funding, when justified, for the actual costs of basic recording systems not to exceed $10,000 on 4-channel or equivalent systems, and not to exceed $20,000 on up to 10-channel or equivalent recording systems. Requests for any other recording systems will require separate approval by the Commission.~~]

(E) [~~(J)~~] The Commission will consider funding of recording capabilities greater than those suggested by the guidelines when sufficient justification is provided as part of a regional strategic plan.

(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 May 2, 2005.

TRD-200501769
Paul Mallett
Executive Director
Commission on State Emergency Communications
Earliest possible date of adoption: June 12, 2005
For further information, please call: (512) 305-6933

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTABILITY RATING SYSTEM

19 TAC §§109.1002 - 109.1005

The Texas Education Agency (TEA) proposes amendments to §§109.1002 - 109.1005, concerning the financial accountability rating system. The sections establish provisions relating to the financial accountability rating system, including the assignment of ratings, types of ratings, criteria, and reporting. The sections also include the financial accountability rating form entitled "School FIRST- Rating Worksheet" that explains the indicators that the TEA will analyze to assign school district financial accountability ratings. The proposed amendments would update the rating system by specifying new provisions that would be implemented beginning with fiscal year 2005-2006, including the addition and enhancement of indicators, along with a new worksheet and calculations; establishing a change to the types of district ratings based on a point system; and delineating certain disclosures that must be included in districts' annual financial management reports. The rule action presented in this proposal replaces the previous proposal that was published in the *Texas Register* on August 6, 2004. The withdrawal of that proposal was published in the *Texas Register* on February 18, 2005.

Senate Bill (SB) 875, 76th Texas Legislature, 1999, added TEC, §39.201, requiring the commissioner of education in consultation with the comptroller of public accounts to develop proposals for a school district financial accountability rating system that was to be presented to the legislature no later than December 15, 2000. TEC, §39.201, expired September 1, 2001. Subsequently, SB 218, 77th Texas Legislature, 2001, added TEC, §§39.201-39.204, requiring the commissioner to adopt rules for the implementation and administration of the financial accountability rating system prescribed by TEC, Chapter 39, Subchapter I.

19 TAC Chapter 109, Budgeting, Accounting, and Auditing, Subchapter AA, Commissioner's Rules Concerning Financial Accountability Rating System, adopted to be effective October 20, 2002, establishes provisions that detail the purpose, ratings,

types of ratings, criteria, reporting, and sanctions for the financial accountability rating system, in accordance with SB 218, 77th Texas Legislature, 2001. The adopted rules include the financial accountability rating form entitled "School FIRST-Rating Worksheet" that explains the indicators that the TEA will analyze to assign school district financial accountability ratings. This form specifies the minimum financial accountability rating information that a district is to report to parents and taxpayers in the district.

The rating worksheet, along with accompanying calculation instructions, was adopted in 19 TAC §109.1002 to be effective October 20, 2002, and later amended to be effective May 7, 2003. The 2003 amendment to 19 TAC §109.1002 included minor technical edits that crosswalked exhibit numbers referenced in the "School FIRST- Rating Worksheet," according to the new standard for the Annual Financial and Compliance Report to be filed by school districts for fiscal year 2002-2003. This rating worksheet, dated May 2003, establishes the indicators applicable to school district financial accountability ratings assigned for fiscal years 2002-2003, 2003-2004 and 2004-2005.

A proposed amendment to 19 TAC §109.1002 published in the August 6, 2004, issue of the Texas Register would have updated the rating system by adding a new critical indicator and enhancing other existing indicators. The revised rating system would have been applicable to school district financial accountability ratings issued beginning in fiscal year 2005-2006. This proposed amendment was withdrawn and a new proposal was to be brought forward at a later date that would add more indicators, establish a different scoring process for many measures, and create new disclosure requirements. The rule actions presented at this time comprise the new proposal.

The proposed amendments presented in this proposal, developed in consultation with the state comptroller's office, would update the rating system by specifying new provisions that would be implemented beginning with fiscal year 2005-2006, including the addition and enhancement of indicators, along with a new worksheet and calculations; establishing a change to the types of district ratings based on a point system; and delineating certain disclosures that must be included in districts' annual financial management reports. The following amendments to 19 TAC Chapter 109, Subchapter AA, are proposed.

The new proposed amendment to 19 TAC §109.1002, Financial Accountability Ratings, would update the rating system by adding two new critical indicators, adding three noncritical indicators, and enhancing other existing indicators. The revised rating system would be applicable to school district financial accountability ratings assigned beginning with fiscal year 2005-2006 (the ratings that will be issued on or about June 2006).

The proposed amendment 19 TAC §109.1002 would include the following changes: language would be added to subsection (a) to cite the statutory reference; language would be added to subsection (b) to specify the applicable fiscal years to which the current rating worksheet, dated May 2003, applies; new subsection (c) would be added to establish the applicable fiscal years to which the new rating worksheet, dated May 2005, applies; the new worksheet and accompanying calculation instructions would be added as a new figure, 19 TAC §109.1002(c); subsection (d) would be renumbered accordingly; and new subsection (e) would be added to specify the procedures for submitting a request for the TEA to review a district's preliminary rating.

In addition, the differences between the May 2003 rating worksheet and the proposed May 2005 version include the following:

Two new critical indicators would be added--total net unrestricted asset balance in governmental activities and academic rating of the district (exceeds academically unacceptable).

Three new noncritical indicators would be added addressing fiscal efficiencies and academic performance--operating expenditures per Weighted Average Daily Attendance (WADA) in the general fund and the special revenue fund, operating expenditures per WADA in the general fund, and district's academic rating (recognized or exemplary).

Several fiscal responsibility indicators would be revised to change the percent of total tax collection standard from 96% to 98% for a three-year average, the percent of aggregate variance for data quality measure from 4.0% to 3.0%, and the standard per-student amount of debt-related expenditures from $770 if the district's five-year percent change in students was a 2.0% increase or more or if property taxes collected per penny of tax effort were more than $100,000 to $250 if the district's five-year percent change in students was a 7.0% increase or more or if property taxes collected per penny of tax effort were more than $200,000.

A budgeting indicator would be revised to increase the standard percentage related to operating expenditures for instruction from 54% to 65%, excluding certain expenditures from the denominator in the calculation.

A personnel indicator related to the administrative cost ratio would be revised and a new threshold ratio chart would be added. The ranges for the ratio of students to total staff would also be revised.

A cash management indicator would be revised to increase the standard for per-student investment earnings from $15 to $40, excluding debt service and capital projects funds. The definition of another cash management indicator, relating to optimum fund balances, would be simplified.

Applicable indicators and references would be renumbered and the date of the form updated.

New information related to determination of rating and determination of points would be added. The proposal would establish that district ratings would be based on a point system and each district would be assigned an "A," "B," "C," "Requires Improvement," or "Suspended--Data Quality" rating.

The proposed amendment to 19 TAC §109.1003, Types of Financial Accountability Ratings, would specify the types of ratings districts may receive beginning with fiscal year 2005-2006, in accordance with the procedures, scores, and classifications established in 19 TAC §109.1002.

The proposed amendment to 19 TAC §109.1004, Criteria for Financial Accountability Ratings, would clarify that changes to criteria for ratings will be communicated to school districts in accordance with the applicable effective dates.

The proposed amendment to 19 TAC §109.1005, Reporting, would add requirements that must be presented in the annual financial management report, including a copy of the superintendent's current employment contract, transactions involving the superintendent and board members, gifts that employees and board members receive from vendors, and five-fiscal year projected summary totals.

The worksheet and calculations that districts use beginning in fiscal year 2005-2006 to report financial accountability information would be modified. In addition, districts would be required to identify their accreted interest on their bonds. This information would be included in their GASB 34 data feed to the TEA.

Tom Canby, managing director for financial audits, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Mr. Canby has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the sections will be an updated rating system. The financial accountability rating system benefits the public by putting into place a system to ensure that school districts will be held accountable for the quality of their financial management practices and achieve improved performance in the management of their financial resources. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendments are proposed under Texas Education Code, §39.204, which authorizes the commissioner of education to adopt rules as necessary for the implementation and administration of a financial accountability rating system.

The amendments implement the TEC, §§39.201-39.204.

§109.1002. Financial Accountability Ratings.

(a) In accordance with Texas Education Code (TEC), Chapter 39, Subchapter I, each [~~Each~~] school district must be assigned a financial accountability rating by the Texas Education Agency (TEA). The specific procedures for determining financial accountability ratings will be established annually by the commissioner of education and communicated to all school districts.

(b) For fiscal years 2002-2003, 2003-2004, and 2004-2005, each [~~The~~] financial accountability rating of a school district is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner of education in the financial accountability rating form provided in this subsection entitled "School FIRST- Rating Worksheet," dated May 2003. [~~"~~]
Figure: 19 TAC §109.1002(b) (No change.)

(c) Beginning with fiscal year 2005-2006, the financial accountability rating of a school district is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner of education in the financial accountability rating form provided in this subsection entitled "School FIRST-Rating Worksheet," dated May 2005.
Figure: 19 TAC §109.1002(c)

(d) [~~(c)~~] A financial accountability rating by a voluntary association is a local option of the district, but it does not substitute for a financial accountability rating by the TEA.

(e) The TEA will issue a preliminary financial accountability rating to a school district within 150 days of the district's complete financial data being made available to the TEA staff.

(1) The issuance of the preliminary rating will not be delayed if a district fails to meet the statutory deadline for submitting the annual financial and compliance report.

(2) A district may submit a written request that the TEA review a preliminary rating if the preliminary rating was based on a data error solely attributable to the TEA's review of the data for any of the indicators.

(A) The TEA office responsible for school finance and fiscal analysis must receive the request for review no later than 30 days after the TEA's release of the preliminary rating, and the request must include substantial evidence that supports the district's position.

(B) Requests for review received 31 days or more after the TEA issues a preliminary rating will not be considered.

(C) Errors by a district in recording data or submitting data through the TEA data collection and reporting system do not constitute a valid basis for requesting a review of a preliminary rating.

(D) If the TEA receives a request to review a preliminary rating, a final rating will be issued to the school district no later than 45 days after the district's request for review has been received by the TEA.

(E) If the TEA does not receive a request to review a preliminary rating, the preliminary rating automatically becomes a final rating on the 31st day after issuance of the preliminary rating.

(F) A final rating issued by the TEA pursuant to this section may not be appealed under the TEC, §7.057, or any other law or rule.

§109.1003. Types of Financial Accountability Ratings.

(a) For fiscal years 2002-2003, 2003-2004, and 2004-2005, the [~~The~~] types of ratings districts may receive are as follows.

(1) Superior Achievement. In accordance with the procedures established in §109.1002 of this title (relating to Financial Accountability Ratings), a district shall be classified as Superior Achievement if it scores within the applicable range established by the commissioner of education for Superior Achievement.

(2) Above Standard Achievement. In accordance with the procedures established in §109.1002 of this title, a district shall be classified as Above Standard Achievement if it scores within the applicable range established by the commissioner of education for Above Standard Achievement.

(3) Standard Achievement. In accordance with the procedures established in §109.1002 of this title, a district shall be classified as Standard Achievement if it scores within the applicable range established by the commissioner of education for Standard Achievement.

(4) Substandard Achievement. In accordance with the procedures established in §109.1002 of this title, a district shall be classified as Substandard Achievement if the district responds negatively to specified indicators or if the district scores within the applicable range established by the commissioner of education for Substandard Achievement. The commissioner of education may apply sanctions to a district that is assigned a Substandard Achievement rating.

(5) Suspended--Data Quality. If serious data quality issues are disclosed by the commissioner of education, a Suspended--

Data Quality rating shall be assigned to the school district. The Suspended--Data Quality rating will be assigned until the district successfully resolves the data quality issues. The commissioner of education may apply sanctions to a district that is assigned a Suspended--Data Quality rating.

(b) Beginning with fiscal year 2005-2006, the types of ratings districts may receive are as follows.

(1) Rating of "A." In accordance with the procedures established in §109.1002 of this title, a district shall be classified as "A" if it scores within the applicable range established by the commissioner of education for a rating of "A."

(2) Rating of "B." In accordance with the procedures established in §109.1002 of this title, a district shall be classified as "B" if it scores within the applicable range established by the commissioner of education for a rating of "B."

(3) Rating of "C." In accordance with the procedures established in §109.1002 of this title, a district shall be classified "C" if it scores within the applicable range established by the commissioner of education for a rating of "C."

(4) Requires Improvement. In accordance with the procedures established in §109.1002 of this title, a district shall be classified as Requires Improvement if the district responds negatively to specified indicators or if the district scores within the applicable range established by the commissioner of education for Requires Improvement. The commissioner of education may apply sanctions to a district that is assigned a Requires Improvement rating.

(5) Suspended--Data Quality. If serious data quality issues are disclosed by the commissioner of education, a Suspended--Data Quality rating shall be assigned to the school district. The Suspended--Data Quality rating will be assigned until the district successfully resolves the data quality issues. The commissioner of education may apply sanctions to a district that is assigned a Suspended--Data Quality rating.

§109.1004. Criteria for Financial Accountability Ratings.

The criteria for financial accountability ratings will be based upon indicators established by the commissioner of education and reflected in §109.1002 of this title (relating to Financial Accountability Ratings), in accordance with requirements in state law and after consultation with the comptroller of public accounts. The commissioner of education shall evaluate the rating system annually and may modify the system in order to improve the effectiveness of the rating system. Changes to criteria for ratings and their effective dates will be communicated to school districts [~~no later than May of each calendar year and will apply to the ratings issued in the first calendar year that follows the modification of any of these indicators~~].

§109.1005. Reporting.

(a) Each school district is required to report information and financial accountability ratings to parents and taxpayers by implementing the following reporting procedures.

(1) Each school district is required to prepare and distribute an annual financial management report in accordance with subsection (b) of this section.

(2) The public must be provided an opportunity to comment on the report at a public hearing in accordance with subsection (c) of this section.

(b) The annual financial management report prepared by the school district must include:

(1) a description of the district's financial management performance based on a comparison, provided by the Texas Education Agency (TEA), of the district's performance on the indicators established by the commissioner of education and reflected in §109.1002 of this title (relating to Financial Accountability Ratings). The report will contain information that discloses:

(A) state-established standards; [~~and~~]

(B) the district's previous performance on the indicators; and

(C) the district's financial management performance under each indicator for the current and previous years' financial accountability ratings;

(2) any descriptive information required by the commissioner of education, including: [~~; and~~]

(A) a copy of the superintendent's current employment contract. The school district may publish the superintendent's employment contract on the school district's Internet site in lieu of publication in the annual financial management report;

(B) a summary schedule for the fiscal year (twelve-month period) of total reimbursements received by the superintendent and each board member, including transactions resulting from use of the school district's credit card(s) to cover expenses incurred by the superintendent and each board member. The summary schedule shall separately report reimbursements for meals, lodging, transportation, motor fuel, and other items (the summary schedule of total reimbursements is not to include reimbursements for supplies and materials that were purchased for the operation of the school district);

(C) a summary schedule for the fiscal year of the dollar amount of compensation and/or fees received by the superintendent from another school district or any other outside entity in exchange for professional consulting and/or other personal services. The schedule shall separately report the amount received from each entity;

(D) a summary schedule for the fiscal year of the total dollar amount by employee and board member of gifts that had an economic value of $50 or more in the aggregate in the fiscal year. This reporting requirement only applies to gifts received by the school district's employee(s) and board members (and their immediate family as described by Government Code, Chapter 573, Subchapter B, as a person related to another person within the first degree by consanguinity or affinity) from an outside entity that received payments from the school district in the prior two fiscal years, and gifts from competing vendors that were not awarded contracts in the prior two fiscal years. This reporting requirement does not apply to reimbursement of travel-related expenses by an outside entity when the purpose of the travel is to investigate or explore matters directly related to the duties of a board member or employee, or matters related to attendance at education-related conferences and seminars whose primary purpose is to provide continuing education (this exclusion does not apply to trips for entertainment- related purposes or pleasure trips). This reporting requirement excludes an individual gift or a series of gifts from a single outside entity that had an aggregate economic value of less than $50 per employee or board member;

(E) a summary schedule for the fiscal year of the dollar amount by board member for the aggregate amount of business transactions with the school district. This reporting requirement is not to duplicate the items disclosed in the summary schedule of reimbursements received by board members; and

(F) the five-fiscal year projected summary totals for revenues, expenditures, and fund balances for the General Fund; and

(3) any other information the board of trustees of the district determines to be useful.

(c) The board of trustees of each school district shall hold a public hearing on the annual financial management report within two months after receipt of a final financial accountability rating (including a final rating of Suspended--Data Quality). The public hearing is to be held at a location in the district's facilities. The board shall give notice of the hearing to owners of real property in the district and to parents of district students. In addition to other notice required by law, notice of the hearing must be provided:

(1) to a newspaper of general circulation in the district once a week for two weeks prior to holding the public meeting, providing the time and place where the hearing is to be held. The first notice in the newspaper may not be more than 30 days prior to or less than 14 days prior to the public meeting. If there is not a newspaper published in the county in which the district's central administration office is located, then the notice is to be published in the county nearest the county seat of the county in which the district's central administration office is located; and

(2) through electronic mail to media serving the district.

(d) At the hearing, the annual financial management report shall be disseminated to the district's parents and taxpayers that are in attendance.

(e) The annual financial management report is to be retained in the district for at least a three-year period after the public hearing and will be made available to parents and taxpayers upon request.

(f) For fiscal years 2002-2003, 2003-2004, and 2004-2005, a [~~A~~] corrective action plan is to be filed with the TEA by each school district that received a rating of Substandard Achievement or Suspended--Data Quality. The corrective action plan, which is to be prepared in accordance with instructions from the commissioner of education, is to be filed within one month after the district's public hearing. The commissioner of education may require certain information in the corrective action plan to address the factor(s) that may have contributed to a district's rating of Substandard Achievement or Suspended--Data Quality.

(g) Beginning in fiscal year 2005-2006, school districts that receive a rating of Requires Improvement or Suspended--Data Quality must file a corrective action plan with the TEA. The corrective action plan, which is to be prepared in accordance with instructions from the commissioner of education, is to be filed within one month after the district's public hearing. The commissioner of education may require certain information in the corrective action plan to address the factor(s) that may have contributed to a district's rating of Requires Improvement or Suspended--Data Quality.

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 May 2, 2005.

TRD-200501765
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: June 12, 2005
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 214. VOCATIONAL NURSING EDUCATION

22 TAC §§214.2, 214.3, 214.9

The Board of Nurse Examiners (Board) proposes amendments to 22 Texas Administrative Code §§214.2, 214.3, and 214.9, concerning Vocational Nursing Education. At the October 2004 Board meeting a question was raised regarding efficacy of the prior Board of Vocational Nurse Examiners' rule, 22 TAC Chapter 233, and current Rule 214 which allowed LVNs to be employed as vocational nursing faculty in nursing skills labs, nursing fundamentals theory courses and clinical instruction in all levels of clinical courses. A charge was issued to ACE to review Chapter 214 and to make a recommendation to the Board regarding educational preparation for vocational nursing faculty. On February 24, 2005, the Board's Advisory Committee on Education (ACE) met to consider continuing concerns arising from Chapter 214, Vocational Nursing Education.

ACE determined that: 1) based on excellent NCLEX passage rates and the recent change in ratios which may affect the vocational nursing programs' economic situation, a "vocational" educational model where LVN mentors are a core component of the program would be advantageous; and 2) LVNs should continue to teach in vocational nursing programs with guidelines formulated by board staff. ACE polled 37 vocational nursing programs identified as using vocational nurses in various aspects of instruction. A standardized set of questions was asked of each program. A total of seventeen (17) responses, representing twenty-five (25) vocational nursing programs were tabulated by an ACE member. The data reflected that 30.3% of the vocational nursing programs in the state utilize LVNs in some manner. The major rationales identified by programs for hiring LVNs included: difficulty in finding RN clinical instructors; strong clinical background/teaching experience; and LVN faculty have been in schools for a long time. In addition, programs utilizing LVNs as faculty have not experienced a negative effect on NCLEX-PN pass rates. The NCLEX-PN pass rates of programs utilizing LVNs exceed 80%.

ACE also recommended amending §214.3(b)(3), Program Development, Expansion, and Closure, to read, "when the extension program's curriculum deviates from the original program in any way, the proposed extension is viewed as a new program and Board guidelines for a new program apply." This statement would provide clarity and direction to board staff in defining the meaning of extension and new program, and would give programs the latitude to offer the approved vocational nursing curriculum in a variety of ways to meet the needs of the local community. For example, the program would not have to submit a full proposal to offer an extension program which mirrors the approved curriculum, hours and philosophy of the main program. For consistency and clarity, ACE recommended amending §214.2(39)(C), Definitions, to read "a newly created program of study in which the curriculum, teaching resources, or program hours required to complete the program differs from that of the main location," for purposes of clarity and consistency with §214.3(b)(3).

Finally, §214.9(k) should be deleted because it conflicts with the intent of §§214.6(h), 214.9(f) and 214.9(g). Section 214.6(h) gives the program director the authority to direct the program in all its phases, including approval of teaching staff, selection of

appropriate clinical sites, admission, progression, etc. Section 214.9(k) would require informing board staff of all changes such as faculty selection, clinical site selection, revision of policies for admission, progression, etc. while §214.9(f) implies that programs have the latitude to implement minor curriculum changes without board staff approval. The required reporting would occur with submission of the annual report. However, §214.9(k) implies that all changes, even minor curriculum changes must be reported and approved; therefore, the Board proposes the deletion of this section.

Katherine Thomas, executive director, has determined that for the first five-year period the proposed amendments are adopted there will be no fiscal implications for state or local government as a result of implementing the proposed amendments.

Ms. Thomas has also determined that for each year of the first five years the proposed amendments are adopted, the public benefit will be that the new rules will safeguard the welfare of the public of this State through implementation of educational standards that provide assurance that nurses are safe practitioners. There will not be an effect on small businesses. There is no anticipated cost to affected individuals as a result of this proposed adoption.

Written comments on the proposal may be submitted to Katherine A. Thomas, MN, RN, Executive Director, Board of Nurse Examiners, 333 Guadalupe, Suite 3-460, Austin, Texas 78701.

The proposed amendments are pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. These proposals will not affect any existing statute.

§214.2. Definitions.

Words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) - (38) (No change.)

(39) Vocational Nursing Education Program--a unit or entity within an educational setting which provides a program of study preparing graduates who are competent to practice safely and who are eligible to take the NCLEX-PN examination. Types of programs:

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

(C) New program--a newly created program of study in which the curriculum, teaching resources, or program hours [~~length of time~~] required to complete the program differs from that of the main location.

§214.3. Program Development, Expansion, and Closure.

(a) (No change.)

(b) Extension Program.

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

(3) When the extension program's curriculum [~~program~~] deviates from the original program in any way, the proposed extension is viewed as a new program and Board guidelines for a new program apply.

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

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

§214.9. Program of Study.

(a) - (j) (No change.)

[~~(k) Programs shall apprise the Board office of any program changes. (Proposed amendment to Board to delete.)~~]

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 April 26, 2005.

TRD-200501719
Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: June 12, 2005
For further information, please call: (512) 305-6823

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CHAPTER 215. PROFESSIONAL NURSING EDUCATION

22 TAC §215.6, §215.7

The Board of Nurse Examiners (Board) proposes amendments to 22 Texas Administrative Code §215.6 and §215.7, concerning Professional Nursing Education. On February 24, 2005, the Board's Advisory Committee on Education (ACE) met regarding a charge from the Board to consider concerns arising from Chapter 214, Vocational Nursing Education, and Chapter 215, Professional Nursing Education. During the meeting amendments to Chapter 215 were considered. The proposal amends §215.6(f)(2) and §215.7(c) by adding an option of a doctorate degree in nursing to the requirements for a dean, director and nursing faculty, and the requirement that a dean or director be required to teach not more than three clock hours per week is moved from §215.7, Faculty Qualifications, to §215.6 under the Dean and Director qualifications. In addition, the existing language in §215.6(g)(1) is modified to provide clarity in the intent of the rule.

Katherine Thomas, executive director, has determined that for the first five-year period the proposed amendments are adopted there will be no fiscal implications for state or local government as a result of implementing the proposed amendments.

Ms. Thomas has also determined that for each year of the first five years the proposed amendments are adopted, the public benefit will be that the new rules will safeguard the welfare of the public of this State through implementation of educational standards that provide assurance that nurses are safe practitioners. There will not be an effect on small businesses. There is no anticipated cost to affected individuals as a result of this proposed adoption.

Written comments on the proposal may be submitted to Katherine A. Thomas, MN, RN, Executive Director, Board of Nurse Examiners, 333 Guadalupe, Suite 3-460, Austin, Texas 78701.

The proposed amendments are pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. These proposals will not affect any existing statute.

§215.6. Administration and Organization.

(a) - (e) (No change.)

(f) Each professional nursing education program shall be administered by a qualified individual who is accountable for the planning, implementation and evaluation of the professional nursing education program. The dean or director shall:

(1) (No change.)

(2) hold a master's degree or a doctorate degree in nursing;

(3) (No change.)

(4) have a minimum of three years teaching experience in a professional nursing education program; [and]

(5) have demonstrated knowledge, skills and abilities in administration within a professional nursing education program; and[.]

(6) not carry a teaching load of more than three clock hours per week if required to teach.

(g) When the dean or director of the program changes, the dean or director shall submit to the Board office written notification of the change indicating the final date of employment.

(1) A new dean or director qualification form shall be submitted to the office by the governing institution for approval prior to the appointment of a new dean or director in an existing program or a new nursing program.

(2) - (4) (No change.)

(h) (No change.)

§215.7. Faculty Qualifications and Faculty Organization.

(a) There shall be written personnel policies for nursing faculty that are in keeping with accepted educational standards and are consistent with those of the governing institution. Policies which differ from those of the governing institution shall be consistent with nursing unit mission and goals (philosophy and outcomes).

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

[(4) If the dean or director is required to teach, he or she shall carry a teaching load of no more than three clock hours per week.]

(b) (No change.)

(c) Faculty Qualifications and Responsibilities.

(1) Documentation of faculty qualifications shall be included in the official files of the programs. Each nurse faculty member shall:

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

(C) Hold a master's degree or doctorate degree, preferably in nursing. [A nurse faculty member holding a master's degree in a discipline other than nursing shall hold a bachelor's degree in nursing from an approved or accredited baccalaureate program in nursing; and]

[(i) if teaching in a diploma or associate degree nursing program, shall have at least six semester hours of graduate level content in nursing appropriate to assigned teaching responsibilities, or]

[(ii) if teaching in a baccalaureate level program, shall have at least 12 semester hours of graduate-level content in nursing appropriate to assigned teaching responsibilities.]

(D) A nurse faculty member holding a master's degree in a discipline other than nursing shall hold a bachelor's degree in nursing from an approved or accredited baccalaureate program in nursing; and

(i) if teaching in a diploma or associate degree nursing program, shall have at least six semester hours of graduate level content in nursing appropriate to assigned teaching responsibilities, or

(ii) if teaching in a baccalaureate level program, shall have at least 12 semester hours of graduate-level content in nursing appropriate to assigned teaching responsibilities.

(E) [(D)] In fully approved programs, if an individual to be appointed as faculty member does not meet the requirements for faculty as specified in this subsection, the dean or director is permitted to petition for a waiver of the Board's requirements, according to Board guidelines, prior to the appointment of said individual.

(F) [(E)] In baccalaureate programs, an increasing number of faculty members should hold doctoral degrees appropriate to their responsibilities.

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

(d) - (g) (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 April 26, 2005.

TRD-200501718
Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: June 12, 2005
For further information, please call: (512) 305-6823

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CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.6

The Board of Nurse Examiners proposes an amendment to 22 Texas Administrative Code §217.6, Failure to Renew License, addressing late renewal fees as it applies to individuals on active duty in the United States armed forces serving outside the state. Texas Occupations Code §55.002 requires a state agency that issues a license to "adopt rules to exempt an individual who holds a license issued by the agency from any increased fee or other penalty imposed by the agency for failing to renew the license in a timely manner if the individual establishes to the satisfaction of the agency that the individual failed to renew the license in a timely manner because the individual was on active duty in the United States armed forces serving outside this state." In compliance with this requirement, §217.6 is amended by adding new proposed subsection (g) and puts into rule the existing policy of the Board. In addition, a few modifications are made to subsections (b) and (c) for clarification only.

Katherine Thomas, executive director, has determined that for the first five-year period the proposed amendments are adopted there will be no fiscal implications for state or local government as a result of implementing the proposed amendments.

Ms. Thomas has also determined that for each year of the first five years the proposed amendments are adopted, the public benefit will be that the new rules will prevent actively deployed nurses from being penalized for late licensure renewals though the Board's practice has been to grant a waiver. There will not

be an effect on small businesses. There is no anticipated cost to affected individuals as a result of this proposed adoption.

Written comments on the proposal may be submitted to Katherine A. Thomas, MN, RN, Executive Director, Board of Nurse Examiners, 333 Guadalupe, Suite 3-460, Austin, Texas 78701.

The proposed amendments are pursuant to the authority of Texas Occupations Code §301.151 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. This proposal will comply with and affect Texas Occupations Code §55.002.

§217.6. Failure to Renew License.

(a) (No change.)

(b) A nurse who is not practicing nursing and who fails to maintain a current license from any licensing authority for four or more years will be required to:

(1) complete a [~~board-approved~~] refresher course[~~,~~] or extensive orientation to the practice of nursing, or completion of a nursing program of study. The applicant will submit an application for temporary permit for the limited purpose of completing a refresher course, extensive orientation to the practice of nursing, or program of study;

(2) - (4) (No change.)

(5) submit evidence of completion of 20 contact hours of acceptable continuing education for [~~within~~] the [~~previous~~] two years immediately preceding the application for relicensure.

(c) A nurse who fails to maintain a current Texas license for four years or more and who is licensed and has practiced in another state during [~~a minimum of two of~~] the previous four years preceding the application for relicensure in Texas, shall be exempt from requirements of subsection (b)(1) and (2) of this section.

(d) - (f) (No change.)

(g) Special Reactivation Provisions for Actively Deployed Nurses.

(1) If a nurse's license lapses and becomes delinquent while serving in the military whenever the United States is engaged in active military operations against any foreign power, the license may be reactivated without penalty or payment of the reactivation late renewal fee(s) under the following conditions:

(A) The license was active at the time of deployment.

(B) The application for reactivation is made while still in the armed services or no later than three months after discharge from active service or return to inactive military status.

(C) A copy of the military activation orders or other proof of active military service accompanies the application;

(D) The renewal fee is paid; and

(E) If the required continuing education contact hours were not earned for renewal during the earning period, the nurse shall be required to complete the required continuing education hours needed for renewal no later than three months after discharge from active service, return to inactive military status, or return to the United States from an active war zone.

(2) The continuing education contact hours used for reactivation may not be used for the next license renewal.

(3) The continuing education contact hours for the next license renewal following reactivation may not be prorated.

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 April 26, 2005.

TRD-200501720
Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: June 12, 2005
For further information, please call: (512) 305-6823

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CHAPTER 227. PILOT PROGRAMS FOR INNOVATIVE APPLICATIONS TO PROFESSIONAL NURSING EDUCATION

22 TAC §§227.1 - 227.6

The Board of Nurse Examiners (Board) proposes new 22 Texas Administrative Code Chapter 227, §§227.1 - 227.6, Pilot Programs for Innovative Applications to Professional Nursing Education. The Board has the authority to approve and adopt rules regarding pilot programs for the innovative application in the practice and regulation of professional nursing as authorized by Texas Occupations Code §301.1605 which was enacted by Senate Bill 718, 78th Texas Legislature, Regular Session. The Board first acted with this authorization in April 2004 and approved an initial pilot program, the M.D. Anderson Patient Safety Pilot Program, designed to evaluate the efficacy and effect on the public of nursing error reporting systems and to encourage the identification of system errors.

The BNE consistently receives requests for flexibility and creativity from nursing education programs wanting to explore new approaches to nursing education. Consequently, offering a proposal process that will encourage the development, implementation and study of innovative approaches will support the efforts of nursing education programs to train and graduate competent, safe registered nurses. In January 2005, staff informed the Board of the approach by several entities inquiring about the process for obtaining Board permission for waiving certain requirements of the Board's Chapter 215, Professional Nursing Education, in order to develop and implement strategies designed to enhance enrollment in Texas schools of nursing. Subsequent to the adoption of this rule, the Board will issue a Request for Proposal for nursing education pilot programs.

Kathy Thomas, Executive Director, has determined that there are no fiscal implications for state or local government entities as a result of adopting this rule for the first five-year period.

Ms. Thomas has also determined that for each year of the first five years the new rule is adopted the public benefit is that these pilot programs may contribute to the development of alternative avenues to increase admission into schools of nursing, may elicit creative approaches for evidence-based nursing education, and may provide a stimulus for Board rule revision and/or development. There will be no cost to small businesses or individuals as a result of adopting this rule, except to those entities whose request for a pilot study is approved.

Comments on the proposed rule adoption must be made in writing to Kathy Thomas, Executive Director, Board of Nurse Examiners for the State of Texas, 333 Guadalupe, Suite 3-460, Austin, Texas 78701.

The proposal of new Chapter 227 is proposed under the authority of the Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the NPA.

The proposed adoption of the new rules affect the NPA, Texas Occupations Code §301.1605 and §301.1606, as it pertains to pilot programs.

§227.1. Pilot Programs for Innovative Applications to Professional Nursing Education.

The purpose of this rule is to establish the procedures to assure that pilot programs for innovative applications to professional nursing education conducted under Tex. Occ. Code §301.1605 are conducted in a manner consistent with the Board's role of protection of the public and are structured appropriately to evaluate the efficacy and effect on professional nursing students through the innovative application of professional nursing education programs.

§227.2. Initiation of Approval for Innovative Applications to Professional Nursing Education Programs.

(a) Innovative Applications in Professional Nursing Education Programs under this rule may be conducted:

(1) by the Board on its own initiative; or

(2) by a third party either through an application or request for proposal process.

(b) If by application, the application must be submitted on an application form developed by the Board and comply with all conditions set by the Board for applying for a pilot.

(c) If by request for proposal, the submitted proposal must comply with all conditions set out in the request for proposal.

(d) The Board shall have the right to limit the number of pilots that are approved and to refuse to accept an application on the basis that the Board is not accepting new pilot program applications.

(e) If an application or proposal is submitted with incomplete information, the Board may:

(1) reject the application or proposal; or

(2) request the incomplete information be provided.

(f) As a condition of approving an application or proposal, the Board may request changes be made in how the pilot is designed so as to better meet the purpose for pilots conducted under this rule as set out in §227.1.

§227.3. General Selection Criteria.

(a) Applications will be approved based on the innovative application to a professional nursing program's ability to meet the purpose of the rules. Selection criteria shall be based on:

(1) Program quality as determined by the Board;

(2) Description of the pilot program, including the body of knowledge that has influenced the development of the proposed program and the financial support for the proposed program;

(3) Methodology of the pilot program, including research objectives and qualitative and/or quantitative metrics used to evaluate the program;

(4) Pilot program outcomes, including how the success of the program will improve nursing education and enhance nursing practice;

(5) Program innovation; and

(6) Controls to maintain quality education:

(A) Methods shall be incorporated into the plan to ensure that students in innovative programs receive an equivalent, quality education as do students in standard programs (comparative group);

(B) Ongoing evaluation shall be implemented to determine the students' progress in the innovative program; and

(C) If evidence indicates that students are not meeting objectives in innovative programs, a plan for corrective measures to re-mediate must be in place.

(7) Other factors including financial ability to perform the innovative professional nursing education pilot program, State and regional needs and priorities, ability to continue the professional nursing education pilot program after the initial application period, past performance of the applicant, and other related factors as determined by the Board.

(b) Programs shall have a defined length, not to exceed two years. Programs may be extended upon approval of a written application submitted to the Board.

§227.4. Application and Review Process.

(a) The Executive Director shall screen and evaluate the quality of applications and proposals to determine if they meet the criteria of §227.3. The Executive Director shall forward qualified applications and proposals to the Board for evaluation. Eliminated applicants shall be notified by the Board.

(b) The Board may approve the proposal, defer action on the proposal, or deny further consideration of the proposal.

(c) If the proposed pilot receives approval, the nursing education program must submit a written report of outcomes resulting from the innovative educational application within 90 days from completion of the pilot.

(d) If the nursing education program requests that the innovative professional nursing education pilot program become a permanent part of an approved nursing program, a proposal shall be submitted to the Board by the Director of the program after the final evaluation of the project has been submitted and no less then 60 days prior to a regularly scheduled meeting of the Board. The proposal shall include information outlined in Board guidelines.

§227.5. Monitoring and Evaluating Innovative Applications for Professional Nursing Education Programs.

(a) All nursing education pilot programs shall be subject to monitoring and evaluation by the Board to ensure compliance with the criteria of this rule and obtain evidence that research goals are being pursued.

(b) The Board may require that the entity conducting a nursing education pilot program under this rule reimburse the Board for the cost of monitoring and evaluating the nursing education pilot program.

(c) The Board may contract with a third party to perform the monitoring and evaluation of nursing education pilot programs.

(d) The Board may arrange for a nursing education pilot program to directly reimburse a third party for the monitoring and evaluation of a nursing education pilot program.

§227.6. Contract Discussions.

(a) Contracts following the approval of an application or proposal by the Board: the successful applicant must sign a contract issued by the Executive Director and based on the information contained in the application.

(b) Subcontracts with the prior written approval of the Board: the successful applicant may enter into third party contracts and subcontracts to conduct the nursing education pilot program.

(c) Cancellation or suspension of programs: the Board has the right to reject all applications and proposals, and cancel any nursing education pilot program solicitations before a contract is signed. Breach of contract will result in termination of the nursing education pilot program.

(d) Requirements for applications: the full text of the administrative regulations and funding requirements for this nursing education pilot program is contained in the official Request for Proposal available on request from the Board.

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 April 26, 2005.

TRD-200501717
Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: June 12, 2005
For further information, please call: (512) 305-6823

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.51

The Texas Real Estate Commission (TREC) proposes amendments to §535.51, concerning General Requirements. The amendment revises subsection (c)(6) of §535.51 to clarify that an education evaluation must be obtained within one year of the date of application for a license. An applicant must submit a new request for evaluation and pay the $20 fee if an existing evaluation is obtained more than one year before the date of application for a license.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section.

Ms. DeHay also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the amendment will be clarification of the requirements for timeliness of education evaluations. The anticipated economic cost to persons who are required to comply with the proposed amendment is $20 to the extent the person wishes to file an application for licensure with the commission and the applicant has not obtained an education evaluation within one year of the date of the application for licensure.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.51. General Requirements.

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

(c) The commission shall return applications to applicants when it has been determined that the application fails to comply with one of the following requirements.

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

(6) The applicant has not obtained, within one year from the date the application is filed, an evaluation from the commission showing the applicant meets education requirements or experience requirements have not been satisfied.

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

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

Filed with the Office of the Secretary of State on April 27, 2005.

TRD-200501728
Loretta DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: June 12, 2005
For further information, please call: (512) 465-3900

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SUBCHAPTER G. MANDATORY CONTINUING EDUCATION

22 TAC §535.71

The Texas Real Estate Commission (TREC) proposes amendments to §535.71, concerning Mandatory Continuing Education (MCE): Approval of Providers, Courses and Instructors. The amendment revises subsection (d)(11) of §535.71 which adopts by reference MCE Form 14-1, Individual MCE Partial Credit Request Form. The Commission proposes to revise the verification on the form to parallel existing language in §535.72(b)(1)(E). Under this subsection, an education provider must sign the partial credit request form as evidence that the provider has no reason to believe the amount of credit claimed is inaccurate. In addition, the amendment adds new subsection (hh) to allow accredited colleges and universities, and professional trade associations that are otherwise approved MCE providers, to use experts from other related fields, including those from outside Texas, to

teach an MCE elective course without first registering as a commission-approved instructor. At the same time, the MCE elective course must be approved in advance by the Commission before any MCE elective credit would be authorized. Finally, a commission-approved instructor would be responsible for supervising and coordinating the course, and would also be responsible for verifying the attendance of those who request MCE elective credit.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section.

Ms. DeHay also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the amendments will be better educated licensees who are taught relevant real estate related courses by experts in the appropriate field of expertise. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.71. Mandatory Continuing Education: Approval of Providers, Courses and Instructors.

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

(d) Forms. The commission adopts by reference the following forms published and available from the commission, P.O. Box 12188, Austin, Texas, 78711-2188:

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

(11) MCE Form 14-1 [θ], Individual MCE Partial Credit Request Form;

(12) - (13) (No change.)

(e) - (gg) (No change.)

(hh) A provider may use guest speakers who have not been approved as instructors to conduct a registered MCE elective credit course if:

(1) the provider is an accredited college or university or a professional trade association as defined by §535.62(b) of this chapter; and

(2) the course is supervised and coordinated by a commission-approved instructor who is responsible for verifying the attendance of all who request MCE credit.

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 April 27, 2005.

TRD-200501729
Loretta DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: June 12, 2005
For further information, please call: (512) 465-3900

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SUBCHAPTER L. TERMINATION OF SALESPERSON'S ASSOCIATION WITH SPONSORING BROKER

22 TAC §535.121

The Texas Real Estate Commission (TREC) proposes amendments to §535.121, concerning Inactive License. The amendment revises subsection (b) to clarify that a broker may notify the Commission that sponsorship of a salesperson has ended by either sending the license or a copy of the license to the Commission, or otherwise notifying the Commission that sponsorship has ended. Subsection (b) is revised because brokers are no longer required to display a salesperson's license certificate at the broker's place of business. In addition, due to budget constraints, the Commission no longer provides a license certificate and a duplicate pocket license on initial licensure. The Commission mails one license to the broker which the broker then gives to the licensee to use for identification purposes. The Commission recommends that the broker retain a copy of the license and the information provided with the license so that the broker can notify the Commission regarding sponsorship and renewal matters. Brokers may use an existing TREC form, Notice of Salesperson Sponsorship Termination, to notify the Commission that sponsorship has terminated. This form is available at no charge through the TREC web site at www.trec.state.tx.us.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section.

Ms. DeHay also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be clarification of the requirements for brokers to provide notice when their sponsorship of a salesperson ends. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.121. Inactive License.

(a) (No change.)

(b) When the sponsorship of a salesperson ends, the broker shall immediately return the salesperson's license or copy thereof [~~certificate~~] to the commission or otherwise notify the commission that the sponsorship has ended. The commission will no longer consider the broker to sponsor the salesperson upon receipt of the license [~~certificate~~] or upon receipt of a written request from a new sponsoring broker to sponsor the salesperson, whichever first occurs. If the sponsorship has ended because the broker has terminated the sponsorship, the broker shall immediately so notify the salesperson in writing. If the sponsorship has ended because the salesperson has left the sponsorship, the salesperson shall immediately so notify the broker in writing. If the commission receives a request from a broker to sponsor a salesperson shown in the commission's records as sponsored by another broker, the commission shall notify the former broker of the change in sponsorship [~~and request the former broker to return the license certificate to the commission~~].

(c) A salesperson's license becomes inactive when a broker returns a salesperson's license to the commission until a new sponsorship form for the salesperson is mailed or delivered to the commission.

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

Filed with the Office of the Secretary of State on April 27, 2005.

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Loretta DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465-3900

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.217

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

The Texas Real Estate Commission (TREC) proposes the repeal of §535.217, concerning Dishonest Conduct as Grounds for Disciplinary Action. The repeal is proposed because the subjects addressed in these sections will be covered in new proposed revisions to §535.220 TREC is simultaneously proposing as part of the Real Estate Inspector Committee recommendations regarding Professional Conduct and Ethics. As the new subsections will comprehensively address the subjects of the proposed repealed rules as well implement the recommendations, repeal of the rules is necessary to avoid confusion and repetition.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section.

Ms. DeHay also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the repeal will be clarification of inspector standards of real estate inspector professional conduct and ethics.

There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

Comments on the proposed repeal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The repeal is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed repeal.

§535.217. Dishonest Conduct as Grounds for 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.

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Loretta DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465-3900

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22 TAC §535.220

The Texas Real Estate Commission (TREC) proposes amendments to §535.220, concerning Professional Conduct and Ethics. The Real Estate Inspector Committee has recommended that the Commission revise the real estate inspector professional conduct and ethics provisions to prohibit contingency arrangements in cases where compensation depends on specific findings or on closing or settlement; to prohibit an inspector from paying a fee to any person for referral of inspections; to prohibit an inspector from receiving an undisclosed fee for an inspection from more than one party without the consent of the inspector's client; to prohibit an inspector from accepting a fee for recommending services or products to the inspector's client or other parties with an interest in the inspected property; to prohibit an inspector from conducting repair for a fee of any systems or components of property covered by the Standards of Practice on which the inspector has performed an inspection under an earnest money contract, lease, or exchange of real property within 12 months of the date of the inspection; to require that inspectors perform services and provide opinions based only on areas in which they are educated, trained, or have experience; and to prohibit an inspector from disclosing inspection results or client information without prior approval from the client, except for observed immediate safety hazards to occupants exposed to such hazards.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is similarly no impact on local or state employment.

Ms. DeHay also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the amendments will be full transparency and disclosure of the cost of obtaining a real estate inspection in connection with the purchase or sale of real property. While there may be an economic cost to licensed persons, small businesses, micro businesses and large businesses, who currently rely on a business model that encourages payment or acceptance of referral fees, such impact is difficult to calculate as such information is generally only disclosed to the client. Those licensees whose business models are inconsistent with the proposed rules may need to reassess their business models to comply with the proposed amendments. Those licensees will be unable to either pay fees for referrals or accept fees from service providers for recommending services or products to the inspector's client or other parties with an interest in the inspected property.

There is no difference in the economic impact to small business, micro businesses, or large businesses.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.220. Professional Conduct and Ethics.

(a) The responsibility of those persons who engage in the business of performing independent inspections of improvements in real estate transactions imposes integrity beyond that of a person involved in ordinary commerce. Each inspector must maintain a high standard of professionalism, independence, objectivity and fairness while performing inspections in a real estate transaction. Each inspector licensee must also uphold, maintain, and improve the integrity, reputation, and practice of the home inspection profession.

(b) The relationship between an inspector and a client should at a minimum meet the following requirements [~~guidelines~~].

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

(c) The relationship between an inspector and the public should at a minimum meet the following requirements [~~guidelines~~].

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

(d) The relationship of the inspector with another inspector should at a minimum meet the following requirements [~~guidelines~~].

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

(e) An inspector shall comply with the following requirements.

(1) An inspector shall not inspect properties under contingent arrangements whereby any compensation or future referrals are dependent on reported findings or on the closing or settlement of a property.

(2) An inspector shall not directly or indirectly pay a fee or other valuable consideration to any person for the referral of inspections.

(3) An inspector shall not receive a fee, compensation or other valuable consideration for an inspection in a real estate transaction from more than one party without the consent of the inspector's client.

(4) An inspector shall not accept a fee or other valuable consideration in a real estate transaction, directly or indirectly, for recommending contractors, services, or products to the inspector's client or other parties having an interest in inspected properties.

(5) An inspector shall not repair, replace, maintain or upgrade systems or components of property covered by the Standards of Practice under this Subchapter on which the inspector has performed an inspection under an earnest money contract, lease, or exchange of real property within 12 months of the date of the inspection.

(6) Inspectors shall perform services and express opinions based only within their areas of education, training, or experience.

(7) Inspectors shall not disclose inspection results or client information without prior approval from the client. Inspectors, at their discretion, may disclose observed immediate safety hazards to occupants exposed to such hazards, when feasible.

(f) [~~(e)~~] The inspector should make a reasonable attempt to cooperate with other professionals and related tradespersons [~~tradesmen~~] at all times and in all manners in a method that is conducive to the promotion of professionalism, independence and fairness to himself, his business, and the inspection industry.

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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Loretta DeHay
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 39. PUBLIC NOTICE

The Texas Commission on Environmental Quality (commission) proposes amendments to §§39.405, 39.418, 39.419, 39.503, 39.603, 39.604, and 39.651.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Currently, alternative language notice is required for air quality authorizations. The requirement to publish notice in an alternative language newspaper is triggered for air authorizations when either the elementary or middle school nearest to the facility or proposed facility is required to provide a bilingual education program under the Texas Education Code. This standard applies to newspaper publication of the Notice of Receipt of Application and Intent to Obtain Permit (NORI) and the Notice of Application and Preliminary Decision (NAPD), as identified under §39.418 and §39.419.

In response to recent legislative inquiries concerning the absence of bilingual public notice in other media, the commission proposes revisions to existing public notice regulations to maximize public participation in the permitting process, while complementing the goal of House Bill (HB) 801, enacted in 1999, to encourage early public participation. Under the proposed amendments, the requirement to provide published, public notice in an alternative language would extend to NORIs and NAPDs for Municipal Solid Waste Permits, Industrial or Hazardous Waste Facility Permits, Class 3 Modifications of Industrial or Hazardous Waste Facility Permits, Wastewater Discharge Permits (including permits for the disposal of sewage sludge or water treatment sludge, but excluding registrations and notifications for sludge disposal under 30 TAC §312.13), Underground Injection Control Permits, and applications for production area authorizations. It is important to note that this proposed rulemaking is not intended to change current notice requirements applicable to a particular program, but rather to require alternative language notice under specified circumstances. The proposal ensures meaningful participation in the permitting process.

SECTION BY SECTION DISCUSSION

To conform with commission and Texas Register formatting requirements, non-substantive revisions are made throughout the sections to correct citations, acronym usage, and other minor issues. The commission also proposes to change the word "shall" to "must," "must" to "shall," and "which" to "that" in numerous locations to the proposed amendments to conform to the drafting rules in the *Texas Legislative Council Drafting Manual*, October 2004.

Section 39.405, General Notice Provisions

The proposed amendment to §39.405 would require newspaper publication of notice in alternative language(s) under certain circumstances. Specifically, when an applicant is required to publish a NORI or a NAPD, and either the elementary or middle school nearest in proximity to the facility subject to the permit application is required to provide a bilingual education program under the applicable provision of the Texas Education Code, in conjunction with the satisfaction of one of three elements identified in this proposed section, the applicant must publish the notice in an alternative language newspaper that is printed in the same language as that taught through the school bilingual education program.

Section 39.405(h) would also set standards for the acceptable circulation of an alternative language newspaper that may publish the required notice. The standards differ between notice for air quality permits and notices for all other media, which require alternative language notice publication under this proposed subsection. This difference is based upon the existence of specific statutory direction regarding the circulation standards for air quality alternative language notice publications. The standard proposal for non-air quality alternative language notice publications is designed to achieve appropriate public notice, consistent with the approach implemented in the English newspaper publication requirements for certain HB 801 authorizations. It should be noted that the newspaper circulation requirements differ between English and alternative language notices. This is due to the inherent differences between English and alternative language newspaper publications, and the statutory requirements which prescribe the circulation standards for newspapers qualified to publish English notices. The English newspaper circulation requirements also differ between media, such as solid waste versus water quality, per statutory mandate.

For air quality authorizations, an applicant would be required to publish in a newspaper or publication of general circulation within either the municipality or county in which the subject facility is or will be located. This circulation requirement is mandated by statute. For waste and water quality authorizations, an applicant would be required to publish in the county where the facility is or will be located. However, if there is a newspaper or publication of general circulation in the municipality that is home to the subject facility, then the applicant must publish in that newspaper or publication. The rationale behind this requirement is to avoid a result in which an applicant publishes notice in a part of the facility's county that is far in proximity from the potentially interested community.

Additionally, the proposed amendment provides a waiver under limited circumstances if all qualifying newspapers refuse to publish the notice or no qualifying publication exists within the applicable geographical area as currently provided for in the air quality permitting program.

Section 39.418, Notice of Receipt of Application and Intent to Obtain Permit

The proposed amendment to §39.418(b)(1) and (3) would add language clarifying that published notices under paragraphs (1) and (3) are subject to the alternative language newspaper publication requirements of §39.405(h).

Section 39.419, Notice of Application and Preliminary Decision

The proposed amendment to §39.419(b) and (e)(3) would add language clarifying that published notices under subsection (b) and (e)(3) are subject to the alternative language newspaper publication requirements of §39.405(h).

Section 39.503, Application for Industrial or Hazardous Waste Facility Permit

The proposed amendment to §39.503(d) would add language clarifying that published notices under subsection (d) are subject to the alternative language newspaper publication requirements of §39.405(h).

Section 39.603, Newspaper Notice

The proposed amendment to §39.603 would delete subsection (d), which sets forth procedural and substantive requirements for publishing certain notices of air quality permit applications in an alternative language newspaper. In light of proposed §39.405(h), the effect of the air-specific alternative language newspaper notice provision would be duplicative and unnecessary. There would be no alteration to the current alternative language newspaper notice requirements for air quality permits as a result of the proposed amendment to §39.603.

Section 39.604, Sign-Posting

The proposed amendment to §39.604 would change the existing cross-reference in subsection (e), which applies the trigger for the air-specific alternative language newspaper notice requirements to alternative language sign-posting requirements within the air quality permitting program. Under the current proposal, §39.603, as it pertains to alternative language newspaper notice, would be deleted. However, the requirements of current §39.603(d) remain in full force and effect under proposed §39.405(h). Therefore, the substitution of the cross-reference to §39.603 in favor of §39.405(h) will achieve regulatory accuracy without imposing any different substantive change in requirements to the sign-posting requirements under §39.604.

Section 39.651, Application for Injection Well Permit

The proposed amendment to §39.651(d) would add language clarifying that published notices under subsection (d) are subject to the alternative language newspaper publication requirements of §39.405(h).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed amendments are in effect, no significant fiscal implications are anticipated for the agency or other units of state as a result of administration or enforcement of the proposed amendments. There are anticipated fiscal implications for local governments due to increased publication. The proposed amendments would require that all Notices of Receipt and Intent (NORI) and Notices of Application and Preliminary Decision (NAPD), required for authorizations subject to the public notice requirements in Chapter 39, Subchapters H - N, be published in an alternative language in a bilingual newspaper in addition to the English publication requirements.

Current rules only require the Air Quality Permitting Program to provide notice in an alternative language when either an elementary or middle school closest to a facility or proposed facility offers a bilingual education program. The proposed amendments would extend the alternative language requirement to all NORI and NAPD notices for all House Bill (HB) 801 media if the nearest elementary or middle school to the facility or proposed facility has a bilingual education program. The experience of the Air Quality Permitting Program shows that approximately 60% of its notices are affected by the bilingual rules. This fiscal note assumes that the waste and water NORIs and NAPDs could be translated into Spanish templates through the use of contracted services. Based upon the experience of the air quality program, the vast majority of required alternative notices are published in Spanish. The agency does not provide templates to the applicants in other languages. In the rare circumstances in which publication is required in a non-Spanish alternative language, an applicant is required to ensure proper translation for publication.

An increase in the number of alternative language notices required will increase the cost to translate notices in a template format. Translation costs are negotiable and can vary widely depending on the vendor, the number of words in the document, the language difficulty of the document, and the number of documents a vendor may be asked to translate. Costs to translate 23 NORI and 25 NAPD templates are estimated to range from $2,000 to $7,000 for NORIs and $2,500 to $7,000 for NAPDs. These costs assume that a NORI for water quality issues would have an estimated 665 words and a NAPD would have 691 words. Recent quotes for translation costs ranged $.15 cents a word to $30 for 225 words and $225 for 300 words. The number of words above the base word limits quoted were estimated to cost $.15 cents per word to translate. If the actual number of words in a translated NORI or NAPD exceed the number of words used for cost estimates, then translation costs could be higher. Translation costs are expected to be one-time costs, but additional costs could be incurred in future years and will vary depending on legislative or rule changes that would affect the need to change the wording of the templates.

Local Governments

Local governments would be fiscally impacted by the proposed amendments. Local governments could see publication costs increase since NORIs and NAPDs will be required to be published in both English and an alternative language. However, the exact amount of publication costs, which for some local governments could be significant, is not known since such costs vary widely across the state depending on the circulation numbers of the newspaper, the size of the notice, and the number of competitors in the newspaper market. Costs to publish in alternative language newspapers with a circulation of 10,000 in an East Texas county where there is no large metropolitan area can range from $600 to $630. Costs to publish public notices in an alternative language newspaper serving Hidalgo, Cameron, Starr, and Willacy Counties with a circulation of 15,000 is estimated to be $255. In Harris County, publication costs in an alternative language newspaper can range from $700 to $1,000 depending on the circulation statistics of the paper. In Travis County, publication of public notices can range from $400 to $500.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from the changes seen in the proposed amendments will be in compliance with legislative mandates and increased opportunity for non-English speaking citizens to become more involved in environmental issues that could affect them.

Fiscal implications are anticipated for businesses and individuals required to publish NORIs and NAPDs. Businesses and individuals, dealing with water and waste actions, will see an increase in publication costs since NORIs and NAPDs will be required to be published in both English and an alternative language. However, the exact amount of publication costs, which for some local governments could be significant depending on number of authorizations sought, is not known since such costs vary widely across the state depending on the circulation numbers of the newspaper, the size of the notice, and the number of competitors in the newspaper market. Costs to publish in alternative language newspapers with a circulation of 10,000 in a county where there is no large metropolitan area can be $600 to $630. Costs to publish public notices in an alternative language newspaper serving Hidalgo, Cameron, Starr, and Willacy Counties with a circulation of 15,000 is estimated to be $255. In Harris County, publication costs in an alternative language newspaper can range from $700 to $1,000 depending on the circulation statistics of the paper. In Travis County, publication of public notices can range from $400 to $500. Additional costs borne by regulated entities, may be passed on to rate payers, taxpayers, or consumers.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are anticipated for small or micro-businesses because of the proposed amendments. A small business is defined as having fewer than 100 employees or less than

$1 million in annual gross receipts. A micro-business is defined as having no more than 20 employees.

Small or micro-businesses would be subject to the same publication costs as those experienced by larger businesses when publishing waste and water NORIs and NAPDs in an alternative language. If publication costs for water and waste NORIs and NAPDs in an alternative language newspaper range from $255 to $1,000, cost per employee would range from $2.55 to $10 per employee. For a micro-business, these publication costs could range from $12.75 to $50 per employee.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed amendments do not adversely affect a local economy in a material way for the first five years that the proposed amendments are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Government Code. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The primary purpose of this proposed rulemaking action is to extend the alternative language notice requirements, as they currently exist within the air quality permitting program, to waste and water quality authorizations subject to HB 801 procedural requirements. The goal of this expansion is to maximize public awareness of, and involvement in, the commission's authorization activities. The rulemaking is procedural in nature and does not address environmental risks or exposures. Therefore, the proposed rulemaking does not constitute a major environmental rule, and thus is not subject to a formal regulatory analysis.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The specific primary purpose of the proposed amendments is to revise the TCEQ rules to establish procedures for the provision of bilingual notice to the public of certain TCEQ permitting proceedings. The proposed amendments will substantially advance this purpose by providing specific provisions on the previously mentioned matters. Promulgation and enforcement of the proposed amendments will not affect private real property, which is the subject of the amendments because the proposed rulemaking is related to the commission's procedural rules, rather than substantive requirements. Implementation of the proposed amendments would not result in any taking of real property. Alternative approaches to the amendments as proposed would include shifting financial burdens associated with providing notice in alternative language upon the state, or altering the scope of authorizations that would be subject to alternative language notice requirements. The alternatives to the proposed amendments would advance the underlying goal of maximizing public involvement in environmental matters that concern the citizens of Texas. If implemented, neither the amendments as proposed, nor these alternatives, would constitute a taking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to the rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is consistent with the CMP goals and policies because the rulemaking concerns public notice rules. The public notice rules are a procedural mechanism for notifying the general public of certain permitting actions, but will not have a direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the proposed amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

Comments on the consistency of this proposed rulemaking with the CMP may be submitted to the contact persons at the addresses listed under the SUBMITTAL OF COMMENTS section of this proposal.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

This rulemaking proposal will not affect sites subject to the federal operating permits program in Chapter 122.

ANNOUNCEMENT OF HEARING

A public hearing for this proposed rulemaking has been scheduled for June 10, 2005, 10:00 a.m., at the Texas Commission on Environmental Quality, 12100 Park 35 Circle, Building F, Room 2210, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. A time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, commission staff members will be available 30 minutes before the hearing to discuss the proposal and will answer questions before and after the hearing.

Persons planning to attend the hearing who have special communication or other accommodation needs should contact Ms. Patricia Durón, Office of Legal Services at (512) 239-6087. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Ms. Patricia Durón, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas, 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-014-039-LS. Comments must be received no later than 5:00 p.m., June 13, 2005. For further information, please contact Mr. Les Trobman of the Environmental Law Division at (512) 239-6056 or Ms. Kerrie Qualtrough of the Environmental Law Division at (512) 239-3990.

SUBCHAPTER H. APPLICABILITY AND GENERAL PROVISIONS

30 TAC §§39.405, 39.418, 39.419

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, §5.013, concerning General Jurisdiction of Commission; §5.102, concerning General Powers; §5.103, concerning Rules; §5.105, concerning General Policy; §5.115, concerning Persons Affected in Commission Hearings; Notice of Application; §5.552, concerning Notice of Intent to Obtain a Permit; and §5.553, concerning Preliminary Decision; Notice and Public Comment. The amendments are also proposed under Texas Water Code, §26.028, concerning Action on Application; Texas Health and Safety Code, §361.011, concerning Commission's Jurisdiction: Municipal Solid Waste; §361.017, concerning Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste; §361.024, concerning Rules and Standards; §361.064, concerning Permit Application Form and Procedures; §361.0665, concerning Notice of Intent to Obtain Municipal Solid Waste Permit; §361.082, concerning Application for Hazardous Waste Permit: Notice and Hearing; and §361.121, concerning Land Application of Certain Sludge; Permit Required. The proposed extension of alternative language notice requirements to the regulated underground injection control media is also supported by Texas Water Code, §27.019, concerning Rules, Etc.

The proposed amendments implement Texas Water Code, §§5.013, 5.102, 5.103, 5.115, 5.552, 5.553, 26.028, and 27.019; and Texas Health and Safety Code, §§361.011, 361.017, 361.024, 361.064, 361.0665, 361.082, 361.121.

§39.405. General Notice Provisions.

(a) Failure to publish notice. If the chief clerk prepares a newspaper notice that is required by Subchapters G - M of this chapter (relating to Public Notice for Applications for Consolidated Permits, Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses) and the applicant does not cause the notice to be published within 45 days of mailing of the notice from the chief clerk, or for Notice of Receipt of Application and Intent to Obtain Permit, within 30 days after the executive director declares the application administratively complete, or fails to submit the copies of notices or affidavit required in subsection (e) of this section, the executive director may cause one of the following actions to occur.

(1) The chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication.

(2) The executive director may suspend further processing or return the application. If the application is resubmitted within six months of the date of the return of the application, it will [~~shall~~] be exempt from any application fee requirements.

(b) Electronic mailing lists. The chief clerk may require the applicant to provide necessary mailing lists in electronic form.

(c) Mail or hand delivery. When Subchapters G - L of this chapter require notice by mail, notice by hand delivery may be substituted. Mailing is complete upon deposit of the document, enclosed in a prepaid, properly addressed wrapper, in a post office or official depository of the United States Postal Service. If hand delivery is by courier-receipted delivery, the delivery is complete upon the courier taking possession.

(d) Combined notice. Notice may be combined to satisfy more than one applicable section of this chapter.

(e) Notice and affidavit. When Subchapters G - L of this chapter require an applicant to publish notice, the applicant must file a copy of the published notice and a publisher's affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file a copy of the published notice which shows the date of publication and the name of the newspaper is ten business days after the last date of publication. The deadline to file the affidavit is 30 calendar days after the last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice. When the chief clerk publishes notice under subsection (a) of this section, the chief clerk shall file a copy of the published notice and a publisher's affidavit.

(f) Published notice. When this chapter requires notice to be published under this subsection:

(1) the applicant shall publish notice in the newspaper of largest circulation in the county in which the facility is located or proposed to be located or, if the facility is located or proposed to be located in a municipality, the applicant shall publish notice in any newspaper of general circulation in the municipality. For air applications subject to §39.603 of this title (relating to Newspaper Notice), applicants shall instead publish notice as required by that rule; and

(2) for applications for solid waste permits and injection well permits, the applicant shall publish notice in the newspaper of largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in any newspaper of general circulation in the county in which the facility is located or proposed to be located. The requirements of this subsection may be satisfied by one publication if the newspaper is both published in the county and is the newspaper of largest general circulation in the county.

(g) The applicant shall make a copy of the application available for review and copying at a public place in the county in which the facility is located or proposed to be located. If the application is submitted with confidential information marked as confidential by the applicant, the applicant shall indicate in the public file that there is additional information in a confidential file. The copy of the application must [~~shall~~] comply with the following.

(1) A copy of the administratively complete application must be available for review and copying beginning on the first day of newspaper publication of Notice of Receipt of Application and Intent to Obtain Permit and remain available for the publications' designated comment period.

(2) A copy of the complete application (including any subsequent revisions to the application) and executive director's preliminary decision must be available for review and copying beginning on the first day of newspaper publication required by this section and remain available until the commission has taken action on the application or the commission refers issues to State Office of Administrative Hearings [~~SOAH~~].

(h) Alternative language newspaper notice.

(1) Air applications or registrations that are declared administratively complete by the executive director on or after September 1, 1999, are subject to this subsection. Permit applications that are

required to comply with §39.418 or §39.419 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit; and Notice of Application and Preliminary Decision) that are declared administratively complete by the executive director on or after March 31, 2006, are subject to this subsection.

(2) This subsection applies whenever notice is required to be published under §39.418 or §39.419 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit; and Notice of Application and Preliminary Decision), and either the elementary or middle school nearest to the facility or proposed facility is required to provide a bilingual education program as required by Texas Education Code, Chapter 29, Subchapter B, and 19 TAC §89.1205(a) (relating to Required Bilingual Education and English as a Second Language Programs) and one of the following conditions is met:

(A) students are enrolled in a program at that school;

(B) students from that school attend a bilingual education program at another location; or

(C) the school that otherwise would be required to provide a bilingual education program waives out of this requirement under 19 TAC §89.1205(g).

(3) Elementary or middle schools that offer English as a second language under 19 TAC §89.1205(e), and are not otherwise affected by 19 TAC §89.1205(a), will not trigger the requirements of this subsection.

(4) The notice must be published in a newspaper or publication that is published primarily in the alternative languages in which the bilingual education program is or would have been taught, and the notice must be in those languages.

(5) The newspaper or publication must be of general circulation in the county in which the facility is located or proposed to be located. If the facility is located or proposed to be located in a municipality, and there exists a newspaper or publication of general circulation in the municipality, the applicant shall publish notice only in the newspaper or publication in the municipality. This paragraph does not apply to notice required to be published for air quality permits under §39.603 of this title.

(6) For notice required to be published in a newspaper or publication under §39.603 of this title, relating to air quality permits, the newspaper or publication must be of general circulation in the municipality or county in which the facility is located or is proposed to be located, and the notice must be published as follows.

(A) One notice must be published in the public notice section of the newspaper and must comply with §39.411 of this title (relating to Text of Public Notice).

(B) Another notice with a total size of at least six column inches, with a vertical dimension of at least three inches and a horizontal dimension of at least two column widths, or a size of at least 12 square inches, must be published in a prominent location elsewhere in the same issue of the newspaper. This notice must contain the following information:

(i) permit application number;

(ii) company name;

(iii) type of facility;

(iv) description of the location of the facility; and

(v) a note that additional information is in the public notice section of the same issue.

(7) The requirements of this subsection are waived for each language in which no publication exists, or if the publishers of all alternative language publications refuse to publish the notice. If the alternative language publication is published less frequently than once a month, this notice requirement may be waived by the executive director on a case-by-case basis.

(8) Notice under this subsection will only be required to be published within the United States.

(9) Each alternative language publication must follow the requirements of this chapter that are consistent with this subsection.

(10) If a waiver is received under this subsection, the applicant shall complete a verification and submit it as required under §39.605(3) of this title (relating to Notice to Affected Agencies).

(11) Waste and water quality alternative language notices are subject to the requirements set forth in paragraph (6)(A) and (B) of this subsection.

§39.418. Notice of Receipt of Application and Intent to Obtain Permit.

(a) When the executive director determines that an application is administratively complete, the chief clerk shall mail this determination concurrently with the Notice of Receipt of Application and Intent to Obtain Permit to the applicant.

(b) Not later than 30 days after the executive director declares an application administratively complete:

(1) the applicant shall publish Notice of Receipt of Application and Intent to Obtain Permit once under §39.405(f)(1) of this title (relating to General Notice Provisions) and, for solid waste applications and injection well applications, also under §39.405(f)(2) of this title. The applicant shall also publish the notice under §39.405(h) of this title, if applicable;

(2) the chief clerk shall mail Notice of Receipt of Application and Intent to Obtain Permit to those listed in §39.413 of this title (relating to Mailed Notice), and to:

(A) the state senator and representative who represent the general area in which the facility is located or proposed to be located; and

(B) the river authority in which the facility is located or proposed to be located if the application is under Texas Water Code, Chapter 26;[.]

(3) for air applications, paragraphs (1) and (2) of this subsection do not apply. Instead the applicant shall provide notice as specified in Subchapter K of this chapter (relating to Public Notice of Air Quality Applications). Specifically, publication in the newspaper must [~~shall~~] follow the requirements under §39.603 of this title (relating to Newspaper Notice), sign posting must [~~shall~~] follow the requirements under §39.604 of this title (relating to Sign-Posting), and the chief clerk shall mail notice according to §39.602 of this title (relating to Mailed Notice). The applicant shall also follow the requirements, as applicable, under §39.405(h) of this title; and

(4) the notice must include the applicable information required by §39.411(b) of this title (relating to Text of Public Notice).

§39.419. Notice of Application and Preliminary Decision.

(a) After technical review is complete, the executive director shall file the preliminary decision and the draft permit with the chief clerk, except for air applications under subsection (e)(1) of this section. The chief clerk shall mail the preliminary decision concurrently with

the Notice of Application and Preliminary Decision. Then, when this chapter requires notice under this section, notice must [~~shall~~] be given as required by subsections (b) - (e) of this section.

(b) The applicant shall publish Notice of Application and Preliminary Decision at least once in the same newspaper as the Notice of Receipt of Application and Intent to Obtain Permit, unless there are different requirements in this section or a specific subchapter in this chapter for a particular type of permit. The applicant shall also publish the notice under §39.405(h) of this title (relating to General Notice Provisions), if applicable.

(c) Unless mailed notice is otherwise provided under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice).

(d) The notice must include the information required by §39.411(c) of this title (relating to Text of Public Notice).

(e) For air applications:

(1) The [~~the~~] applicant is not required to publish Notice of Application and Preliminary Decision, if:

(A) no hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain Permit;

(B) a hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain Permit and the request is withdrawn before the date the preliminary decision is issued;

(C) the application is for any amendment, modification, or renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted unless the application involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations; or

(D) the application is for initial issuance of a permit described in §39.403(b)(11) or (12) of this title (related to Applicability) or §39.404 of this title (relating to Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities);

(2) If notice under this section is required, the agency shall mail notice according to §39.602 of this title (relating to Mailed Notice); and

(3) Notice of Application and Preliminary Decision must [~~shall~~] be published as specified in Subchapter K of this chapter (relating to Public Notification of Air Quality Applications) and, as applicable, under §39.405(h) of this title for permits that are not exempt under paragraph (1)(A) - (D) of this subsection or are for the following federal preconstruction approvals:

(A) applications under Chapter 116, Subchapter B, Division 5 of this title (relating to Nonattainment Review);

(B) applications under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review); and

(C) applications under Chapter 116, Subchapter C of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

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 April 29, 2005.

TRD-200501759
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 12, 2005
For further information, please call: (512) 239-6087

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SUBCHAPTER I. PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

30 TAC §39.503

STATUTORY AUTHORITY

The amendment is proposed under Texas Health and Safety Code, §361.017, Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste; §361.024, Rules and Standards; §361.064, Permit Application Form and Procedures; and Texas Water Code, §5.103, Rules; §5.552, Notice of Intent to Obtain Permit; and 5.553, Preliminary Decision; Notice and Public Comment.

The proposed amendment implements Texas Health and Safety Code, §§361.017, 361.024, and 361.064; and Texas Water Code, §§5.103, 5.552, and 5.553.

§39.503. Application for Industrial or Hazardous Waste Facility Permit.

(a) Applicability. This section applies to applications for industrial or hazardous waste facility permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication requirements.

(1) If an applicant for an industrial or hazardous waste facility permit decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant must submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must [~~shall~~] also be mailed to the mayor of the municipality. Mailed notice must [~~shall~~] be by certified mail. When the applicant submits the notice of intent to the executive director, the applicant shall publish notice of the submission in a paper of general circulation in the county in which the facility is to be located.

(2) The requirements of this paragraph are set forth at 40 Code of Federal Regulations (CFR) §124.31(b) - (d), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417, and apply to all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, where the renewal application is proposing a significant change in facility operations. For the purposes of this paragraph, a "significant change" is any change that would qualify as a Class 3 permit modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The requirements of this paragraph do not

apply to an application for minor amendment under §305.62 of this title (relating to Amendment), correction under §50.45 of this title (relating to Corrections to Permits), or modification under §305.69 of this title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit, where the renewal application is proposing a significant change in facility operations.

(c) Notice of Receipt of Application and Intent to Obtain Permit.

(1) Upon the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located and to the persons listed in §39.413 of this title (relating to Mailed Notice). For all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, the chief clerk shall provide notice to meet the requirements of this subsection and 40 CFR §124.32(b), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417, and the executive director shall meet the requirements of 40 CFR §124.32(c), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417. The requirements of this paragraph relating to 40 CFR §124.32(b) - (c) do not apply to an application for minor amendment under §305.62 of this title, correction under §50.45 of this title, or modification under §305.69 of this title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit.

(2) After the executive director determines that the application is administratively complete:

(A) notice must [~~shall~~] be given as required by §39.418 of this title (relating to Receipt of Application and Intent to Obtain Permit). Notice under §39.418 of this title will satisfy the notice of receipt of application required by §281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); and

(B) the executive director or chief clerk shall mail notice of this determination along with a copy of the application or summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and the health authority of the county in which the facility is located.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must [~~shall~~] be published once as required by §39.405(f)(2) of this title (relating to General Notice Provisions). In addition to the requirements of §39.405(h) and §39.419 of this title, the following requirements apply.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county that [~~which~~] is adjacent or contiguous to each county in which the facility is located. One notice may satisfy the requirements of §39.405(f)(2) of this title and of this subsection, if the newspaper meets the requirements of both rules.

(2) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the application on one or more local radio stations that broadcast to an area that includes all of the county in which the facility is located. The executive director may require that the broadcasts be made to an area that also includes contiguous counties.

(3) The notice must [~~shall~~] comply with §39.411 of this title (relating to Text of Public Notice). The deadline for public comments on industrial solid waste applications will [~~shall~~] be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) If an applicant proposes a new hazardous waste facility, the agency shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application.

(2) If an applicant proposes a major amendment of an existing hazardous waste facility permit, this subsection applies if a person affected files a request for public meeting with the chief clerk concerning the application before the deadline to file public comment or hearing requests.

(3) If an applicant proposes a new industrial or hazardous waste facility that would accept municipal solid waste, the applicant shall hold a public meeting in the county in which the facility is proposed to be located. This meeting must be held before the 45th day after the date the application is filed.

(4) A public meeting is not a contested case proceeding under the Administrative Procedure Act [~~APA~~]. A public meeting held as part of a local review committee process under subsection (b) of this section meets the requirements of paragraph (1) of this subsection if public notice is provided under this subsection.

(5) The applicant shall publish notice of any public meeting under this subsection, in accordance with §39.405(f)(2) of this title, once each week during the three weeks preceding a public meeting. The published notice must [~~shall~~] be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three [~~3~~] inches (7.6 centimeters). For public meetings under paragraph (3) of this subsection, the notice of public meeting is not subject to §39.411(d) of this title, but instead must [~~shall~~] contain at least the following information:

(A) permit application number;

(B) applicant's name;

(C) proposed location of the facility;

(D) location and availability of copies of the application;

(E) location, date, and time of the public meeting; and

(F) name, address, and telephone number of the contact person for the applicant from whom interested persons may obtain further information.

(6) For public meetings held by the agency under paragraph (1) of this subsection, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of hearing.

(1) This subsection applies if an application is referred to State Office of Administrative Hearings [~~SOAH~~] for a contested case hearing under Chapter 80 of this title (concerning Contested Case Hearings).

(2) Newspaper notice.

(A) The applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area that [~~which~~] is adjacent or contiguous to each county in which the proposed facility is located.

(B) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(f)(2) of this title. The published notice must [~~shall~~] be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three [~~3~~] inches (7.6 centimeters) or have a total size of at least nine [~~9~~] column inches (18 square inches). The text of the notice must [~~shall~~] include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must [~~shall~~] be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The chief clerk shall mail notice to the persons listed in §39.413 of this title, except that the chief clerk shall not mail notice to the persons listed in paragraph (1) of that section. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant shall [~~must~~] file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(B) If the applicant proposes to amend or renew an existing permit, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(4) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the hearing under subsection (d)(2) of this section.

(5) Notice under paragraphs (2)(A), (3), and (4) of this subsection must [~~shall~~] be completed at least 30 days before the hearing.

(g) This section does not apply to applications for an injection well permit.

(h) Information repository. The requirements of 40 CFR §124.33(b) - (f), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417, apply to all applications for hazardous waste permits.

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 April 29, 2005.

TRD-200501760
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 12, 2005
For further information, please call: (512) 239-6087

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SUBCHAPTER K. PUBLIC NOTICE OF AIR QUALITY APPLICATIONS

30 TAC §39.603, §39.604

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, §5.013, General Jurisdiction of Commission, §5.102, General Powers; and §5.103, General Policy; and Texas Health and Safety Code, §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.017, Rules; §382.051, Permitting Authority of Commission; Rules; and §382.056, Notice of Intent to Obtain Permit or Permit Review; Hearing.

The proposed amendments implement Texas Health and Safety Code, §§382.002; 382.011; 382.017; 382.051; and 382.056.

§39.603. Newspaper Notice.

(a) Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) is required to be published no later than 30 days after the executive director declares an application administratively complete. This notice must contain the text as required by §39.411(b)(1) - (6) and (8) - (10) of this title (relating to Text of Public Notice).

(b) Notice of Application and Preliminary Decision under §39.419 of this title (relating to Notice of Application and Preliminary Decision) is required to be published within 33 days after the chief clerk has mailed the preliminary decision concurrently with the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(c)(1) - (6) of this title [~~(relating to Text of Public Notice)~~].

(c) General newspaper notice. Unless otherwise specified, when this chapter requires published notice of an air application, the applicant shall publish notice in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility, as follows.

(1) One notice must [~~shall~~] be published in the public notice section of the newspaper and must [~~shall~~] comply with §39.411 of this title [~~(relating to Text of Notice)~~].

(2) Another notice with a total size of at least six [~~6~~] column inches, with a vertical dimension of at least three [~~3~~] inches and a horizontal dimension of at least two [~~2~~] column widths, or a size of at least 12 square inches, must [~~shall~~] be published in a prominent location elsewhere in the same issue of the newspaper. This notice must [~~shall~~] contain the following information:

(A) permit application number;

(B) company name;

(C) type of facility;

(D) description of the location of the facility; and

(E) a note that additional information is in the public notice section of the same issue.

[~~(d) Alternative language newspaper notice.~~]

[~~(1) This subsection applies whenever notice is required to be published under §39.418 of this title, §39.419 of this title, and this section and either the elementary or middle school nearest to the facility or proposed facility is required to provide a bilingual education program as required by Texas Education Code, Chapter 29, Subchapter B, and 19 TAC §89.1205(a) (relating to Required Bilingual Education~~

and English as a Second Language Programs) and one of the following conditions is met:]

[(A) students are enrolled in a program at that school;]

[(B) students from that school attend a bilingual education program at another location; or]

[(C) the school that otherwise would be required to provide a bilingual education program waives out of this requirement under 19 TAC §89.1205(g).]

[(2) Elementary or middle schools that offer English as a second language under 19 TAC §89.1205(e), and are not otherwise affected by 19 TAC §89.1205(a), will not trigger the requirements of this subsection.]

[(3) The notice shall be published in a newspaper or publication that is published primarily in the alternative languages in which the bilingual education program is or would have been taught, and the notice must be in those languages.]

[(4) The newspaper or publication must be of general circulation in the municipality or county in which the facility is located or proposed to be located. Notice under this subsection shall only be required to be published within the United States.]

[(5) The requirements of this subsection are waived for each language in which no publication exists, or if the publishers of all alternative language publications refuse to publish the notice. If the alternative language publication is published less frequently than once a month, this notice requirement may be waived by the executive director on a case-by-case basis.]

[(6) Each alternative language publication shall follow the requirements of this chapter that are consistent with this section.]

[(7) If a waiver is received under this section, the applicant shall complete a verification and submit it as required under §39.605(3) of this title (relating to Notice to Affected Agencies).]

(d) [(e)] Alternative publication procedures for small businesses.

(1) The applicant does not have to comply with subsection (c)(2) of this section if all of the following conditions are met:

(A) the applicant and source meets the definition of a small business stationary source in Texas Health and Safety Code, §382.0365 [of the Texas Health and Safety Code] including, but not limited to, those which:

(i) are not a major stationary source for federal air quality permitting;

(ii) do not emit 50 tons or more per year of any regulated air pollutant;

(iii) emit less than 75 tons per year of all regulated air pollutants combined; and

(iv) are owned or operated by a person that employs 100 or fewer individuals; and

(B) if the applicant's site meets the emission limits in §106.4(a) of this title (relating to Requirements for Exemption from Permitting) it will be considered to not have a significant effect on air quality.

(2) The executive director may post information regarding pending air permit applications on its website, such as the permit number, company name, project type, facility type, nearest city, county, date public notice authorized, information on comment periods, and information on how to contact the agency for further information.

(e) [(f)] If an air application is referred to State Office of Administrative Hearings [SOAH] for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings), the applicant shall publish notice once in a newspaper as described in subsection (c) of this section, containing the information under §39.411(d) of this title. This notice must [shall] be published and affidavits filed with the chief clerk no later than 30 days before the scheduled date of the hearing.

§39.604. Sign-Posting.

(a) At the applicant's expense, a sign or signs must [shall] be placed at the site of the existing or proposed facility declaring the filing of an application for a permit and stating the manner in which the commission may be contacted for further information. Such signs must [shall] be provided by the applicant and must [shall] substantially meet the following requirements:

(1) Signs must [shall] consist of dark lettering on a white background and must [shall] be no smaller than 18 inches by 28 inches and all lettering must [shall] be no less than 1-1/2 [one and one-half] inches in size and block printed capital lettering;

(2) Signs must [shall] be headed by the words listed in the following subparagraphs [below]:

(A) "PROPOSED AIR QUALITY PERMIT" for new permits and permit amendments; or

(B) "PROPOSED RENEWAL OF AIR QUALITY PERMIT" for permit renewals.

(3) Signs must [shall] include the words "APPLICATION NO." and the number of the permit application. More than one application number may be included on the signs if the respective public comment periods coincide;

(4) Signs must [shall] include the words "for further information contact";

(5) Signs must [shall] include the words "Texas Commission on Environmental Quality" ["Texas Natural Resource Conservation Commission,"] and the address of the appropriate commission regional office;

(6) Signs must [shall] include the telephone number of the appropriate commission office;

(b) The sign or signs must be in place by the date of publication of the Notice of Receipt of Application and Intent to Obtain Permit and must remain in place and legible throughout that public comment period. The applicant shall [must] provide a verification that the sign posting was conducted according to this section.

(c) Each sign placed at the site must be located within ten feet of every property line paralleling a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs must [shall] be required along any property line paralleling a public highway, street, or road. The executive director may approve variations from these requirements if it is determined that alternative sign posting plans proposed by the applicant are more effective in providing notice to the public. This section's sign requirements do not apply to properties under the same ownership that [which] are noncontiguous or separated by intervening public highway, street, or road, unless directly involved by the permit application.

(d) The executive director may approve variations from the requirements of this subsection if the applicant has demonstrated that it

is not practical to comply with the specific requirements of this subsection and alternative sign posting plans proposed by the applicant are at least as effective in providing notice to the public. The approval from the executive director under this subsection must be received before posting signs for purposes of satisfying the requirements of this section.

(e) Alternative language sign posting is required whenever alternative language newspaper notice would be required under §39.405(h) of this title (relating to General Notice Provisions) [~~§39.603 of this title (relating to Newspaper Notice)~~]. The applicant shall post additional signs in each alternative language in which the bilingual education program is taught. The alternative language signs must [~~shall~~] be posted adjacent to each English language sign required in this section. The alternative language sign posting requirements of this subsection must [~~shall~~] be satisfied without regard to whether alternative language newspaper notice is waived under §39.405(h)(10) of this title [~~§39.703(d)(5) of this title (relating to Newspaper Notice)~~]. The alternative language signs must [~~shall~~] meet all other requirements of this section.

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

Filed with the Office of the Secretary of State on April 29, 2005.

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Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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SUBCHAPTER L. PUBLIC NOTICE OF INJECTION WELL AND OTHER SPECIFIC APPLICATIONS

30 TAC §39.651

STATUTORY AUTHORITY

The amendment is proposed under Texas Health and Safety Code, §361.017, Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste; §361.024, Rules and Standards; §361.064, Permit Application Form and Procedures; and Texas Water Code, §5.103, Rules; §5.552, Notice of Intent to Obtain Permit; §5.553, Preliminary Decisions; Notice and Public Comment; and §27.019, Rules.

The proposed amendment implements Texas Health and Safety Code, §§361.017, 361.024, and 361.064; and Texas Water Code, §§5.103, 5.552, 5.553, and 27.019.

§39.651. Application for Injection Well Permit.

(a) Applicability. This subchapter applies to applications for injection well permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication local review committee process. If an applicant decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall [~~must~~] submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. In addition, if the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must [~~shall~~] be mailed to the mayor of the municipality.

(c) Notice of Receipt of Application and Intent to Obtain Permit.

(1) On the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located.

(2) After the executive director determines that the application is administratively complete, notice must [~~shall~~] be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain a Permit). This notice must contain the text as required by §39.411(b)(1) - (9) and (12) of this title (relating to Text of Public Notice). Notice under §38.418 of this title will satisfy the notice of receipt of application required by §281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness).

(3) After the executive director determines that the application is administratively complete, in addition to the requirements of §39.418 of this title, notice must [~~shall~~] be given to[~~:~~] the School Land Board, if the application will affect lands dedicated to the permanent school fund. The notice shall be in the form required by Texas Water Code, §5.115(c).

(4) For notice of receipt of application and intent to obtain permit concerning Class I underground injection wells, the chief clerk shall also mail notice to:

(A) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(B) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(C) persons who own mineral rights underlying the existing or proposed injection well facility; and

(D) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located.

(5) The chief clerk or executive director shall also mail a copy of the application or a summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located and to the county judge and the health authority of the county in which the facility is located.

(6) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three [~~3~~] inches (7.6 centimeters) and the notice must [~~shall~~] appear in the section of the newspaper containing state or local news items.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Application and Preliminary Decision) must [~~shall~~] be published once under §39.405(f)(2) of this title (relating to General Notice Provisions) after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(c)(1) - (6) of this title. In addition to the requirements of §39.405(h) and §39.419 of this title, the following requirements apply.[~~:~~]

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county that [~~which~~] is adjacent

or contiguous to each county in which the proposed facility is located. One notice may satisfy the requirements of §39.405(f)(2) of this title and of this subsection, if the newspaper meets the requirements of both rules.

(2) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three [~~3~~] inches (7.6 centimeters) and the notice must [~~shall~~] appear in the section of the newspaper containing state or local news items.

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice) and to local governments located in the county of the facility. "Local governments" shall have the meaning provided for that term in Texas Water Code, Chapter 26.

(4) For notice of application and preliminary decision concerning Class I underground injection wells, the chief clerk shall also mail notice to:

(A) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(B) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(C) persons who own mineral rights underlying the existing or proposed injection well facility; and

(D) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located.

(5) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title (relating to Application for Industrial or Hazardous Waste Facility Permit).

(6) The deadline for public comments on industrial solid waste applications will [~~shall~~] be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) If the applicant proposes a new hazardous waste facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. If the applicant proposes a major amendment of an existing hazardous waste facility permit, the executive director shall hold a public meeting if a person affected files with the chief clerk a request for public meeting concerning the application before the deadline to file public comment or requests for reconsideration or hearing. A public meeting is not a contested case proceeding under the Administrative Procedure Act [~~APA~~]. A public meeting held as part of a local review committee process under subsection (a) of this section meets the requirements of this subsection if public notice is provided in accordance with this subsection.

(2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting under §39.405(f)(2) of this title. The published notice must [~~shall~~] be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three [~~3~~] inches (7.6 centimeters).

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of contested case hearing.

(1) This subsection applies if an application is referred to State Office of Administrative Hearings [~~SOAH~~] for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Newspaper notice.

(A) If the application concerns a facility other than a hazardous waste facility, the applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area that [~~which~~] is adjacent or contiguous to each county wherein the proposed facility is located.

(B) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three [~~3~~] inches (7.6 centimeters) and the notice must [~~shall~~] appear in the section of the newspaper containing state or local news items.

(C) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(f)(2) of this title. The published notice must [~~shall~~] be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three [~~3~~] inches (7.6 centimeters). The notice must [~~shall~~] appear in the section of the newspaper containing state or local news items. The text of the notice must [~~shall~~] include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) For all applications concerning underground injection wells, the chief clerk shall mail notice to persons listed in §39.413 of this title.

(B) For notice of hearings concerning Class I underground injection wells, the chief clerk shall also mail notice to:

(i) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(ii) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(iii) persons who own mineral rights underlying the existing or proposed injection well facility; and

(iv) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located.

(C) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address, not listed under subparagraph (A) of this paragraph, located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must [~~shall~~] be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the contested case hearing. Within 30 days after the date of mailing, the applicant shall [~~must~~] file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(4) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title.

(5) Notice under paragraphs (2)(A), (3), and (4) of this subsection must [~~shall~~] be completed at least 30 days before the contested case hearing.

(g) All published notices required by this section must [~~shall~~] be in a form approved by the executive director prior to publication.

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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Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.310, 65.314, 65.315, 65.318 - 65.321

The Texas Parks and Wildlife Department (the department) proposes amendments to §§65.310, 65.314, 65.315, and 65.318 - 65.321, concerning the Migratory Game Bird Proclamation.

The amendment to §65.310, concerning Means, Methods, and Special Requirements, would reinstate specific language from federal regulations delineating the means and methods that are lawful and unlawful for the take of migratory game birds. Prior to 1997, the Texas regulation governing means, methods, and manners for the take of migratory game birds was a verbatim repetition of the federal rules located at 50 CFR §20.21. The federal rules consist of a list of lawful means, methods, and manners and a list of unlawful means, methods, and manners. In 1997 the department initiated an effort to reduce the overall volume of regulations. As part of that effort, the department decided to reduce regulatory volume in the Migratory Game Bird Proclamation, in part, by removing the lengthy list of unlawful means, methods, and manners from the rules and replacing that list with a proviso that all means, methods, and manners other than those listed as lawful were unlawful. In general, this approach has worked well over the intervening years; however, there have been cases where confusion has arisen and the department's Law Enforcement Division has determined that reinstatement of the original wording is necessary.

The amendment to §65.314, concerning Zones and Boundaries for Early Season Species, would alter the zone boundaries of the South Zone and the Special Whitewing Dove Area (SWDA) and rename the South Zone the Southeast Zone. The current SWDA boundary no longer serves a useful purpose because whitewing density and distribution have increased, meaning whitewing populations in South Texas no longer need the protection of a restricted hunting area or season. Since the inception of the SWDA in 1984, whitewings have expanded their breeding range throughout Texas, with the highest densities located in urban areas of the South Texas Plains south and west of San Antonio. Since 1994, more whitewings have been counted annually in the expansion area than in their historic range. Whitewings now dominate the bag of most hunters in the vicinity of the larger towns (i.e., San Antonio, Hondo, Uvalde, Sabinal, and Brackettville) in the Central Zone, where the hunting season opens September 1. However, equally high densities occur farther south and east in Pearsall, Falfurrias, Kingsville, Three Rivers, Freer, and George West, where hunters don't have access to them until after September 20, by which time most whitewings have migrated out of the area. Therefore, the department has made a formal proposal to the U.S. Fish and Wildlife Service (Service), through the Central Flyway Council, to enlarge the SWDA by expanding it eastward to Interstate Highway 37, which would roughly double its size. Nesting studies conducted in the 1980s by the department indicate that the vast majority of white-winged doves have finished nesting and fledged their young by September 1, whereas for mourning doves, approximately 4% of nests were initiated after September 1, 6% of the seasonal eggs and nestlings were present after September 1, and 89% of nestlings have been fledged by that time. The impact of the proposed boundary change on mourning dove populations is expected to be minimal, since significantly large numbers of mourning doves inhabit urban areas where ordinances prohibit the discharge of firearms, and because the hunting season, although it would begin earlier and nearer September 1, will be restricted to half-days on weekends for the first two weeks of September (the current season structure for the Special Whitewing Season). Additionally, the department proposes to reduce the bag limit for mourning doves in the SWDA from 5 to 3 during the Special Whitewing Season in order to reduce potential negative impacts on mourning dove populations. The proposal must be approved by the Service before it can be implemented.

The amendment to §65.315, concerning Open Seasons and Bag and Possession Limits - Early Season Species, adjusts the season dates for early-season species of migratory game birds to account for calendar-shift (an annual adjustment to ensure that seasons open on the correct day of the week). Additionally, the department proposes to increase the aggregate bag limit while reducing the bag limit for mourning doves in the Special Whitewing Dove Area from 10 to 12 during the Special Whitewing Season. The increase in the aggregate bag limit will effectively be an increase in the whitewing dove bag limit, since the mourning dove component of the whitewing bag limit is being reduced. The mourning dove component of the aggregate bag limit is being reduced in order to minimize potential negative impacts on mourning dove populations as a result of enlarging the size of the area. Additionally, the proposed amendment would implement a 16-day teal season. The proposal must be approved by the Service before it can be implemented.

The amendment to §65.318, concerning Open Seasons and Bag and Possession Limits - Late Season Species, adjusts the season dates for late-season species of migratory game birds to account for calendar-shift, with the exceptions of the proposed South Zone duck season and the white-fronted goose seasons. The department last year implemented an exploratory season for ducks in the South Zone to see if hunters would respond

favorably to an increased opportunity for the take of early arrivals. Surveys indicate, however, a strong hunter preference for a later opener for the first split. Therefore, the department is proposing a later opener for the first split in the South Zone. The seasons for white-fronted geese in previous years have been 86 days long. However, recent declines in the mid-continent white-fronted goose populations are a cause for concern. The estimated population in 1999 was 980,000. That population in 2004 had declined to 650,000. This decline is not of a magnitude or even close to a magnitude to threaten depletion of the resource, as the population is well within limits for recuperative potential; however, the department is concerned and chooses to employ a cautious approach. Therefore, the department is proposing a reduction in season length to 72 days. The proposed amendment also sets forth conditional bag limits for ducks, coots, and mergansers. The current and proposed bag limits for these species reflect the continuing concerns of the U.S. Fish and Wildlife Service over breeding populations of canvasback and pintail ducks. For the last two years, the Service has not authorized full-season hunting opportunity for those two species, electing to require states to impose a truncated season-within-a-season instead.

The amendment to §65.319, concerning Extended Falconry Season--Early Season Species, adjusts season dates for the take of early-season species of migratory game birds by means of falconry to reflect calendar shift.

The amendment to §65.320, concerning Extended Falconry Season--Late Season Species, adjusts season dates for the take of late-season species of migratory game birds by means of falconry, also to reflect calendar shift.

The amendment to §65.321, concerning Special Management Provisions, also adjusts dates for the take of light geese during the special conservation season to account for calendar shift.

The amendments are generally necessary to implement commission policy to provide the greatest hunter opportunity possible, consistent with hunter preference for season starting dates and segment lengths, under frameworks issued by the Service. The Service has not issued regulatory frameworks for the 2005-2006 hunting seasons for migratory game birds; thus, the department cautions that the proposed regulations are tentative and may change significantly, depending on federal actions. However, it is the policy of the commission to adopt the most liberal provisions possible, consistent with hunter preference, under the frameworks in order to provide maximum hunter opportunity.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for the first five years that the amendments as proposed are in effect, there will be no additional fiscal implications to state or local governments of enforcing or administering the amendments.

Mr. Macdonald also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the department's discharge of its statutory obligation to manage and conserve the state's populations of migratory game birds, as well as the implementation of commission policy to maximize recreational opportunity for the citizenry.

There will be no adverse economic effect on small businesses or microbusinesses and no additional economic costs to persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as the department has determined that the rules 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 rules.

Comments on the proposed rules may be submitted to Vernon Bevill, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4578 or 1-800-792-1112.

The amendments are proposed under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

The amendments affect Parks and Wildlife Code, Chapter 64.

§65.310. Means, Methods, and Special Requirements.

(a) The following means and methods are lawful, subject to control of subsection (b) of this section, in the taking of migratory game birds:

(1) dogs, artificial decoys, manual or mouth-operated birdcalls, lawful archery equipment (except crossbows), legal shotguns, and by means of falconry;

(2) positions in the open or from a blind or other place of concealment except a sinkbox;

(3) taking from floating craft (other than a sinkbox), provided that at the time of take:

(A) any motion by the craft is the result of manual propulsion or natural current or wind, and not by sail or motive power; and

(B) any sails are furled and any motor is completely shut off;

(4) taking on or over unbaited areas;

(5) taking by the use of power boats, sailboats, or other craft when used solely as a means of picking up dead or injured birds; and

(6) taking by means of falconry, but the hunting is limited to persons holding valid falconry permits issued under the authority of Parks and Wildlife Code, Chapter 49.

(b) Paraplegics and single or double amputees of the legs may take migratory game birds from a stationary motor vehicle or motor-driven land conveyance.

(c) Except as specifically provided in §65.321 of this title (relating to Special Management Provisions), the following means and methods are unlawful in the taking of migratory game birds:

(1) trap, snare, net, crossbow, fish hook, poison, drug, explosive, or stupefying substance;

(2) any firearm other than a legal shotgun;

(3) from, or by means, aid, or use of a sinkbox, motor-driven conveyance, motor vehicle, or aircraft of any kind;

(4) by the use of recorded or electrically amplified birdcalls or sounds;

(5) by the use of live birds as decoys;

(6) by the means or aid of motor-driven land, water, or air conveyance or sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of any migratory game bird; and

(7) by the aid of baiting, or on or over any baited area, where a person knows or reasonably should know that the area is or has been baited. However, nothing in this paragraph prohibits:

(A) the taking of any migratory game bird, including waterfowl, coots, and cranes, on or over the following lands or areas that are not otherwise baited areas:

(i) standing crops or flooded standing crops (including aquatics);

(ii) standing, flooded, or manipulated natural vegetation; flooded harvested croplands; or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(iii) from a blind (or any other place of concealment) camouflaged with natural vegetation;

(iv) from a blind (or any other place of concealment) camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(v) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys, or retrieving downed birds.

(B) the taking of any migratory game bird, except waterfowl, coots and cranes, on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown, or solely as the result of a normal agricultural operation.

[(a) It is unlawful to hunt migratory game birds by any means or method other than as authorized in this section.]

[(1) Lawful means: lawful archery equipment (except crossbows), legal shotguns, and falconry.]

[(2) Lawful methods: It is lawful to hunt:]

[(A) with dogs, artificial decoys, manual or mouth-operated birdcalls;]

[(B) in the open or from a blind or other place of concealment except a sinkbox; including but not limited to:]

[(i) blinds camouflaged with natural vegetation; and]

[(ii) blinds camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing, or scattering of grain or other feed;]

[(C) from floating craft (other than a sinkbox), provided that at the time of hunting:]

[(i) any motion by the craft is the result of manual propulsion or natural current or wind, and not by sail or motive power; and]

[(ii) any sails are furled and any motor is completely shut off;]

[(D) on or over unbaited areas, including:]

[(i) standing crops or flooded standing crops; and]

[(ii) flooded harvested cropland.]

[(E) by the use of power boats, sailboats, or other craft when used solely as a means of picking up dead or injured birds;]

[(F) from any stationary motor vehicle or motor-driven land conveyance, provided the hunter is missing at least one leg or is a paraplegic;]

[(G) on or over standing, flooded, or manipulated natural vegetation;]

[(H) on or over lands or areas where seeds or grains have been scattered solely as a result of a normal agricultural practice or pre-harvest manipulation of an agricultural crop, except that waterfowl and cranes may not be hunted where grain or other feed has been distributed or scattered as the result of:]

[(i) pre-harvest manipulation of an agricultural crop; or]

[(ii) livestock feeding;]

[(I) on or over normal soil stabilization practice; and]

[(J) on or over crops where grain has been inadvertently scattered as a result of a hunter entering or exiting a hunting area, placing decoys, or retrieving downed birds.]

[(b) No person may possess shotgun shells containing any shot material, or loose shot for muzzleloading firearms, other than nontoxic shot while hunting waterfowl anywhere in Texas, including the shooting of privately owned banded pen-reared mallards on licensed private bird hunting areas.]

[(c) Nothing in this subchapter applies to persons taking birds pursuant to valid collection or depredation permits when operating within the terms of such permits.]

[(d) Except for migratory birds processed at a cold storage or processing facility, or doves, one fully-feathered wing or the head must remain attached on dressed migratory game birds while the birds are being transported between the place where taken and the personal residence of the possessor.]

[(e) No person may place or direct the placement of bait on or adjacent to an area for the purpose of causing, inducing, or allowing any person to take or attempt to take any migratory game bird by the aid of baiting on or over the baited area.]

§65.314. Zones and Boundaries for Early Season Species.

(a) Rails: statewide.

(b) Mourning and white-winged doves.

(1) North Zone: That portion of the state north of a line beginning at the International Bridge south of Fort Hancock; thence north along FM 1088 to State Highway 20; thence west along State Highway 20 to State Highway 148; thence north along State Highway 148 to Interstate Highway 10 at Fort Hancock; thence east along Interstate Highway 10 to Interstate Highway 20; thence northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; thence northeast along Interstate Highway 30 to the Texas-Arkansas state line.

(2) Central Zone: That portion of the state between the North Zone and the Southeast [South] Zone.

(3) Southeast [South] Zone: That portion of the state within the area circumscribed by line beginning at Interstate Highway 10 at the Louisiana border, thence west along I-10 to State Loop 1604 east of San Antonio, thence south and west along Loop 1604 to Interstate Highway 37, thence south and east along I-37 to its junction with State Highway 358, thence south and east along State Highway 358 to its junction with Park Road 22, thence south and east along Park Road

22 to the Kleberg-Nueces county line, thence east along the county line to the Gulf of Mexico, thence north and east along the Gulf of Mexico to Sabine Pass, and thence north along the Texas-Louisiana border through Sabine Lake and the Sabine River to I-10. [~~That portion of the state south of a line beginning at the International Toll Bridge in Del Rio; thence northeast along U.S. Highway 277 Spur to U.S. Highway 90 in Del Rio; thence east along U.S. Highway 90 to State Loop 1604; thence following Loop 1604 south and east to Interstate Highway 10; thence east along Interstate Highway 10 to the Texas-Louisiana State Line.~~]

(4) Special white-winged dove area: That portion of the state within the area circumscribed by a line beginning at the Del Rio/Ciudad Acuña International Bridge southwest of Del Rio, thence northeast along U.S. Highway 277 Spur to U.S. Highway 90 in Del Rio, thence proceeding east along U.S. 90 to State Loop 1604 west of San Antonio, thence south and east along Loop 1604 to Interstate Highway 37, thence south and east along I-37 to its junction with State Highway 358, thence south and east along State Highway 358 to its junction with Park Road 22, thence south and east along Park Road 22 to the Kleberg-Nueces county line, thence east along the county line to the Gulf of Mexico, thence east and south along the shoreline of the Gulf of Mexico to the Rio Grande River; and thence west and north along the Rio Grande River to the International Bridge south of Del Rio. [~~That portion of the state south and west of a line beginning at the International Toll Bridge in Del Rio; thence northeast along U.S. Highway 277 Spur to U.S. Highway 90 in Del Rio; thence east along U.S. Highway 90 to United States Highway 83 at Uvalde; thence south along U.S. Highway 83 to State Highway 44; thence east along State Highway 44 to State Highway 16 at Freer; thence south along State Highway 16 to State Highway 285 at Hebbronville; thence east along State Highway 285 to FM 1017; thence southeast along FM 1017 to State Highway 186 at Linn; thence east along State Highway 186 to the Mansfield Channel at Port Mansfield; thence east along the Mansfield Channel to the Gulf of Mexico.~~]

(c) Gallinules (Moorhen or common gallinule and purple gallinule): statewide.

(d) Teal ducks (blue-winged, green-winged, and cinnamon): statewide.

(e) Woodcock: statewide.

(f) Wilson's (Common) snipe: statewide.

§65.315. Open Seasons and Bag and Possession Limits--Early Season.

(a) Rails.

(1) Dates: September 10 - 25, 2005 and October 29 - December 21, 2005 [~~September 11 - 26, 2004 and October 30 - December 22, 2004~~].

(2) Daily bag and possession limits:

(A) king and clapper rails: 15 in the aggregate per day; 30 in the aggregate in possession.

(B) sora and Virginia rails: 25 in the aggregate per day; 25 in the aggregate in possession.

(b) Dove seasons.

(1) North Zone.

(A) Dates: September 1 - October 30, 2005 [~~September 1 - October 30, 2004.~~]

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(2) Central Zone.

(A) Dates: September 1 - October 30, 2005 and December 26, 2005 - January 4, 2006 [~~September 1 - October 31, 2004 and December 26, 2004 - January 3, 2005~~].

(B) Daily bag limit: 12 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 24 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(3) Southeast [~~South~~] Zone.

(A) Dates: Except in the special white-winged dove area as defined in §65.314 of this title (relating to Zones and Boundaries for Early Season Species), September 23 - November 10, 2005 and December 26, 2005 - January 15, 2006 [~~September 24 - November 10, 2004 and December 26, 2004 - January 16, 2005~~].

(B) Daily bag limit: 12 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 24 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(4) Special white-winged dove area.

(A) Dates: September 3, 4, 10, and 11, 2005 [~~September 4, 5, 11, and 12, 2004~~].

(i) Daily bag limit: 12 [~~10~~] white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than three [~~five~~] mourning doves and two white-tipped doves per day;

(ii) Possession limit: 24 [~~20~~] white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than six [~~10~~] mourning doves and four white-tipped doves in possession.

(B) Dates: September 23 - November 10, 2005 and December 26, 2005 - January 11, 2006 [~~September 24 - November 10, 2004 and December 26, 2004 - January 12, 2005~~].

(i) Daily bag limit: 12 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than two white-tipped doves per day;

(ii) Possession limit: 24 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than four white-tipped doves in possession.

(c) Gallinules.

(1) Dates: September 10 - 25, 2005 and October 29 - December 21, 2005 [~~September 11 - 26, 2004 and October 30 - December 22, 2004~~].

(2) Daily bag and possession limits: 15 in the aggregate per day; 30 in the aggregate in possession.

(d) September teal-only season.

(1) Dates: September 10 - 25, 2005 [~~September 18 - 26, 2004~~].

(2) Daily bag and possession limits: four in the aggregate per day; eight in the aggregate in possession.

(e) Red-billed pigeons, and band-tailed pigeons. No open season.

(f) Shorebirds. No open season.

(g) Woodcock: December 18, 2005 - January 31, 2006 [~~December 18, 2004 - January 31, 2005~~]. The daily bag limit is three. The possession limit is six.

(h) Wilson's snipe (Common snipe): October 29, 2005 - February 12, 2006 [~~October 30, 2004 - February 13, 2005~~]. The daily bag limit is eight. The possession limit is 16.

§65.318. Open Seasons and Bag and Possession Limits--Late Season.

Except as specifically provided in this section, the possession limit for all species listed in this section shall be twice the daily bag limit.

(1) Ducks, mergansers, and coots. The daily bag limit for ducks is six, which may include no more than five mallards or Mexican mallards (Mexican duck), only two of which may be hens, three scaup, one mottled duck, one canvasback, one pintail, two redheads, and two wood ducks. The daily bag limit for coots is 15. The daily bag limit for mergansers is five, which may include no more than one hooded merganser. Canvasback and pintail may be taken only during the restricted seasons provided for those species.

(A) High Plains Mallard Management Unit: September 26 - October 3, 2005, and October 29 - January 24, 2006 [~~September 27 - October 4, 2004, and October 30 - January 25, 2005~~]. The open season for pintail and canvasback begins December 17, 2005 and runs through January 24, 2006 [~~December 18, 2004 and runs through January 25, 2005~~].

(B) North Zone: November 5 - 27, 2005 and December 10 - January 29, 2006 [~~November 6 - 28, 2004 and December 11 - January 30, 2005~~]. The open season for pintail and canvasback begins December 22, 2004 and runs through January 29, 2006 [~~December 23, 2004 and runs through January 30, 2005~~].

(C) South Zone: October 29 - November 27, 2004 and December 10, 2004 - January 22, 2006 [~~September 27 - October 3, 2004, and November 13, 2004 - January 18, 2005~~]. The open season for pintail and canvasback begins December 15, 2004 and runs through January 22, 2006 [~~December 11, 2004 and runs through January 18, 2005~~].

(2) Geese.

(A) Western Zone.

(i) Light geese: November 5, 2005 - February 7, 2006 [~~October 30, 2004 - February 1, 2005~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: November 5, 2005 - February 7, 2006 [~~October 30, 2004 - February 1, 2005~~]. The daily bag limit for dark geese is four, which may not include more than three Canada geese or more than one white-fronted goose.

(B) Eastern Zone.

(i) Light geese: October 29, 2005 - January 29, 2006 [~~November 6, 2004 - January 30, 2005~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: November 19, 2005 - January 29, 2006 [~~November 6, 2004 - January 30, 2005~~]. The daily bag limit for dark geese is five, no more than three of which may be Canada geese and no more than two of which may be two white-fronted geese.

(3) Sandhill cranes. A free permit is required of any person to hunt sandhill cranes in areas where an open season is provided under this proclamation. Permits will be issued on an impartial basis with no limitation on the number of permits that may be issued.

(A) Zone A: November 5, 2005 - February 5, 2006 [~~November 6, 2004 - February 1, 2005~~]. The daily bag limit is three. The possession limit is six.

(B) Zone B: November 26, 2005 - February 5, 2006 [~~November 27, 2004 - February 1, 2005~~]. The daily bag limit is three. The possession limit is six.

(C) Zone C: December 17, 2004 - January 22, 2005 [~~December 18, 2004 - January 16, 2005~~]. The daily bag limit is two. The possession limit is four.

(4) Special Youth-Only Season. There shall be a special youth-only duck season during which the hunting, taking, and possession of ducks, mergansers, and coots is restricted to licensed hunters 15 years of age and younger accompanied by a person 18 years of age or older, except for persons hunting by means of falconry under the provisions of §65.320 of this chapter (relating to Extended Falconry Season--Late Season Species). Bag and possession limits in any given zone during the season established by this paragraph shall be as provided for that zone by paragraph (1) of this section, except that pintail ducks and canvasback ducks may be taken. The bag limit for pintail ducks is one per day and the bag limit for canvasback ducks is one per day. The possession limit is two. Season dates are as follows:

(A) High Plains Mallard Management Unit: October 22 - 23, 2005 [~~October 23 - 24, 2004~~];

(B) North Zone: October 29 - 30, 2005 [~~October 30 - 31, 2004~~]; and

(C) South Zone: October 22 - 23, 2005 [~~October 30 - 31, 2004~~].

§65.319. Extended Falconry Season--Early Season Species.

(a) It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons:

(1) mourning doves and white-winged doves: November 19 - December 25, 2005 [~~November 19 - December 25, 2004~~].

(2) rails and gallinules: December 22, 2005 - January 27, 2006 [~~December 23, 2004 - January 28, 2005~~].

(3) woodcock: November 24 - December 17, 2005 and February 1 - March 10, 2006 [~~November 24 - December 17, 2004 and February 1 - March 9, 2005~~].

(b) The daily bag and possession limits for migratory game birds under this section shall not exceed three and six birds respectively, singly or in the aggregate.

§65.320. Extended Falconry Season--Late Season Species.

It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons.

(1) Ducks, coots, and mergansers:

(A) High Plains Mallard Management Unit: no extended season;

(B) North Duck Zone: January 30 - February 13, 2006 [~~January 31 - February 21, 2005~~];

(C) South Duck Zone: January 23 - February 7, 2006 [~~January 19 - February 9, 2005~~].

(2) The daily bag and possession limits for migratory game birds under this section shall not exceed three and six birds, respectively, singly or in the aggregate.

§65.321. Special Management Provisions.

The provisions of paragraphs (1) - (3) of this section apply only to the hunting of light geese. All provisions of this subchapter continue in effect unless specifically provided otherwise in this section; however, where this section conflicts with the provisions of this subchapter, this section prevails.

(1) Means and methods. In addition to the means and methods authorized in §65.310(a) of this title (relating to Means , Methods, and Special Requirements), the following means and methods are lawful during the time periods set forth in paragraph (4) of this section:

(A) shotguns capable of holding more than three shells; and

(B) electronic calling devices.

(2) Possession. During the time periods set forth in paragraph (4) of this section:

(A) there shall be no bag or possession limits; and

(B) the provisions of §65.312 of this title (relating to Possession of Migratory Game Birds) do not apply; and

(C) a person may give, leave, receive, or possess legally taken light geese or their parts, provided the birds are accompanied by a wildlife resource document from the person who killed the birds. The wildlife resource document is not required if the possessor lawfully killed the birds; the birds are transferred at the personal residence of the donor or donee; or the possessor also possesses a valid hunting license, a valid waterfowl stamp, and is HIP certified. The wildlife resource document shall accompany the birds until the birds reach their final destination, and must contain the following information:

(i) the name, signature, address, and hunting license number of the person who killed the birds;

(ii) the name of the person receiving the birds;

(iii) the number and species of birds or parts;

(iv) the date the birds were killed; and

(v) the location where the birds were killed (e.g., name of ranch; area; lake, bay, or stream; county).

(3) Shooting hours. During the time periods set forth in paragraph (4) of this section, shooting hours are from one half-hour before sunrise until one half-hour after sunset.

(4) Special Light Goose Conservation Period.

(A) From January 30, 2006 - March 26, 2006 [~~January 31, 2005 through March 27, 2005~~], the take of light geese is lawful in Eastern Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species).

(B) From February 8 - March 26, 2006 [~~February 2 - March 27, 2005~~], the take of light geese is lawful in the Western Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species).

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 May 2, 2005.

TRD-200501768
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: June 12, 2005
For further information, please call: (512) 389-4775

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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 the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in 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 1. OFFICE OF THE GOVERNOR

CHAPTER 5. BUDGET AND PLANNING OFFICE

SUBCHAPTER B. STATE AND LOCAL REVIEW OF FEDERAL AND STATE ASSISTANCE APPLICATIONS

DIVISION 1. INTRODUCTION AND GENERAL PROVISIONS OF TEXAS REVIEW AND COMMENT SYSTEM

1 TAC §5.195

The Office of the Governor adopts an amendment to 1 TAC §5.195, concerning the Texas Review and Comment System with changes to the proposed text as published in the January 21, 2005, issue of the *Texas Register* (30 TexReg 173).

The amendment adds 16 new programs for review, deletes 8 programs no longer in existence or no longer of widespread interest and conforms program numbers to current listings in the Catalog of Federal Domestic Assistance.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Government Code, Title 7, §772.004 and §772.005, and the Local Government Code, Chapter 391, §391.008, which authorizes the Office of the Governor to provide for review state and local applications for grant and loan assistance and to establish policies and guidelines for review and comment. Chapter 391 of the Local Government Code requires certain applicants for state or federal assistance to submit their applications for review to the appropriate regional planning commissions and directs the governor to issue guidelines for carrying out such reviews.

§5.195. Program Coverage.

(a) Federal program coverage under the Texas Review and Comment System (TRACS) is constrained by the dictates of Executive Order 12372, which stipulates the list of programs states may select for review and on which accommodation may be sought. In addition, federal statutes, particularly the Demonstration Cities and Metropolitan Development Act of 1966, §204, the Intergovernmental Cooperation Act of 1968, §401(a), and the National Environmental Policy Act of 1969, §102(2)(C), mandate certain programs for review.

(b) Program coverage will be reviewed for changes at least annually. New state and federal assistance programs not specifically exempted by law will be automatically covered under TRACS. Program coverage changes will be published in the *Texas Register*.

(c) Federal programs included for review under TRACS pursuant to these laws, plus selected other activities, including all direct federal and state development not specifically excluded by law, are shown, respectively, in Tables I and II. Copies of these tables may be obtained from Ms. Denise S. Francis, State Single Point of Contact, Office of the Governor, Budget, Planning and Policy Division, Post Office Box 12428, Austin, Texas 78711-2428 or dfrancis@governor.state.tx.us. As required by state law (Government Code, §772.005), all state agencies must notify the Office of the Governor when applying for federal funds.
Figure: 1 TAC §5.195(c)

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

Filed with the Office of the Secretary of State on May 2, 2005.

TRD-200501776
Katherine R. Knight
Assistant General Counsel
Office of the Governor
Effective date: May 22, 2005
Proposal publication date: January 21, 2005
For further information, please call: (512) 463-3471

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 8. PIPELINE SAFETY REGULATIONS

The Commission adopts amendments to §8.1, relating to General Applicability and Standards, §8.201, relating to Pipeline Safety Program Fees, and §8.210, relating to Reports. Sections 8.201 and 8.210 are adopted with two changes to the versions published in the February 25, 2005, issue of the *Texas Register* (30 TexReg 991). Section 81.1 is adopted without changes and will not be republished.

Section 8.1(b) concerns minimum safety standards and adopts by reference the United States Department of Transportation's (USDOT) pipeline safety standards found in 49 U.S.C. §§60101, *et seq.*; 49 Code of Federal Regulations (CFR) Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports,

Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards; 49 U.S.C. §§60101, *et seq*.; 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline; and 49 CFR Part 199, Drug and Alcohol Testing. The current rule adopts the federal pipeline safety standards as of April 9, 2004; the adopted amendment will show this date as September 14, 2004. The federal safety rule amendments that will be captured are summarized in the following paragraphs.

USDOT's Amendment No. 192-96, published at 69 Federal Register (FR) 27861, referred to a final rule published by the Research and Special Programs Administration (RSPA) on September 15, 2003, concerning the operation and capacity of existing pressure limiting and regulating stations on gas pipelines. The rule inadvertently established a pressure limit that could require a reduction in the operating pressure of some pipelines and be impracticable for others to meet. This direct final rule establishes an appropriate pressure limit to avoid these unintended results. The effective date for the direct final rule was September 14, 2004.

USDOT's Amendment No. 192-97, published at 29 FR 36024, concerned a regulation published by RSPA requiring that new gas transmission lines and sections of existing transmission lines in which pipe or components are replaced be designed and constructed to accommodate the passage of instrumented internal inspection devices. Responding to petitions for reconsideration, RSPA stayed enforcement on some facilities and invited comments on proposed changes to the regulation. The present action concludes RSPA's consideration of the petitions and comments. For existing onshore transmission lines, this action restricts the regulation to replacements of pipe or components. For offshore transmission lines, the regulation is restricted to certain new lines that run between platforms or from platforms to shore. The action aligns the regulation with the supporting congressional directive and a related Marine Board recommendation. The effective date was July 28, 2004; however, offshore transmission lines covered by revised §192.150 are those on which construction begins after December 28, 2005.

Amendment Nos. 192-98 and 195-82, published at 69 FR 48400, amended the pipeline safety regulations to require operators of gas and hazardous liquid pipelines to prepare and follow procedures for periodic inspections of pipeline facilities located in the Gulf of Mexico and its inlets in waters less than 15 feet deep. These inspections will inform the operator if the pipeline is exposed or a hazard to navigation. The effective date was September 9, 2004.

Amendment Nos. 195-81 and 199-22, published at 69 FR 32886, were part of a RSPA final rule incorporating the most recent editions of the voluntary consensus standards and specifications referenced in the federal pipeline safety regulations to enable pipeline operators to utilize the most current technology, materials, and industry practices in the design, construction, and operation of their pipelines. This rule also increased the design pressure limitation for new thermoplastic pipe, allowed the use of plastic pipe for certain bridge applications, increased the time period for revision of maximum allowable operating pressure after a change in class location, clarified welding requirements, and made various other editorial clarifications and corrections. The final rule does not require pipeline operators to undertake any significant new pipeline safety initiatives. The effective date was July 14, 2004. After this effective date, RSPA published a correction to Amendment 195-81 at 69 FR 54591; the original final rule included an inadvertent error in the definition of "transmission line" in §192.3, failed to properly amend Appendix B to part 192, inadvertently reversed a recent amendment to a welder qualification requirement in §195.222, and contained several typographical errors. The correction revises the relevant sections. The effective date remained July 14, 2004.

In a previous adoption of updated USDOT changes, the Commission inadvertently left out USDOT Amendment No. 21 to 49 CFR Part 199. That amendment, published at 68 FR 75455, concerned USDOT's drug and alcohol testing rules and included requirements for select employers to submit drug and alcohol testing data to five DOT agencies. In the past, these employers have been required to use agency-specific Management Information System (MIS) forms for this purpose, 21 different forms in all. USDOT published a final rule revising these MIS forms into a single one-page form for use through all the DOT agencies. The requirement for use of the form is now in 49 CFR Part 40. By this action, the DOT agencies endorsed the use of this single form within their regulated industries, provided their regulated employers with guidance for submission of the form, and amended their rules accordingly. The DOT agencies are the Federal Motor Carrier Safety Administration (FMCSA), the Federal Aviation Administration (FAA), the Federal Transit Administration (FTA), the Federal Railroad Administration (FRA), and the Research and Special Programs Administration (RSPA). The effective date of that action was December 31, 2003. The Commission includes this amendment in this proposal for clarification purposes; pipeline operators were already required to comply with the amendment as of December 31, 2003.

The adopted amendments in §8.201(a) correct a typographical error; in subsection (b)(1) and (2) change the calendar year from 2003 to 2004 and the deadline by which the annual pipeline safety program fee is to be filed from March 15, 2004, to March 15, 2005; and in subsection (b)(3)(E) add wording that state agencies, as defined in Texas Utilities Code, §101.003, shall not be billed this fee. This exemption was proposed as part of the resolution of litigation brought by the Office of the Attorney General challenging the Commission's authority to charge the pipeline safety fee to state agency customers of gas utilities. The fee remains at $0.37 per year.

The Commission adopts the amendment in §8.210(a)(4)(A) with a change from the proposal to correct the citation to "paragraph (1)(A) - (C) and (E)." This change is discussed further in the Commission's response to comments.

The Commission received three comments on the proposal. Atmos Energy Corporation (Atmos) supported the amendments in §8.201, especially the amendment that clarifies that the pipeline safety user fee should not be billed to a state agency. Atmos stated that the current rule's silence on this issue has been a source of discussion with state agencies and the proposed amendment appropriately clarifies the issue.

Atmos found the proposed amendment to §8.210(a)(4)(A) ambiguous as to whether a written report must be filed when property damage exceeds $5,000 but is less than $50,000. The amendment provides that a written report will be required for events described in subsection (a), which includes events with property damage in excess of $5,000. However, Atmos stated, §8.210(a)(4)(C) implies that the written report requirement is limited to events with more than $50,000 in property damage. Atmos stated that this ambiguity can be addressed by amending

§8.210(a)(4)(C) to read: "The written report is *only* required for estimated damage to the property of the operator, others, or both totaling $50,000 or more, including gas loss."

The Commission agrees that the proposed correction in §8.210(a)(4)(A) should be clarified and has adopted this amendment with a change from the proposal. The reference to "paragraph (1)" is adopted as "paragraph (1)(A) - (C) and (E)." This adopted change makes Atmos' suggested wording change to §8.210(a)(4)(C) unnecessary.

A comment from an individual concerned §8.210 and requested clarification that the operator's judgment about the significance of an event not meeting "subsections A through D" has not changed from what is currently reported. The commenter cites typical scenarios such as closing significant arterial thoroughfares, not just a residential street, and evacuations of significant number of buildings or people, not just limited customers.

The Commission agrees and has adopted §8.210(a)(1)(E) with a slight change. Subparagraph (E) begins "could reasonably be judged as significant because of location . . . " The Commission's adopted change makes this wording read "could reasonably be judged *by the operator* as significant because of location . . . " The Commission finds this change is supported because the adopted wording matches the language of the corresponding federal rule.

The third comment was from the State of Texas, Office of the Attorney General of Texas, Consumer Protection Division, Public Agency Representation Section (the State). The State commented on the definition of "state agency" in §8.201(b)(3)(E), which refers to Texas Utilities Code, §101.003, and suggested that the proposed definition is unnecessarily limiting and in contravention of the purpose of Senate Bill 83 (SB 83) (73rd Legislature, 1993), the specific legislative enactment which created the exemption of state agencies from the surcharge under Texas Utilities Code, §104.202. That provision provides that the "rates that a gas utility or municipally owned utility charges a State agency may not include an amount representing a gross receipts assessment, regulatory assessment, or similar expense of the utility." The pipeline safety fee is, by its definition and application, a regulatory assessment or similar expense of the utility. As such, the State asserted that all state agencies should be exempt from the pass-through provisions of the rule, not just those using greater than 100 Mcf per day of natural gas.

The State also asserted that the legislative history behind §104.202 shows that the legislature intended that all state agencies be excluded from the pipeline safety fee; §104.202 was introduced in the 73rd legislative session (1993) as part of SB 83, which was based on the recommendations of the Texas Comptroller's 1993 state government performance review entitled "*Against the Grain*." The State asserts that both the Comptroller's report and the Legislative Budget Board's fiscal note for SB 83 conclude that all state agencies should be exempt from all utility fees and assessments under §104.202. The State also cites the Texas Code Construction Act, in which the public interest is favored over any private interest in enacting a statute. Because utility fees and assessment impact state agency budgets, which are funded by taxpayers, the State asserts it is well within the public interest to exempt all state agencies from utility fees and assessments.

The State also contends that the Commission's proposed use of the Utilities Code definition of "state agency" is not supported by any legal authority that the legislature intended only "large-volume" state agency customers to be exempt from the payment of the pipeline safety fee. The Utilities Code definition of "state agency" refers to a state agency obtaining "the approval described in Section 31.401(a), Natural Resources Code." Section 31.401(a) applies to approval of contracts entered into by state agencies for the acquisition of an annual average of 100 Mcf per day or more of natural gas. Therefore, the State contends that the proposed definition based on the Utilities Code definition of "state agency" results in a very narrow set of circumstances and was not intended by the legislature.

The State suggests that the most appropriate definition of "state agency" is found in the Government Code, §2251.001, which defines "state agency" as "a board, commission, department, office, or other agency in the executive branch of state government that is created by the constitution or a statute of this state, including a river authority and an institution of higher education as defined by Section 61.003, Education Code."

The Commission disagrees with the State's comments and declines to make the suggested changes to the rule. Resort to legislative history is appropriate when statutory language is ambiguous, unclear, or uncertain in its application. While the definition of "state agency" found in Texas Utilities Code, §101.003(15), may be narrow, it is not ambiguous. As the Texas supreme court has explained: "When interpreting statutes we try to give effect to legislative intent. 'Legislative intent remains the polestar of statutory construction.' However, it is cardinal law in Texas that a court construes a statute, 'first, by looking to the plain and common meaning of the statute's words.' If the meaning of the statutory language is unambiguous, we adopt, with few exceptions, the interpretation supported by the plain meaning of the provision's words and terms. Further, if a statute is unambiguous, rules of construction or other extrinsic aids cannot be used to create ambiguity. As our Court said long ago: When the purpose of a legislative enactment is obvious from the language of the law itself, there is nothing left to construction. In such case it is vain to ask the courts to attempt to liberate an invisible spirit, supposed to live concealed within the body of the law. The United States Supreme Court has also stated that a court should not apply rules of construction to unambiguous language barring exceptional circumstances. There are sound reasons we begin with the plain language of a statute before resorting to rules of construction. For one, it is a fair assumption that the Legislature tries to say what it means, and therefore the words it chooses should be the surest guide to legislative intent. Also, ordinary citizens should be able to rely on the plain language of a statute to mean what it says. Moreover, when we stray from the plain language of a statute, we risk encroaching on the Legislature's function to decide what the law should be." [Citations omitted.]

Fitzgerald v. Advanced Spine Fixation Systems, Inc., 996 S.W.2d 864 (Tex. 1999), at 865 - 866.

In addition, it is fundamental that "a state administrative agency only has those powers that the Legislature expressly confers upon it or that are implied to carry out the express functions or duties given or imposed by statute. [Citations omitted.]" *Texas Workers' Compensation Commission v. Patient Advocates of Texas, et al.*, 136 S.W.3d 643 (Tex. 2004), at 652. The opinion continues: ". . . because a legislative body would be hard pressed to contend with every detail involved in carrying out applicable laws, delegation of some legislative power is both necessary and proper. [Citation omitted.] However, the Legislature's power to delegate must be exercised with a certain amount

of caution. The Legislature may delegate its powers to administrative agencies established to carry out legislative purposes as long as the Legislature establishes reasonable standards to guide the agencies in exercising those powers. [Citation omitted.]" *Id.*, at 654. Because Texas Utilities Code, §101.003(15), defines "state agency" unambiguously, the Railroad Commission lacks authority to expand the definition as the State suggests.

SUBCHAPTER A. GENERAL REQUIREMENTS AND DEFINITIONS

16 TAC §8.1

The Commission adopts the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, *et seq*.; and Texas Utilities Code, §121.211, authorizes the Railroad Commission to adopt, by rule, an inspection fee to be assessed annually against operators of natural gas distribution pipelines and their pipeline facilities and natural gas master metered pipelines and their pipeline facilities.

Texas Natural Resources Code, §81.051 and §81.052; Texas Utilities Code, §§121.201 - 121.211; and 49 United States Code Annotated, §§60101, *et seq*., are affected by the adopted amendments.

Statutory authority: Texas Natural Resources Code, §81.051 and §81.052; Texas Utilities Code, §§121.201 - 121.211; and 49 United States Code Annotated, §§60101, *et seq*.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas, on April 25, 2005.

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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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

16 TAC §8.201, §8.210

The Commission adopts the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, *et seq*.; and Texas Utilities Code, §121.211, authorizes the Railroad Commission to adopt, by rule, an inspection fee to be assessed annually against operators of natural gas distribution pipelines and their pipeline facilities and natural gas master metered pipelines and their pipeline facilities.

Texas Natural Resources Code, §81.051 and §81.052; Texas Utilities Code, §§121.201 - 121.211; and 49 United States Code Annotated, §§60101, *et seq*., are affected by the adopted amendments.

Statutory authority: Texas Natural Resources Code, §81.051 and §81.052; Texas Utilities Code, §§121.201 - 121.211; and 49 United States Code Annotated, §§60101, *et seq*.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas, on April 25, 2005.

§8.201. Pipeline Safety Program Fees.

(a) Pursuant to Texas Utilities Code, §121.211, the Commission establishes a pipeline safety inspection fee, to be assessed annually against operators of natural gas distribution pipelines and pipeline facilities and natural gas master metered pipelines and pipeline facilities subject to the Commission's pipeline safety jurisdiction under Texas Utilities Code, Chapter 121. The total amount of revenue estimated to be collected under this section does not exceed the amount the Commission estimates to be necessary to recover the costs of administering the pipeline safety program under Texas Utilities Code, Chapter 121, excluding costs that are fully funded by federal sources for any fiscal year.

(b) The Commission hereby assesses each investor-owned natural gas distribution system and each municipally owned natural gas distribution system an annual pipeline safety program fee of $0.37 for each service (service line) reported to be in service at the end of calendar year 2004 by each system operator on the Distribution Annual Report, Form F7100.1-1, to be filed on March 15, 2005.

(1) Each operator of an investor-owned natural gas distribution system and each operator of a municipally-owned natural gas distribution system shall calculate the total amount of the annual pipeline safety program fee to be paid to the Commission by multiplying the number of services listed in Part B, Section 3, of Department of Transportation (DOT) Distribution Annual Report, Form F7100.1-1, due to be filed on March 15, 2005, by $0.37.

(2) Each operator of an investor-owned natural gas distribution system and each operator of a municipally-owned natural gas

distribution system shall remit to the Commission on March 15, 2005, the amount calculated under paragraph (1) of this subsection.

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

(A) shall be a flat rate, one-time surcharge;

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

(C) shall be applied in the billing cycle or cycles immediately following the date on which the operator paid the Commission;

(D) shall not exceed $0.50 per service or service line; and

(E) shall not be billed to a state agency, as that term is defined in Texas Utilities Code, §101.003.

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

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

(B) the unit rate and total amount of the surcharge billed to each customer;

(C) the date or dates on which the surcharge was billed to customers; and

(D) the total amount collected from customers from the surcharge.

(5) Each investor-owned natural gas distribution system that is a utility subject to the jurisdiction of the Commission pursuant to Texas Utilities Code, Chapters 101 - 105, shall file a generally applicable tariff for its surcharge in conformance with the requirements of §7.315 of this title, relating to Filing of Tariffs.

(6) Amounts paid to the Commission under this subsection by an investor-owned natural gas distribution company shall not be included in the revenue or gross receipts of the company for the purpose of calculating municipal franchise fees or any tax imposed under Subchapter B, Chapter 182, Tax Code, or under Chapter 122. Amounts paid to the Commission under this subsection are not subject to a sales and use tax imposed by Chapter 151, Tax Code, or Chapters 321 through 327, Tax Code.

(c) The Commission hereby assesses each master meter system an annual inspection fee of $100 per master meter system.

(1) Each operator of a natural gas master meter system shall pay the annual inspection fee of $100 per master meter system no later than June 30 of each year.

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

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

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

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

(B) the unit rate and total amount of the surcharge billed to each customer;

(C) the date or dates on which the surcharge was billed to customers; and

(D) the total amount collected from customers from the surcharge.

(d) If an operator of an investor-owned or municipally owned natural gas distribution company or a natural gas master meter operator does not submit payment of the annual inspection fee to the Commission within 30 days of the due date, the Commission shall assess a late payment penalty of 10 percent of the total assessment due under subsection (b) or (c) of this section, as applicable, and shall notify the operator.

§8.210. Reports.

(a) Accident, leak, or incident report.

(1) Telephonic report. At the earliest practical moment or within two hours following discovery, a gas company shall notify the Commission by telephone of any event that involves a release of gas from any pipeline which:

(A) caused a death or any personal injury requiring hospitalization;

(B) required taking any segment of a transmission line out of service, except as described in paragraph (2) of this subsection;

(C) resulted in unintentional gas ignition requiring emergency response;

(D) caused estimated damage to the property of the operator, others, or both totaling $5,000 or more, including gas loss; or

(E) could reasonably be judged by the operator as significant because of location, rerouting of traffic, evacuation of any building, media interest, etc., even though it does not meet subparagraphs (A), (B), (C), or (D) of this paragraph.

(2) A gas company shall not be required to make a telephonic report for a leak or incident which meets only paragraph (1)(B) of this subsection if that leak or incident occurred solely as a result of or in connection with planned or routine maintenance or construction.

(3) The telephonic report shall be made to the Commission's 24-hour emergency line at (512) 463-6788 and shall include the following:

(A) the operator or gas company's name;

(B) the location of the leak or incident;

(C) the time of the incident or accident;

(D) the fatalities and/or personal injuries;

(E) the phone number of the operator; and

(F) any other significant facts relevant to the accident or incident.

(4) Written report.

(A) Following the initial telephonic report for accidents, leaks, or incidents described in paragraph (1)(A) - (C) and (E) of this subsection, the operator who made the telephonic report shall submit to the Commission a written report summarizing the accident or incident. The report shall be submitted as soon as practicable within 30 calendar days after the date of the telephonic report. The written report shall be made in duplicate on forms supplied by the Department of Transportation. The Division shall forward one copy to the Department of Transportation.

(B) The written report is not required to be submitted for master metered systems.

(C) The written report is required for estimated damage to the property of the operator, others, or both totaling $50,000 or more, including gas loss.

(D) The Commission may require an operator to submit a written report for an accident or incident not otherwise required to be reported.

(b) Pipeline safety annual reports.

(1) Except as provided in paragraph (2) of this subsection, each gas company shall submit an annual report for its systems in the same manner as required by 49 CFR Part 191. The report shall be submitted to the Division in duplicate on forms supplied by the Department of Transportation not later than March 15 of a year for the preceding calendar year. The Division shall forward one copy to the Department of Transportation.

(2) The annual report is not required to be submitted for:

(A) a petroleum gas system, as that term is defined in 49 CFR 192.11, which serves fewer than 100 customers from a single source; or

(B) a master metered system.

(c) Safety related condition reports. Each gas company shall submit to the Division in writing a safety-related condition report for any condition outlined in 49 CFR 191.23.

(d) Offshore pipeline condition report. Within 60 days of completion of underwater inspection, each operator shall file with the Division a report of the condition of all underwater pipelines subject to 49 CFR 192.612(a). The report shall include the information required in 49 CFR 191.27.

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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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 534. GENERAL ADMINISTRATION

22 TAC §534.3

The Texas Real Estate Commission (TREC) adopts amendments to Chapter 534, General Administration by adding §534.3, concerning employee training and education without changes to the proposed text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1563) and will not be republished.

The purpose of the rule is to comply with Texas Government Code §§656.041 - 656.049, which require that state agencies adopt rules addressing employee training and education.

The reasoned justification for the rule will be a better understanding by employees of agency policy and procedures regarding compensation for employee training.

No comments were received regarding the rule as proposed.

The new rule is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this rule are Texas Occupations Code, Chapter 1101 and Texas Government Code, Chapter 656. No other statute, code or article is affected by the 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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Loretta DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465-3900

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22 TAC §534.4

The Texas Real Estate Commission (TREC) adopts amendments to Chapter 534, General Administration by adding §534.4, concerning historically underutilized businesses without changes to the proposed text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1563) and will not be republished.

The purpose of the rule is to comply with Texas Government Code §2161.003. Section 2161.003 of the Government Code requires the Commission to adopt the Texas Building and Procurement Commission's rules on Historically Underutilized Businesses.

The reasoned justification for the rule will be to decrease confusion among the vendor community regarding agency rules and

procedures for historically underutilized businesses. This should result in a more efficient agency purchasing process.

No comments were received regarding the rule as proposed.

The new rule is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this rule are Texas Occupations Code, Chapter 1101 and Texas Government Code, Chapter 2161. No other statutes, articles, or codes are affected by the 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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Loretta DeHay
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Texas Real Estate Commission
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For further information, please call: (512) 465-3900

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22 TAC §534.5

The Texas Real Estate Commission (TREC) adopts amendments to Chapter 534, General Administration by adding §534.5, concerning bid opening and tabulation without changes to the proposed text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1563) and will not be republished.

The purpose of the rule is to comply with Texas Government Code §2156.005. Section 2156.005 of the Government Code requires the Commission to adopt the Building and Procurement Commission's rules on Bid Opening and Tabulation.

The reasoned justification of the rule will be to decrease confusion among the vendor community regarding agency rules and procedures for bid opening and tabulation. This should result in a more efficient agency purchasing process.

No comments were received regarding the rule as proposed.

The new rule is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this rule are Texas Occupations Code, Chapter 1101 and Chapter 2156, Texas Government Code. No other statutes, articles, or codes are affected by the 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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For further information, please call: (512) 465-3900

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22 TAC §534.6

The Texas Real Estate Commission (TREC) adopts amendments to Chapter 534, General Administration by adding §534.6, concerning negotiation and mediation of certain contract disputes without changes to the proposed text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1564) and will not be republished.

The purpose of the rule is to comply with Texas Government Code §2260.052. Section 2260.052 of the Government Code authorizes the Commission to adopt the Office of the Attorney General's rules on negotiation and mediation of certain contracts.

The reasoned justification for the rule will be to decrease confusion among the vendor community regarding agency rules and procedures for negotiation and mediation of certain contract disputes. This should result in a more efficient agency purchasing process.

No comments were received regarding the rule as proposed.

The new rule is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purposed and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this rule are Texas Occupations Code, Chapter 1101 and Chapter 2260, Texas Government Code. No other statutes, articles, or codes are affected by the 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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For further information, please call: (512) 465-3900

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22 TAC §534.7

The Texas Real Estate Commission (TREC) adopts amendments to Chapter 534, General Administration by adding §534.7, concerning vendor protest procedures with changes to the proposed text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1565).

The purpose of the rule is to comply with Texas Government Code §2155.076. Section 2155.076 of the Government Code requires that the agency's rules for vendor protest procedures must be consistent with rules adopted by the Building and Procurement Commission.

The reasoned justification for the rule will be to decrease confusion among the vendor community regarding agency rules and procedures for vendor protest procedures. This should result in a more efficient agency purchasing process.

No comments were received regarding the rule as proposed.

The new rule is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this rule are Texas Occupations Code, Chapter 1101 and Chapter 2155, Texas Government Code. No other statutes, articles, or codes are affected by the rule.

§534.7. Vendor Protest Procedures.

(a) The commission adopts by reference the rules promulgated by the Texas Building and Procurement Commission regarding purchasing protest procedures as set forth in Subchapter A of 1 TAC §111.3.

(b) The commission shall maintain documentation about the purchasing process to be used in the event of a protest by maintaining current information regarding applicable statutory law, administrative rules, and guidelines affecting the purchasing process.

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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Loretta DeHay
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES SUBCHAPTER G. TRANSPORTATION PLANNING

30 TAC §114.260

The Texas Commission on Environmental Quality (commission) adopts an amendment to §114.260 and corresponding revisions to the Transportation Conformity State Implementation Plan (SIP) for Texas Nonattainment and Maintenance Areas. Section 114.260 is adopted *with change* to the proposed text as published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11262).

The amendment and revised SIP narrative will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the SIP.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The Federal Clean Air Act (FCAA) Amendments of 1990 as codified in 42 United States Code (USC), §§7401 *et seq*. required each state to submit a revision to its SIP by November 25, 1994, establishing enforceable criteria and procedures for making conformity determinations for metropolitan transportation plans, transportation improvement programs, and projects funded by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA). Final rules regarding conformity requirements were published by EPA on November 24, 1993. The Texas SIP revision, which originally incorporated conformity requirements, was adopted October 19, 1994, and approved by EPA on November 8, 1995. EPA has amended the federal transportation conformity rule six times: August 7, 1995; November 14, 1995; August 15, 1997; April 10, 2000; August 6, 2002; and July 1, 2004. The commission previously incorporated the federal changes up to and including the 2002 amendments. The commission is now updating its rule to incorporate the July 1, 2004, federal amendments. The addition of these changes to the existing state rules will allow metropolitan planning organizations in Texas nonattainment areas to take advantage of the flexibility in the recent federal amendments during their required June 2005 conformity determinations.

Transportation conformity is required under FCAA, §176(c), to ensure that federally supported highway and transit project activities are consistent with the purpose of the state's SIP. Conformity currently applies under EPA's rules to areas that are designated nonattainment, and those redesignated to attainment after 1990 (maintenance areas) with plans developed under the FCAA. Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant National Ambient Air Quality Standards (NAAQS). EPA's transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the SIP.

EPA has amended the transportation conformity rule to finalize several provisions that were proposed June 30, 2003 and November 5, 2003. The transportation conformity rule, as amended, includes criteria and procedures for implementing conformity in accord with the new eight-hour ozone NAAQS and particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$) NAAQS. The final EPA rule also addresses a March 2, 1999, ruling by the United States Court of Appeals for the District of Columbia Circuit (*Environmental Defense Fund v. EPA, et al., 167 F. 3d 641, D.C. Cir. 1999*). Specifically, the court's ruling affected provisions of the rule that pertained to funding of metropolitan transportation plans (MTPs) and transportation improvement programs (TIPs); use of the motor vehicle emission budget (MVEB) prior to SIP approval; federal transportation projects in areas without a conforming MTP and TIP; timing of conformity consequences following an EPA SIP disapproval; and use of submitted safety margins in areas with approved SIPs submitted prior to November 24,

1993. Lastly, the EPA final rule incorporates into the transportation conformity rule the EPA and Department of Transportation (DOT) guidance that has been utilized in place of certain regulatory provisions of the rule since the *Environmental Defense Fund v. EPA* court decision. DOT is EPA's federal partner in implementing the transportation conformity regulation.

The primary changes to 40 Code of Federal Regulations (CFR) Part 93 regarding transportation conformity include the following. 40 CFR §93.101 adds new definitions for one-hour ozone NAAQS; eight-hour ozone NAAQS; donut areas; isolated rural nonattainment and maintenance areas; and limited maintenance plan, and by revising definitions for control strategy implementation plan revisions and milestones. 40 CFR §93.102 adds a new term to the list of criteria pollutants, particles with $PM_{2.5}$. Section 93.102 incorporates into the rule a one-year grace period before conformity is required in areas designated as nonattainment for a given air quality standard for the first time. 40 CFR §93.104 streamlines conformity frequency requirements. 40 CFR §93.106 states that there will be a two-year grace period for transportation plan requirements in certain ozone and carbon monoxide (CO) areas. Principal changes to 40 CFR §93.109 include the applicability of conformity for one-hour nonattainment or maintenance areas up until the effective date of revocation of the one-hour ozone NAAQS; eight-hour nonattainment areas with and without MVEBs; $PM_{2.5}$ nonattainment and maintenance areas; areas with limited maintenance plans; and areas with insignificant motor vehicle emissions. 40 CFR §93.110 clarifies that conformity determinations will be based on the latest planning assumptions at the time a conformity analysis begins, rather than at the time of DOT's conformity finding. 40 CFR §93.116 is amended so that project-level hotspot analyses in metropolitan nonattainment and maintenance areas must consider the full time frame of an area's transportation plan at the time the analysis is conducted. This also applies to hotspot analyses for new projects in isolated, rural nonattainment and maintenance areas. Regional emissions analyses in isolated rural areas also cover a 20-year time frame, consistent with the general requirements in metropolitan and donut areas. 40 CFR §93.117 concerns FTA and FHWA project requirements to be in compliance with a SIP's $PM_{2.5}$ control measures. 40 CFR §93.118 concerns motor vehicle emissions budgets. The final rule, for example, modifies several provisions under 40 CFR §93.118 of the conformity regulation to specify that EPA must affirmatively find submitted budgets adequate before they can be used in a conformity determination. The final rule also establishes the process by which EPA will review and make adequacy findings for submitted SIPs, as described in the June 30, 2003 proposal. 40 CFR §93.119 concerns interim emission tests in areas without MVEBs. Before an adequate or approved SIP budget is available, conformity of the transportation plan, TIP, or project not from a conforming plan and TIP is generally demonstrated with the interim emission tests, as described in revised 40 CFR §93.119. Primary changes to 40 CFR §93.120 include the point in time at which conformity consequences apply when EPA disapproves a control strategy SIP without a protective finding. Specifically, the final rule deletes the 120-day grace period from 40 CFR §93.120(a)(2), so that a conformity ''freeze'' occurs immediately upon the effective date of EPA's final disapproval of a SIP and its budgets without a protective finding. EPA is amending 40 CFR §93.121(a) of the conformity rule so that regionally significant non- federal projects can no longer be advanced during a conformity lapse, unless they have received all necessary state and local approvals prior to the lapse. Second, EPA is adding a new 40 CFR §93.121(c) to the rule to address regionally significant non-federal projects in areas where EPA has found a pollutant or precursor to be regionally insignificant. 40 CFR §93.122 concerns procedures for determining regional transportation-related emissions, and principally involves the addition of subsection (c), which sets a two-year grace period for regional emissions analysis requirements in certain ozone and CO areas. Minor amendments were also made to 40 CFR §§93.124 - 93.126.

SECTION DISCUSSION

§114.260, Transportation Conformity

Administrative and grammatical changes are adopted throughout the section to bring the existing rule language into agreement with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004.

The adopted amendment to §114.260(a) incorporates the acronym USC for the term United States Code.

The adopted amendments to §114.260(b) include an incorporation of the phrase "particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$)." This phrase refers to the new NAAQS for fine particles adopted by EPA. Another adopted amendment to §114.260(b) specifies that the section is only applicable to the precursors of ozone, nitrogen dioxide, and particles with an aerodynamic diameter of ten micrometers (PM_{10}). This distinction is made because EPA is not finalizing requirements for addressing $PM_{2.5}$ precursors in transportation conformity at this time. The last adopted amendment to subsection (b) points to the CFR rather than the Texas Administrative Code for the official list and boundaries of nonattainment areas. This change is made to ensure that the most up-to-date list is incorporated.

The adopted amendments to §114.260(c) update the date through which the transportation conformity rules are amended, i.e., from August 6, 2002 to July 1, 2004. In addition, the adopted amendments to subsection (c) adopt by reference the federal amendments, except for 40 CFR §93.105. The federal requirements in §93.105 are addressed in the commission's rule in §114.260(d).

The adopted amendment to §114.260(d)(1)(A)(vi) removes the words, "formerly §9," as this citation is now more commonly referred to as FTA §5307.

The adopted amendment to §114.260(d)(1)(A)(vii) removes the words "TCEQ or." The amendment would delete the language to be consistent with current agency style and format.

The adopted amendment to §114.260(d)(1)(A)(viii) substitutes the reference to "FCAA, §105," with a reference to "42 USC, §7405" because FCAA, §105 has been codified into the USC.

The adopted amendment to §114.260(d)(1)(B)(ix) removes the words, "formerly §9," as this citation is now more commonly referred to as FTA §5307.

The adopted amendment to §114.260(d)(1)(B)(x) substitutes the reference to "FCAA, §105," with a reference to "42 USC, §7405" because FCAA, §105 has been codified into the USC.

The adopted amendment to §114.260(d)(2)(A)(i) replaces, "Strategic Assessment" Division director, with "Air Quality Planning and Implementation" Division director because the Strategic Assessment Division has been renamed.

The adopted amendment to §114.260(d)(2)(A)(viii) corrects the spelling of "emissions."

The adopted amendment to §114.260(d)(2)(C) replaces the phrase, "Title 23 United States Code," with "23 USC," and changes "Federal Transit Laws," to "federal transit laws" to be consistent with current agency style and format.

The adopted amendment to §114.260(d)(4)(B) replaces "TCEQ" with "commission's" to be consistent with current agency style and format.

The adopted amendments to §114.260(d)(4)(C) and (6) correct the capitalization of the term "governor" and add a catchline to bring the existing rule language into agreement with *Texas Register* requirements and guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking considering the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule." A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amended section incorporates the requirements of the amended federal transportation conformity rule and revises the SIP to include the federal transportation conformity requirements to ensure that federally supported highway and transit project activities are consistent with the purpose of the SIP. While this rulemaking is intended to protect the environment by ensuring that federally supported highway and transit project activities are consistent with the SIP, the commission finds that the rule will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety in the state, since no fiscal implications are anticipated as a result of administration or enforcement of the rule.

Additionally, the revision to Chapter 114 is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the rule does not meet any of the four applicability requirements. Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, the revision to Chapter 114 was developed to meet the specific requirement of FCAA, §176(c), which requires that federally supported highway and transit project activities are consistent with the purpose of a SIP. In addition, states are primarily responsible for ensuring attainment and maintenance of NAAQS once the EPA has established them. Under 42 USC, §7410, and related provisions, states shall submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. Therefore, one purpose of this rulemaking action is to meet the air quality standards established under federal law as NAAQS. Specifically, the requirement to have federally supported highway and transit project activities conform to the SIP ensures that transportation activities do not interfere with the attainment and maintenance of the NAAQS. There is no contract or delegation agreement that covers the topic that is the subject of this action. Therefore, the rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, nor adopted solely under the general powers of the agency. Finally, this rulemaking action was not developed solely under the general powers of the agency, but is authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act (TCAA)), and Texas Water Code (TWC) that are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, and 382.208. Therefore, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the rulemaking does not meet any of the four applicability requirements. The commission received no public comment on the proposed regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the rulemaking action under Texas Government Code, §2007.043. The specific purpose of the rulemaking action is to incorporate the requirements of the amended federal transportation conformity rule. The incorporation of the requirements of the amended federal transportation conformity rule will assure that highway and transit project activities are consistent with the Texas SIP. This rule will not place a burden on private, real property.

Texas Government Code, §2007.003(b)(13), states that Chapter 2007 does not apply to an action that: 1) is taken in response to a real and substantial threat to public health and safety; 2) is designed to significantly advance the health and safety purpose; and 3) does not impose a greater burden than is necessary to achieve the health and safety purpose. This rulemaking action is not subject to Texas Government Code, Chapter 2007, because it is reasonably taken to fulfill an obligation mandated by federal law. The 1990 Amendments to the FCAA, §176(c), require that federally supported highway and transit project activities are consistent with the purpose of a SIP.

In addition, states are primarily responsible for ensuring attainment and maintenance of NAAQS once the EPA has established them. Under 42 USC, §7410, and related provisions, states shall submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. Therefore, one purpose of this rulemaking action is to meet the air quality standards established under federal law as NAAQS. Specifically, the requirement to have federally supported highway and transit project activities conform to the SIP ensures that transportation activities do not interfere with the attainment and maintenance of the NAAQS.

Consequently, the commission's assessment indicates that Texas Government Code, Chapter 2007, does not apply to this rule because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). Therefore, the rule does not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that it is an action identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and therefore required that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission prepared a consistency determination for the rules under 31 TAC §505.22 and found that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). The CMP policy applicable to this rulemaking is the policy that commission rules comply with regulations in 40 CFR, to protect and enhance air quality in coastal areas (31 TAC §501.14(q)). The rulemaking and SIP revision will ensure that federally funded highway and transit activities will conform to the SIP, and comply with 40 CFR Part 50, National Primary and Secondary Air Quality Standards, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. This rulemaking is consistent with CMP goals and policies, in compliance with 31 TAC §505.22(e). The commission invited, but received, no public comment on the CMP.

PUBLIC COMMENT

A public hearing was held December 21, 2004, in Austin, Texas. No comments were received at the hearing. The comment period closed January 3, 2005. No comments were received.

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; Texas Health and Safety Code, TCAA, §382.002, which provides that the policy and purpose of the TCAA are to safeguard the state's air resources from pollution; and TCAA, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.208, which requires the commission to develop and implement transportation programs necessary to demonstrate and maintain attainment of NAAQS and to protect the public from exposure to hazardous air contaminants from motor vehicles.

The adopted amendment implements TCAA, §382.002, relating to Policy and Purpose; §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; and §382.208, relating to Attainment Program.

§114.260. Transportation Conformity.

(a) Purpose. The purpose of this section is to implement the requirements set forth in 40 Code of Federal Regulations (CFR) Part 93, Subpart A (relating to Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved Under Title 23 United States Code (USC) or the Federal Transit Laws), which are the regulations developed by the United States Environmental Protection Agency (EPA) under the Federal Clean Air Act Amendments of 1990, §176(c). It includes policy, criteria, and procedures to demonstrate and assure conformity of transportation planning activities with the state implementation plan (SIP).

(b) Applicability. This section applies to transportation-related pollutants for which an area is designated nonattainment or is subject to a maintenance plan. The pollutants include ozone, carbon monoxide, nitrogen dioxide, particles with an aerodynamic diameter of ten micrometers (PM_{10}) and smaller, particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$), and the precursors of ozone, nitrogen dioxide, and PM_{10}. (For the official list and boundaries of nonattainment areas, see 40 CFR Part 81 and pertinent *Federal Register* notices.)

(c) CFR incorporation. The transportation conformity rules, as specified in 40 CFR Part 93, Subpart A, (62 FR 43780) dated August 15, 1997 and amended through July 1, 2004, are adopted by reference with the exception of §93.105. The requirements of §93.105 are addressed in subsection (d) of this section.

(d) Consultation. Under 40 CFR §93.105, regarding consultation, the following procedures must be undertaken in nonattainment and maintenance areas before making conformity determinations and before adopting applicable SIP revisions.

(1) General factors.

(A) For the purposes of this subsection, concerning consultation, the affected agencies include:

(i) EPA;

(ii) Federal Highway Administration (FHWA);

(iii) Federal Transit Administration (FTA);

(iv) Texas Department of Transportation (TxDOT);

(v) metropolitan planning organizations (MPOs) in nonattainment or maintenance areas;

(vi) local publicly owned transit services in nonattainment or maintenance areas (the designated recipient of FTA §5307 funds);

(vii) Texas Commission on Environmental Quality (commission);

(viii) local air quality agencies in nonattainment or maintenance areas (recipients of 42 USC, §7405 funds).

(B) All correspondence with the affected agencies in subparagraph (A) of this paragraph must be addressed to the following designated points of contact:

(i) MPO: executive director or designee;

(ii) commission: executive director or designee;

(iii) TxDOT: director of Transportation Planning and Programming or designee;

(iv) TxDOT: director of Environmental Affairs Division or designee;

(v) FHWA: administrator of Texas Division or designee;

(vi) FTA: director of Office of Program Development or designee - FTA Region 6;

(vii) EPA: regional administrator or designee - EPA Region 6;

(viii) TxDOT District: district engineer or designee;

(ix) local publicly owned transit services (the designated recipient of FTA §5307 funds): general manager or designee;

(x) local air quality agencies (recipients of 42 USC, §7405 funds): director or designee; and

(xi) commission regions in nonattainment or maintenance areas: regional director or designee.

(2) Roles and responsibilities of affected agencies.

(A) The MPO, in cooperation with TxDOT and publicly owned transit services, shall consult with the agencies in paragraph (1)(A) of this subsection in the development of Metropolitan Transportation Plans (MTPs), Transportation Improvement Programs (TIPs), projects, technical analyses, travel demand or other modeling, and data collection. Specifically, the MPOs shall:

(i) allow the commission's Air Quality Planning and Implementation Division director, or a designated representative, to be a voting member of technical committees on surface transportation and air quality in each nonattainment and maintenance area in order to consult directly with the particular committee during the development of the transportation plans, programs, and projects;

(ii) send information on time and location, an agenda, and supporting materials (including preliminary versions of MTPs and TIPs) for all regularly scheduled meetings on surface transportation or air quality to each of the contacts specified in paragraph (1)(B) of this subsection. This information must be provided in accordance with the locally adopted public involvement process as required by 23 CFR §450.316(b)(1);

(iii) after preparation of final draft versions of MTPs and TIPs, and before adoption and approval by the affected governing body, ensure that the contacts specified in paragraph (1)(B) of this subsection receive a copy, and that they are included in the local area's public participation process as required by the Metropolitan Planning Rule, 23 CFR §450.316(b)(1). Upon approval of MTPs and TIPs, MPOs shall distribute final approved copies of the documents to the contacts specified in paragraph (1)(B) of this subsection;

(iv) for the purposes of regional emissions analysis, initiate a consultation process with the affected agencies specified in paragraph (1)(A) of this subsection during the development stage of new or revised MTPs and TIPs to determine which transportation projects should be considered regionally significant and which projects should be considered to have a significant change in design concept and scope from the effective MTP and TIP. Regionally significant projects will include, at a minimum, all facilities classified as principal arterial or higher, or fixed guideway systems or extensions that offer an alternative to regional highway travel. Also, these include minor arterials included in the travel demand modeling process that serve significant interregional and intraregional travel, and connect rural population centers not already served by a principal arterial, or connect with intermodal transportation terminals not already served by a principal arterial. A significant change in design concept and scope is defined as a revision of a project in the MTP or TIP that would significantly affect model speeds, vehicle miles traveled, or network connections. In addition to new facilities, examples include changes in the number of through lanes or length of project (more than one mile), access control, addition of major intermodal terminal facilities (such as new international bridges, park-and-ride lots, and transfer terminals), addition/deletion of interchanges, or changing between free and toll facilities. When a significant change in the design and scope of a project is proposed, the MPO shall document the rationale for the change and give the affected agencies specified in paragraph (1)(A) of this subsection a 30-day opportunity to comment on the rationale. The MPO shall consider the views of each agency that comments, and respond in writing before any final action on these issues. If the MPO receives no comments within 30 days, the MPO may assume concurrence by the agencies specified in paragraph (1)(A) of this subsection;

(v) include in the TIP a list of projects exempted from the requirements of a conformity determination under 40 CFR §93.126 and §93.127. The MPO shall consult with the affected agencies specified in paragraph (1)(A) of this subsection in determining if a project on the list has potentially adverse emissions for any reason, including whether or not the exempt project will interfere with implementation of an adopted transportation control measure (TCM). The MPO shall respond in writing to all comments within 30 days on final MTP and TIP documents. In addition, if no comments are received as part of the subsequent public involvement process for the TIP, the MPO may proceed with implementation of the exempt project;

(vi) notify the affected agencies specified in paragraph (1)(A) of this subsection in writing of any MTP or TIP revisions or amendments that add or delete the exempt projects identified in 40 CFR §93.126;

(vii) as required by 40 CFR §93.116 and §93.123, and in cooperation with TxDOT, make a preliminary identification of those projects located at sites in PM_{10} nonattainment and maintenance areas that require quantitative PM_{10} hot spot analyses. After these projects have been identified, the MPO shall submit a list of these projects and sufficient data to the agencies specified in paragraph (1)(A) of this subsection for review and comment;

(viii) before adoption of any new or substantially different methods or assumptions used in the hot spot or regional emissions analysis, provide an opportunity for the agencies specified in paragraph (1)(A) of this subsection to review and comment;

(ix) in coordination with TxDOT and the local transit agencies, disclose all known, regionally significant, non-federal projects, even if the sponsor has not made a final decision on its implementation; include all disclosed, or otherwise known, regionally significant non-federal projects in the regional emissions analysis for the nonattainment area; respond in writing to any comments that known plans for a regionally significant non-federal project have not been properly reflected in the regional emissions analysis; and have recipients of federal funds determine annually that their regionally significant non-federal projects are included in a conforming MTP or TIP, or are included in a regional emissions analysis of the MTP and TIP. The MPO shall consult with project sponsors to determine the non-federal projects' location and design concept and scope to be used in the regional emissions analysis, particularly for projects that the sponsor does not report a single intent because the sponsor's alternatives selection process is not yet complete. If the MPO assumes a design concept and scope that is different from the sponsor's ultimate choice, the next regional emissions analysis for a conformity determination must reflect the most recent information regarding the project's design concept and scope;

(x) ensure timely TCM implementation and report on the implementation and emissions reductions status of adopted TCMs annually to the commission;

(xi) cooperatively share the responsibility for conducting conformity determinations on transportation activities that cross the borders of MPOs or nonattainment and maintenance areas. The affected MPOs will enter into a Memorandum of Agreement (MOA) that will define the effective boundary and the respective responsibilities of each MPO for regional emissions analysis. The MPOs will be responsible within their respective metropolitan area boundaries and, at their option, beyond to the boundaries of the nonattainment/maintenance areas, for regional emissions analysis. Adjacent MPOs or nonattainment/maintenance areas or basins will

share information concerning air quality modeling assumptions and emission rates that affect both areas; and

(xii) for the purpose of determining the conformity of all projects outside the metropolitan planning area, but within the nonattainment or maintenance area, enter into an MOA involving the MPO and TxDOT for cooperative planning and analysis of projects.

(B) The commission, as the lead air quality planning agency, shall work in consultation with the agencies specified in paragraph (1)(A) of this subsection in developing applicable transportation-related SIP revisions, air quality modeling, general emissions analysis, emissions inventory, and all related activities. Specifically, the commission shall:

(i) set agendas and schedule meetings to seek advice and comments from all agencies specified in paragraph (1)(A) of this subsection during preparation of applicable transportation- related SIP revisions;

(ii) schedule public hearings in order to gather public input on the applicable transportation- related SIP revisions in accordance with 40 CFR §51.102 and notify the agencies specified in paragraph (1)(B) of this subsection of the hearings;

(iii) provide copies of final documents, including applicable adopted or approved transportation-related SIP revisions and supporting information, to all agencies specified in paragraph (1)(B) of this subsection;

(iv) after consultation with the MPO regarding TCMs, distribute to all agencies specified in paragraph (1)(B) of this subsection and other interested persons the list of TCMs proposed for inclusion in the SIP. In consultation with the agencies specified in paragraph (1)(A) of this subsection, the commission shall determine whether past obstacles to implementation of TCMs have been identified and are being overcome, and determine whether the MPOs and the implementing agencies are giving maximum priority to approval or funding for TCMs. Also, the commission shall consider, in consultation with the affected agencies, whether delays in TCM implementation necessitate a SIP revision to remove TCMs or to substitute TCMs or other emission reduction measures; and

(v) consult with the applicable agencies specified in paragraph (1)(A) of this subsection, in order to cooperatively choose conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by 40 CFR §93.109(g)(2)(iii).

(C) Any group, entity, or individual planning to construct a regionally significant transportation project that is not an FHWA-FTA project (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered) shall disclose project plans to the MPO on a regular basis and disclose any changes to those plans immediately. This requirement also applies to recipients of funds designated under 23 USC or the federal transit laws.

(3) General procedures.

(A) The MPO, TxDOT, or the commission, as applicable, shall respond to comments of affected agencies on MTPs, TIPs, projects, or SIP revisions in accordance with the public involvement procedures that govern the involved action. The MPO, TxDOT, or the commission, as applicable, shall include all comments and the replies to those comments with final documents when they are submitted for adoption by the agency's governing board. In the event that comments are not adequately resolved, the procedures outlined in paragraph (4) of this subsection regarding conflict resolution apply.

(B) Because the validity of the regional emissions analysis depends on transportation modeling assumptions that need periodic updates, the MPO, with the assistance of TxDOT and local publicly owned transit agencies, will conduct meetings with the agencies specified in paragraph (1)(A) of this subsection to cooperatively establish research and data collection efforts and regional model development (e.g., household/transportation surveys).

(C) For the purposes of evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot spot and regional emissions analyses, agencies specified in paragraph (1)(A) of this subsection shall participate in a working group identified as the Technical Working Group for Mobile Source Emissions. The frequency of meetings and agendas for them will be cooperatively determined by the agencies specified in paragraph (1)(A) of this subsection. The function of this working group may be delegated to an existing group with similar composition and purpose.

(D) The commission, affected MPOs, affected local air quality agencies, and TxDOT shall cooperatively evaluate events that will trigger the need for new conformity determinations. New conformity determinations may be triggered by events established in 40 CFR §93.104 as well as other events, including emergency relief projects that require substantial functional, locational, and capacity changes, or in the event of any other unforeseeable circumstances.

(E) The MPO and its governing body, or TxDOT if applicable, shall make conformity determinations for all MTPs, TIPs, regionally significant projects, and all other events as required by 40 CFR Part 93, Subpart A and this section. Upon completion of the transportation conformity determination review process (including consultation, public participation, and all other requirements of this section), FHWA and FTA will issue a joint conformity finding, indicating the transportation conformity status of the document(s) under review. The effective date of the conformity determination for an area is the date of the joint conformity finding made by FHWA-FTA.

(4) Conflict resolution.

(A) The commission and the MPO (or TxDOT where appropriate) shall make a good-faith effort to address the major concerns of the other party in the event they are unable to reach agreement on the conformity determination of a proposed MTP or TIP. The efforts must include meetings of the agency executive directors, if necessary.

(B) In the event that the MPO or TxDOT determines that every effort has been made to address the commission's concerns, and that no further progress is possible, the MPO or TxDOT shall notify the commission's executive director in writing to this effect. This subparagraph must be cited by the MPO or TxDOT in any notification of a conflict that may require action by the governor, or his or her delegate under subparagraph (C) of this paragraph.

(C) The commission has 14 calendar days from date of receipt of notification, as required in subparagraph (B) of this paragraph, to appeal to the governor. If the commission appeals to the governor, the final conformity determination must then have the concurrence of the governor. The governor may delegate his or her role in this process, but not to the commission or commission staff, a local air quality agency, the Texas Transportation Commission or TxDOT staff, or an MPO. This subparagraph must be cited by the commission in any notification of a conflict that may require action by the governor or his or her delegate. If the commission does not appeal to the governor within 14 calendar days from receipt of written notification, the MPO or TxDOT may proceed with the final conformity determination.

(5) Public comment on conformity determinations. Consistent with the requirements of 23 CFR Part 450, concerning public

involvement, the agencies making conformity determinations on transportation plans, programs, and projects must establish a proactive public involvement process that provides opportunity for public review and comment. This process must, at a minimum, provide reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and before taking formal action on conformity determinations for all MTPs and TIPs, as required by 23 CFR §450.316(b) and this section. Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR §7.95. In addition, these agencies shall address in writing any public comment claiming that a non-FHWA/FTA funded, regionally significant project has not been properly represented in the conformity determination for an MTP or TIP. Finally, these agencies shall provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

(6) Good-faith effort made by the consulting agencies. In formulating an enforcement policy regarding a violation of this subsection (relating to the consultation process) the commission may consider any good-faith effort made by the consulting agencies to comply.

(e) Compliance date. Compliance with this section begins on the date of EPA approval of the transportation conformity SIP associated with this 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.

Filed with the Office of the Secretary of State on April 29, 2005.

TRD-200501749
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: December 3, 2004
For further information, please call: (512) 239-6087

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CHAPTER 117. CONTROL OF AIR POLLUTION FROM NITROGEN COMPOUNDS

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendments to §§117.114, 117.201, 117.203, 117.206, 117.213, 117.214, 117.479, and 117.520. Sections 117.203, 117.206, 117.213, 117.214, 117.479, and 117.520 are adopted *with changes* to the proposed text as published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11279). Sections 117.114 and 117.201 are adopted *without changes* to the proposed text and will not be republished.

These amended sections and corresponding revisions to the state implementation plan (SIP) will be submitted to the United States Environmental Protection Agency (EPA).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The Federal Clean Air Act (FCAA) Amendments of 1990 as codified in 42 United States Code (USC), §§7401 *et seq*. require the EPA to set national ambient air quality standards (NAAQS) to ensure public health, and to designate areas as either in attainment or nonattainment with the NAAQS, or as unclassifiable. States are primarily responsible for ensuring attainment and maintenance of NAAQS once the EPA has established them. Each state is required to submit a SIP to the EPA that provides for attainment and maintenance of the NAAQS.

The Dallas-Fort Worth area (DFW area), consisting of four counties (Collin, Dallas, Denton, and Tarrant), was designated nonattainment and classified as moderate, in accordance with the 1990 FCAA Amendments, and was required to attain the one-hour ozone NAAQS by November 15, 1996. A SIP was submitted based on a volatile organic compound (VOC) reduction strategy, but the DFW area did not attain the NAAQS by the mandated deadline. Consequently, in 1998 the EPA reclassified the DFW area from "moderate" to "serious," resulting in a requirement to submit a new SIP demonstrating attainment by the new deadline of November 15, 1999.

The DFW area also failed to reach attainment by the November 1999, deadline. In the attainment demonstration SIP adopted by the commission in April 2000, the importance of local nitrogen oxides (NO_x) reductions as well as the transport of ozone and its precursors from the Houston-Galveston-Brazoria ozone nonattainment area (HGB area) were considered. Based on photochemical modeling demonstrating transport from the HGB area, the agency requested an extension of the DFW area attainment date to November 15, 2007, the same attainment date as for the HGB area, in accordance with an EPA policy allowing extension of attainment dates due to transport of pollutants from other areas.

The EPA transport policy was overturned by federal courts, which ruled that the EPA does not have authority to extend an area's attainment date based on transport. Although the DFW area was not the specific subject of any of these suits, the DFW area one-hour ozone attainment demonstration SIP, including an extended attainment date, was not approvable by the EPA. Thus, the DFW area does not currently have an approved attainment demonstration SIP for the one-hour ozone NAAQS.

On July 18, 1997, the EPA promulgated a revised ozone standard (the eight-hour ozone NAAQS), and on April 30, 2004, promulgated the first phase implementation rule for the eight-hour ozone NAAQS (Phase I Implementation Rule) (69 FR 23951). Also on April 30, 2004, the DFW area was designated as nonattainment and classified as moderate for the eight-hour ozone NAAQS. Five additional counties (Ellis, Johnson, Kaufman, Parker, and Rockwall) were added to the DFW area. The DFW eight-hour nonattainment area consists of nine counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant) effective June 15, 2004, for the eight-hour ozone NAAQS. The DFW area must attain the eight-hour ozone NAAQS by June 15, 2010.

The EPA's Phase I guidance provided three options for eight-hour ozone nonattainment areas that do not have an approved one-hour ozone attainment SIP: 1) submit a one-hour ozone attainment demonstration no later than one year after the effective date of the designation (by June 15, 2005); 2) submit an eight-hour ozone plan no later than one year after the effective date of the designation (by June 15, 2005) that provides a 5% increment of reductions from the area's 2002 emissions baseline in addition to federal measures and state measures already approved by the EPA, and achieves these reductions by June 15, 2007; or 3) submit an eight-hour ozone attainment demonstration by June 15, 2005. Options one and three require successful photochemical grid modeling performance. The commission, in coordination with the EPA, determined that option two is the most expeditious approach to beginning to achieve the reductions ultimately needed to: 1) meet the June 15, 2005, transportation

conformity deadline; and 2) attain the eight-hour ozone NAAQS by June 15, 2010. In order for the DFW area to comply with the requirement to submit a 5% increment of progress (IOP) plan that provides a 5% emission reduction from the 2002 emissions baseline, additional emission reduction strategies are necessary.

The 5% IOP plan includes implementing new emission specifications and other requirements for certain industrial, commercial, and institutional stationary internal combustion engines in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties to reduce NO_x emissions and ozone air pollution.

The emission reduction requirements that will result from this adopted rulemaking will result in reductions in ozone formation in the DFW area and will help bring the DFW area into compliance with the eight-hour ozone NAAQS. These emission reductions are one component of the DFW SIP that the state is required to submit to the EPA to assure attainment and maintenance of the eight-hour ozone NAAQS. Attainment of the eight-hour ozone standard may require further reductions in NO_x emissions as well as VOC emissions. This rulemaking is one step toward meeting the state's obligations under the FCAA. The EPA has not yet issued Phase II of its eight-hour implementation rule (Phase II guidance) for states to use in developing eight-hour ozone attainment demonstrations. Phase II guidance, expected to be promulgated by the EPA in 2005, will provide additional information relating to eight-hour ozone attainment demonstrations. The commission is continuing to prepare for the required eight-hour ozone attainment demonstration SIP.

In addition to the changes applicable to certain engines in the DFW area, the commission is making technical changes to improve the language to best state the commission's intent regarding current requirements for major and minor sources of NO_x emissions in ozone nonattainment areas. Each change affects one or more of the ozone nonattainment areas of the state. The ozone nonattainment areas are Beaumont-Port Arthur ozone nonattainment area (BPA area), DFW area, and HGB area. The commission is also correcting references and typographical errors as required by Texas Register formatting requirements.

SECTION BY SECTION DISCUSSION

To conform with commission and Texas Register formatting requirements, non-substantive revisions were made throughout the sections to correct citations, formatting for dates, acronym usage, and other minor issues.

Subchapter B, Combustion at Major Sources

Division 1, Utility Electric Generation in Ozone Nonattainment Areas

§117.114, Emission Testing and Monitoring for the Houston-Galveston Attainment Demonstration

The commission amends §117.114(a)(4)(A) to correct the mass balance equation to show that the variable for the correction factor "d" multiplies the result of the operations of the other variables. The subparagraph containing the equation and associated variables has been reformatted for readability. The adopted amendment to §117.114(a)(4)(A) specifies that minor changes to the required test methods or EPA-approved alternative test methods may be approved by the executive director for the testing required to determine the correction factor "d." In §117.114(a)(4)(D) language has been removed that states that for this subparagraph the Engineering Services Team acts for the executive director.

Division 3, Industrial, Commercial, and Institutional Combustion Sources in Ozone Nonattainment Areas

§117.201, Applicability

The commission adds the phrase "or as otherwise specified" after the listing of ozone nonattainment areas. This addition is needed to alert potentially affected persons that other sections within this division may contain additional applicability requirements. In the case of this adopted rule package, persons in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties, could be subject to control requirements found in §117.206, even though these counties are not listed in the current definition of "Dallas-Fort Worth (DFW) ozone nonattainment area" found in §117.10.

§117.203, Exemptions

The commission removes an extraneous "and" from §117.203(a)(11)(B) and adds "and" to §117.203(a)(12)(B).

The commission also adds, in adopted §117.203(a)(13), an exemption for cogeneration boilers that recover waste heat from one or more carbon black reactors for sources in the BPA area, except as may be specified in 30 TAC §§117.206(i), 117.209(c)(1), 117.213(i), 117.214(a)(2), 117.216(a)(5), and 117.219(f)(6) and (10). This exemption is added because it was not the commission's intent that these units be subject to Chapter 117, Subchapter B, Division 3. This exemption does not impact the BPA area SIP demonstration because NO_x reductions from these units are not included in the attainment demonstration. In addition, based on comments received, the adopted §117.203(a)(13) specifies that a cogeneration boiler in the BPA area that utilizes as a fuel source the tail gas from one or more carbon black reactors is also exempt.

Adopted §117.203(c) removes the exemption in §117.203(a)(1) from engines subject to the emission specifications in §117.206(b)(3). This assures that all gas-fired lean-burn and gas-fired rich-burn engines rated 300 horsepower (hp) or greater in the affected counties are required to meet the new emission specifications in §117.206(b)(3), regardless of when the units were placed into service. Subsequently, the commission removes the June 15, 2007, date because it is the commission's intent that this exemption no longer applies as of the effective date of the adopted rule.

Under 42 USC, §7511a(f), any moderate, serious, severe, or extreme ozone nonattainment area was required to implement NO_x reasonably available control technology (RACT) unless a demonstration was made that NO_x reductions would not contribute to, or would not be necessary for, attainment of the ozone standard. The exemption in §117.203(a)(1) for units placed into service after November 15, 1992, was part of the initial NO_x RACT rules adopted on May 11, 1993. This exemption included the November 15, 1992, date because this was the FCAA deadline by which states were to promulgate NO_x RACT rules. The emission specifications relating to RACT were adopted to implement controls on units permitted before November 15, 1992, because previous best available control technology determinations may not have been as stringent as RACT. The pollution controls in the permits issued after November 15, 1992, were expected to be equal to or more stringent than RACT.

Section 117.203(a)(1) was included in the Dallas-Fort Worth SIP to exclude new sources placed into service after the effective date of nonattainment new source review, November 15, 1992,

from the emission standards in Chapter 117. Under these rules, major net increases from new or modified major stationary sources must apply controls representing the lowest achievable emission rate and obtain emission offsets in order to construct and operate. The DFW area is now designated nonattainment for the eight-hour NAAQS. Additional emission reductions from previously exempted units and source categories are necessary to achieve the reductions for the 5% IOP SIP revision.

§117.206, Emission Specifications for Attainment Demonstrations

The commission amended §117.206(b) to remove the words "in the Dallas-Fort Worth ozone nonattainment area" because each paragraph in this subsection now specifies the particular counties in which emission limitations apply, and the particular compliance schedule for each paragraph.

Amended §117.206(b)(1) states that gas-fired boilers in Collin, Dallas, Denton, and Tarrant Counties must comply with the existing NO_x emission limitations according to the compliance schedule in §117.520(b)(1). The commission amended §117.206(b)(2) to change "gas/liquid-fired" to "dual-fuel" to be consistent with references to types of engines in other sections of Chapter 117. Amended §117.206(b)(2) states that gas-fired lean-burn engines in Collin, Dallas, Denton, and Tarrant Counties must comply with the existing NO_x emission limitations according to the compliance schedule in §117.520(b)(1).

The adopted amendment to §117.206(b)(3) establishes new emission specifications for gas-fired lean-burn, and gas-fired rich-burn stationary reciprocating internal combustion engines rated 300 hp or greater in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties. Amended §117.206(b)(3) also specifies that the engines in these counties must comply with the emission standard in accordance with the compliance schedule in §117.520(b)(2). As previously noted in this preamble, the commission has selected option two from EPA's Phase I guidance, which requires the commission to submit a 5% IOP plan that provides a 5% reduction from the 2002 emissions inventory by June 15, 2007. Reductions resulting from these units are necessary to satisfy the 5% IOP and are part of the commission's approach to achieve the reductions ultimately needed to attain the eight-hour ozone NAAQS by June 15, 2010.

The proposed emission specification was 0.5 grams NO_x per horsepower hour (g/hp-hr) for both lean-burn internal combustion engines and rich-burn internal combustion engines. Subsequently, the commission revises the emission specification to 2.0 g/hp-hr for rich-burn engines placed into service before January 1, 2000, and all lean-burn engines. The revisions also require rich-burn engines placed into service on or after January 1, 2000, to comply with a 0.5 g/hp-hr emission specification.

The commission determined that the revised emission specifications are a reasonable first phase of reductions from these sources. Further reductions from these sources may be required to attain the eight-hour ozone standard. The commission will continue to analyze emissions inventories for future attainment demonstrations and determine what reductions may or may not be necessary.

Based on the data reported by industry, the commission's 2002 emissions inventory indicated that the new emission specifications affect a total of 13 lean-burn engines and six rich-burn engines at four sites in the DFW area. Subsequently, the commission determined that one of the engines previously categorized as a lean-burn engine is a rich-burn engine.

All seven of the affected rich-burn engines in the commission's 2002 emissions inventory should achieve the 2.0 g/hp-hr emission specification through engine modifications and/or the application of non-selective catalytic reduction. All rich-burn engines in Collin, Dallas, Denton, and Tarrant Counties were required to meet the existing emission specification of 2.0 g/hp-hr by March 31, 2002. The 12 affected lean-burn engines in the DFW area should achieve the emission specification with engine modifications. Both lean-burn and rich-burn engines are also required to perform a stack test in accordance with §117.211.

Based on comments received, adopted §117.206(b)(3)(C) specifies a 3.0 g carbon monoxide (CO)/hp-hr emission limit to clarify the commission's intent that the same CO emission limit in §117.205(d) or §117.206(b)(2) applies to affected engines in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties.

Subsequently, the term "carbon monoxide" is replaced with the previously defined acronym "CO" in §117.206(e)(1).

The commission adds language in §117.206(h)(1), to clarify that the maximum rated capacity of units subject to §117.206(c) should be used to determine requirements for control plans, compliance demonstration, monitoring, testing requirements, and final control plan. This language ensures that the prohibition of circumvention provisions of subsection (h)(1) establish maximum rated capacity for the emission specifications in subsection (c) as well as any control plans, compliance, monitoring, and testing requirement in §§117.209, 117.211, 117.213, 117.214, and 117.216. This amendment applies in the HGB area as the provisions in §117.206(h)(1) are applicable only to HGB area sources.

§117.213, Continuous Demonstration of Compliance

The commission adds language to §117.213(a) that specifies the accuracy of totalizing fuel flow (TFF) meters to ± 5%. An accuracy specification for the TFF meters is necessary to ensure that fuel usage data is representative of actual operations and to demonstrate compliance with the NO_x Mass Emissions Cap and Trade (MECT) requirements in 30 TAC Chapter 101, Subchapter H. The ± 5% specification is sufficient for the commission's intended purpose for the fuel data and should be readily achievable by suppliers of fuel meters. Language added to this subsection also allows the amount of fuel burned in pilot flames to be calculated based on the manufacturer's design flow rates instead of requiring a separate fuel flow meter to measure the amount of fuel burned. This amendment requires that the calculated result be added to the metered value for total fuel use. This amendment applies in the BPA area, DFW area, and HGB area because all three areas have fuel flow requirements. Based on public comment, language is added to this subsection to require that owners or operators of units with totalizing flow meters installed before March 31, 2005, that do not meet the ± 5% accuracy requirement either recertify or replace the meters to meet the ± 5% accuracy requirement by March 31, 2007.

The commission clarifies the TFF requirements for wood-fired boilers in the HGB area by revising §117.213(a)(1)(B)(i). The commission requires a mechanism to measure activity or throughput for wood-fired boilers; however, a TFF meter can

only be used to measure gas or liquid fuel. The revision requires maintaining records of fuel usage as required in §117.219(f) or monitoring exhaust flow. This revision only applies in the HGB area as there are currently no wood-fired boiler requirements in the BPA area or DFW area.

The commission adds language to §117.213(a)(1)(B)(xiii) that exempts vapor streams resulting from vessel cleaning and routed to an incinerator from the TFF meter requirements. The requirement to install TFF meters on these vapor streams is removed because the heating value of these vapor streams is expected to be low and variable. The total heating value contribution from these vapor streams to the combustion process must still be estimated based on calculations regardless of whether the vapor stream flow rate is determined by direct monitoring or by engineering calculations. This amendment specifies that the flow of vapor streams resulting from vessel cleaning must be calculated using good engineering methods. This requirement applies only in the HGB area. There are currently no fuel flow requirements for incinerators in the BPA area or DFW area. Adopted §117.213(a)(1)(B)(xiii) is revised to clarify that only vapor streams from vessel cleaning are exempt from fuel metering requirements, and that all other fuel and vapor streams are not exempt.

The commission restructures §117.213(a)(2) by adding new subparagraph (B) that allows a single TFF meter to monitor flow to multiple units as long as the units exhaust to a common stack monitored with a continuous emissions monitoring system (CEMS). The changes also add to §117.213(a)(2)(C) language that allows a fuel flow alternative for stationary diesel internal combustion engines. As long as the diesel engine is equipped with a run time meter, the use of monthly fuel use records is sufficient to measure activity or throughput. Adopted §117.213(a)(2)(C) is revised to clarify that monthly fuel use records must be maintained for each engine. These amendments apply to the BPA area, DFW area, and HGB area.

The commission amended §117.213(b)(3) to replace the word "necessitated" with "required" to better express the commission's intent of this rule.

The commission adds §117.213(c)(3) to provide for collection of substitute emissions compliance data in the event that the NO_x CEMS or predictive emissions monitoring system (PEMS) is offline. In this event, the owner or operator of the unit would be required to comply with the missing data procedures in 40 Code of Federal Regulations (CFR) Part 75 as well as in §117.213. This amendment applies in the BPA area, DFW area, and HGB area.

The commission amended §117.213(e)(2) to correct a typographical error in the term "O_2."

The commission amended §117.213(e)(3) to clarify that all exhaust stacks, from a unit for which a CEMS is required, must be monitored using a single monitor per stack or a time-shared monitor that can analyze each stack individually. Each exhaust with units with multiple exhaust stacks must be monitored to ensure that the emissions are accurately quantified. This amendment applies in the BPA area, DFW area, and HGB area.

The commission adds language to §117.213(e)(4)(A) that allows bypass stacks to be monitored upstream of the stack provided no additional NO_x gas streams are introduced downstream of the monitor. The commission makes this change because, depending on the unit, installing a CEMS in the bypass stack itself may require that the unit be forced into upset in order to perform initial certification of the CEMS. The amendment requires that accurate readings be maintained and bypass stacks be continuously monitored to determine when the stack is in operation. The commission is retaining the option that currently exists in the rule allowing latitude in monitor placement, but this amendment ensures that no additional contaminants are introduced into the exhaust where they cannot be monitored. In addition, the commission clarifies that process knowledge and engineering calculations may be used to determine volumetric flow rate for the purposes of quantifying mass emissions for each event when the bypass stack is open. The adopted language requires that the maximum potential calculated flow rate be used and that the owner or operator maintain records on all process information and calculations and make these records available upon request by the executive director. An amendment to §117.213(e)(4)(B) allows CEMS to be shared among multiple exhaust stacks on a single unit provided certain conditions are met. A change to §117.213(e)(4)(C) adds an "and" to accommodate §117.213(e)(4)(D) that specifies that each individual stack must be analyzed separately for units with multiple exhaust stacks. The revisions to §117.213(e)(4) apply in the HGB area.

The commission updates §117.213(f)(5)(A)(ii)(VI) to replace "Engineering Services Team" with "executive director."

§117.214, Emission Testing and Monitoring for the Houston-Galveston Attainment Demonstration

The commission amends §117.214(a)(1)(D)(i) to correct the mass balance equation to show that the variable for the correction factor "d" multiplies the result of the operations of the other variables. The clause containing the equation has been reformatted for readability. The amendment in the figure also revises the previous language in §117.214(a)(1)(D)(i) to specify that minor changes to the required test methods or EPA-approved alternative test methods may be approved by the executive director for the testing required to determine the correction factor "d." In the figure of adopted §117.214(a)(1)(D)(i), the acronym "NO_x" is defined because the table is printed separately from the rule text in the *Texas Register*, a citation is corrected, and the second occurrence of "(relating to Initial Demonstration of Compliance)" is deleted because it is not needed. Also, §117.214(a)(1)(D)(iv) is amended to remove language stating that the Engineering Services Team acts for the executive director in approving alternate monitoring methods for ammonia.

In adopted §117.214(b)(1), the citation to §117.211 is revised to include "(relating to Initial Demonstration of Compliance)" because this is the first occurrence of the citation in the actual rule text as printed in the *Texas Register*.

Adopted §117.214(b)(2)(B) clarifies that affected stationary internal combustion engines must be tested biennially or every 15,000 hours of engine operation as required by §117.213(g)(1), in addition to the testing for proper operation required by §117.214(b)(2).

Subchapter D, Small Combustion Sources

Division 2, Boilers, Process Heaters, and Stationary Engines and Gas Turbines at Minor Sources

§117.479, Monitoring, Recordkeeping, and Reporting Requirements

The amendment to §117.479 applies in the HGB area only because this division only applies to the HGB area.

The commission adds language to §117.479(a) that specifies the accuracy of TFF meters to an accuracy of ± 5%. An accuracy specification for the TFF meters is necessary to ensure that fuel usage data is representative of actual operations and to demonstrate compliance with the NO_x MECT requirements in Chapter 101, Subchapter H. The ± 5% specification is sufficient for the commission's intended purpose for the fuel data and should be readily achievable by suppliers of fuel meters. Based on public comment, language is added to this subsection to require that owners or operators of units with totalizing flow meters installed before March 31, 2005, that do not meet the ± 5% accuracy requirement either recertify or replace the meters to meet the ± 5% accuracy requirement by March 31, 2007. Language added to this subsection also allows the amount of fuel burned in pilot flames to be calculated using the manufacturer's design flow rates instead of requiring a separate fuel flow meter. The calculated result must be added to the metered value for total fuel use.

The commission also adds language to exempt units from the TFF meter requirements if the site is not subject to the MECT program in Chapter 101, Subchapter H, Division 3. For the purposes of this division, fuel metering is not required unless the unit is subject to the MECT program or the owner or operator is claiming that the unit is exempt from the emission specifications in §117.475 due to low heat input as specified in §117.473(b). TFF meters should only be required for units that must demonstrate continuous compliance with the MECT program and the heat input limits in §117.473(b), unless the unit qualifies for one of the fuel metering alternatives provided §117.479(a)(2).

Adopted §117.479(a)(2)(B) allows a single TFF meter to monitor flow to multiple units as long as the units exhaust to a common stack monitored with a CEMS. The adopted amendment to §117.479(a)(2)(C) allows for a fuel flow alternative for stationary diesel internal combustion engines. If the diesel engine is equipped with a run time meter, the use of monthly fuel use records is sufficient to meet fuel flow monitoring requirements.

The commission provides an alternative to the TFF meter requirements in adopted §117.479(a)(2)(D) for units subject to the MECT program by allowing meter sharing among units. This alternative is an option for owners or operators who perform a stack test on all units sharing a TFF meter in accordance with §117.479(e). The owner or operator is required to use the emission rate from the stack test with the highest emission rate to quantify the emissions for purposes of MECT reporting in accordance with 30 TAC 101.359. This alternative in §117.479(a)(2)(D) minimizes economic impact for minor sources. Adopted §117.479(a)(2)(D) is revised to specify that only units of the same category of equipment may quality for this alternative. This is necessary to ensure that emissions estimates based on this alternative are reflective of actual emissions. It is important to note that although units that are not subject to the MECT program are not required to have a TFF meter, the owner or operator of each unit claiming the exemption in §117.473(b) is still subject to the annual fuel usage recordkeeping requirements in §117.479(g)(1).

Based on comments received, the commission adopts §117.479(a)(2)(E) to provide an alternative to the TFF meter requirements for independent school districts. Adopted §117.479(a)(2)(E)(i) specifies that owners or operators that elect to follow this alternative provision must maintain monthly records of fuel usage for the entire site and monthly records for each unit of the hours of operation, average operating rate, and estimated fuel usage. Adopted §117.479(a)(2)(E)(ii) specifies that within 60 days of written request by the executive director, the owner or operator must submit for review and approval all methods, engineering calculations, and process information used to estimate the hours of operation, operating rates, and fuel usage for each unit. The commission is providing this alternative specifically for independent school districts because schools are typically closed during the ozone season, and to prevent financial hardship due to lack of funding.

The commission also adopted §117.479(a)(2)(F) to allow TFF meter sharing for units exempted under §117.473(b), provided that all units at the same site qualify for the exemption and the total fuel usage for the entire site meets the appropriate fuel usage limitation.

The commission amended §117.479(e)(3) to allow shorter test times provided that they are approved by the executive director. This change ensures that the executive director has sufficient flexibility to address issues that may result from affected units that only operate for short periods of time in a day.

In response to comment, the adopted amendment to §117.479(e)(3)(G) allows for the use of American Society of Testing and Materials (ASTM) D6522-00 as an alternative to the specified test methods for testing performed on natural gas fired reciprocating engines, combustion turbines, boilers, and process heaters. The adopted provision also specifies that if an owner or operator uses ASTM D6522-00 to conduct the performance testing, the report must contain the information specified in §117.211(g). At adoption, the description "(relating to Initial Demonstration of Compliance)" after the citation in §117.479(e)(4) is deleted because it previously appears in §117.479(e)(3)(G). At adoption, the phrase "(relating to Exemptions)" is deleted after the citation in §117.479(h) because this description of the citation previously appears in this section after the same citation in §117.479(a)(1).

Subchapter E, Administrative Provisions

§117.520, Compliance Schedule for Industrial, Commercial, and Institutional Combustion Sources in Ozone Nonattainment Areas

The commission restructures §117.520(b) in order to accommodate the following changes. Amended §117.520(b)(1) restates the current compliance schedule that applies to DFW area sources, noting an exception for adopted §117.520(b)(2). Adopted §117.520(b)(2) specifies the June 15, 2007, compliance date for the amended emissions specifications, monitoring, testing requirements, and final control plans for certain internal combustion engines in the DFW area. The compliance date of June 15, 2007, is established to meet the EPA requirements in 40 CFR §51.905 relating to the 5% IOP. The amendment also specifies that all sources must submit the first semiannual report by January 31, 2008. Reference to these compliance dates is set forth for the DFW area engine emission specifications in §117.206(b)(3).

The commission also corrects a rule reference in §117.520(c)(1)(A)(iii).

The commission proposed amended §117.520(c)(2)(A)(ii) to clarify the intent of the compliance schedule. Subsequently, the commission determined that the proposed language did not accurately specify the intent. The commission is amending §117.520(c)(2)(A)(i) by adding two new subclauses, (I) and (II), to require an owner or operator to submit the results of CEMS or PEMS performance evaluation and quality assurance procedures within 60 days after startup of a unit following installation

of emissions monitors or within 60 days of startup of a unit that is shut down as of March 31, 2005, respectively. Additionally, to avoid a conflict with §117.520(c)(2)(A)(i)(II), the commission deletes the final sentence from §117.520(c)(2)(A)(ii)(II). Finally, because the provisions of §117.520(c)(2)(A)(ii) only address units placed into service after March 31, 2005, that install emission controls, the commission amends §117.520(c)(2)(C) to clarify the compliance dates for units without emission controls. This clarification relates to compliance dates in the HGB area only.

Units subject to the System Cap requirements of §117.210, and not in operation prior to January 1, 1997, have the option of choosing any two consecutive years out of five for the average daily heat input level of activity (LOA) certification requirements. The compliance dates in §117.520(c)(2)(B)(ii) specify that the certification of LOA must be submitted no later than 60 days after the second consecutive third quarter of actual LOA is complete, but does not allow companies to choose any two out of five years before certifying the LOA. The proposed language in subsection (c)(2)(B)(ii) specified that owners or operators are allowed 60 days after the second consecutive third quarter of actual LOA out of the first five years of operation is chosen to submit their LOA. Adopted §117.520(c)(2)(B)(ii) is revised for clarity to specify that the certification of activity level must be submitted no later than 60 days after the second consecutive third quarter of actual level of activity data are available, selected from the first five years of operation.

The commission adopted the amendment to §117.520(c)(2)(G) to provide owners or operators of units that will be permanently shut down within six months of the compliance date, September 30, 2005, relief from the monitoring requirements in §117.214(a). Specifically, an owner or operator must have submitted written notification to the executive director no later than March 31, 2005, containing the following information: a list of units, by emission point number, that the owner or operator intends to shut down on or before September 30, 2005; the projected date each unit will be shut down; and the projected dates of the stack testing. The owner or operator will also be required to perform a stack test in accordance with §117.211 after March 31, 2005, and prior to September 30, 2005. For the time period from March 31, 2005, and September 30, 2005, the results of this testing will be used for demonstrating compliance with the emission specifications in §117.206(c) or to quantify the emissions for units subject to the MECT program. The revision also requires owners or operators that have not installed TFF meters to use the maximum rated capacity of the unit to quantify the emissions between March 31, 2005, and September 30, 2005. The revision also specifies that if the unit is not permanently shut down by September 30, 2005, the owner or operator will be considered in violation of §117.520(c) as of March 31, 2005, and that extensions beyond September 30, 2005, will not be granted. At adoption, the word "permanently" is added to the term "shut down" in §117.520(c)(2)(G)(i) and (iv) to clarify that the unit must be permanently shut down by September 30, 2005.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking considering the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule." A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments revise the SIP. While this rulemaking is intended to protect the environment by reducing NO_x, the commission does not find that the specific lean-burn and rich-burn engines in the DFW area comprise a sector of the economy, or that the rules will adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety in the DFW area. Further, the commission does not find that the changes that add the exemption for cogeneration boilers in the BPA area and the changes to improve the implementation of the requirements for compliance with existing rules in the BPA area, DFW area, and HGB area apply to sources that comprise a sector of the economy, or that the rules will adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety in the BPA area, DFW area, and HGB area.

The amendments to Chapter 117 are not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the adopted rules do not meet any of the four applicability requirements. Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, the amendments were developed as part of the control strategy to meet the eight-hour ozone NAAQS set by the EPA under 42 USC, §7409, and therefore meet a federal requirement. In addition to the changes applicable to certain engines in the DFW area, the amendments include technical changes to improve the language to best state the commission's intent regarding current requirements for major and minor sources of NO_x emissions in ozone nonattainment areas. Each change affects one or more of the ozone nonattainment areas of the state, BPA area, DFW area, and HGB area. 42 USC, §7410, requires states to adopt and submit a SIP which provides for "implementation, maintenance, and enforcement" of the primary NAAQS in each air quality control region of the state. While 42 USC, §7410 does not require specific programs, methods, or reductions in order to meet the standard, SIPs must include "enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter," (meaning 42 USC, Chapter 85, Air Pollution Prevention and Control). While 42 USC, §§7401 *et seq*. does require some specific measures for SIP purposes, like the inspection and maintenance program, the statute also provides flexibility for states to select other necessary or appropriate measures. The federal government, in implementing 42 USC, §§7401 *et seq*., recognized that the states are in the best position to determine what programs and controls are necessary or appropriate to meet the NAAQS, and provided for the ability of states and the public to collaborate on the best methods for attaining the NAAQS within a particular state. However, this flexibility does not relieve a state

from developing and submitting a SIP that meets the requirements of 42 USC, §7410. Thus, while specific measures are not generally required, the emission reductions are required. States are not free to ignore the requirements of 42 USC, §7410 and must develop programs to assure that the nonattainment areas of the state will be brought into attainment on schedule.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislative Session, 1999. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegation federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. As previously discussed, 42 USC, §§7401 *et seq*. does not require specific programs, methods, or reductions in order to meet the NAAQS; thus states must develop programs for each nonattainment area to ensure that the area will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule included in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require a full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the Legislative Budget Board, the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules may have broad impacts, those impacts are no greater than necessary or appropriate to meet the requirements of 42 USC, §§7401 *et seq*. For these reasons, rules included in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

In addition, 42 USC, §7502(a)(2), requires attainment as expeditiously as practicable and 42 USC, §7511a(c), requires states to submit attainment demonstration SIPs for ozone nonattainment areas, such as the DFW area. The adopted rules, which will reduce ozone in the DFW area, will be submitted to the EPA as one of several measures in the federally required SIP. By reducing emissions of NO_x, a precursor of ozone, these controls will result in reductions in ozone formation in the BPA area, DFW area, and HGB area and help bring these areas into compliance with the air quality standards established under federal law as NAAQS for ozone. Therefore, the adopted rulemaking is a necessary component of, and consistent with, the eight-hour ozone attainment demonstration DFW SIP required by 42 USC, §7410, and for the state's existing plans for the BPA area and HGB area.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. The commission presumes that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485. 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*); *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Sharp v. House of Lloyd, Inc.*, 815 S.W.2d 245 (Tex. 1991); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

As discussed earlier in this preamble, this rulemaking action implements requirements of 42 USC, §§7401 *et seq*. There is no contract or delegation agreement that covers the topic that is the subject of this action. Therefore, the adopted rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, nor is it adopted solely under the general powers of the agency. Finally, this rulemaking action was not developed solely under the general powers of the agency, but is authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, that are cited in the STATUTORY AUTHORITY section of this preamble. Therefore, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the adopted rulemaking does not meet any of the four applicability requirements.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the adopted rulemaking action under Texas Government Code, §2007.043. The specific purposes of this rulemaking are to achieve reductions of NO_x emissions to reduce ozone formation in the DFW area and help bring the DFW area into compliance with the air quality standards established under federal law as NAAQS for ozone. In addition to the changes applicable to engines in the DFW area, the amendments include technical changes to improve the language to best state the commission's intent regarding current requirements for major and minor sources of NO_x emissions in ozone nonattainment areas. Each change affects one or more of the ozone nonattainment areas of the state, BPA area, DFW area, and HGB area. If certain amendments are adopted, certain engines located in the DFW area may be required to install equipment to monitor emissions and implement new reporting and recordkeeping requirements. Installation of the necessary equipment could conceivably place a burden on private, real property. Other amendments provide clarification as to monitoring and reporting requirements and will not place a burden on private, real property.

Texas Government Code, §2007.003(b)(4), provides that Chapter 2007 does not apply to this rulemaking action, because it is reasonably taken to fulfill an obligation mandated by federal law. The emission limitations and control requirements within this rulemaking action were developed in order to meet the eight-hour ozone NAAQS set by the EPA under 42 USC, §7409. States are primarily responsible for ensuring attainment and maintenance of NAAQS once the EPA has established them. Under

42 USC, §7410, and related provisions, states must submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. Therefore, one purpose of this rulemaking action is to meet the air quality standards established under federal law as NAAQS. Attainment of the eight-hour ozone standard may require further reductions in NO_x emissions as well as VOC emissions. This rulemaking is one step toward meeting the state's obligations under the FCAA. Attainment of the eight-hour ozone standard may require further reductions in NO_x emissions as well as VOC emissions. This rulemaking is one step toward meeting the state's obligations under the FCAA.

In addition, Texas Government Code, §2007.003(b)(13), states that Chapter 2007 does not apply to an action that: 1) is taken in response to a real and substantial threat to public health and safety; 2) is designed to significantly advance the health and safety purpose; and 3) does not impose a greater burden than is necessary to achieve the health and safety purpose. Although the rules do not directly prevent a nuisance or prevent an immediate threat to life or property, they do prevent a real and substantial threat to public health and safety and significantly advance the health and safety purpose. This action is taken in response to the DFW area exceeding the federal eight-hour ozone NAAQS, which adversely affects public health, primarily through irritation of the lungs. The action significantly advances the health and safety purpose by reducing ozone levels in the DFW area. Consequently, these adopted rules meet the exemption in Texas Government Code, §2007.003(b)(13). This rulemaking action therefore meets the requirements of Texas Government Code, §2007.003(b)(4) and (13). For these reasons, the adopted rules do not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined the adopted rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the amendments are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. The adopted rulemaking and SIP revision will ensure that the amendments comply with 40 CFR Part 50, National Primary and Secondary Air Quality Standards, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. This rulemaking action is consistent with CMP goals and policies, in compliance with 31 TAC §505.22(e).

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 117 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program; therefore, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, revise their operating permit to include the revised Chapter 117 requirements at their sites affected by the revisions to Chapter 117.

PUBLIC COMMENT

Public hearings on the proposal were held in Arlington on January 3, 2005, Austin on January 4, 2005, and in Houston on January 5, 2005, but no oral comments were received. The public comment period ended at 5:00 p.m. on January 6, 2005. Written comments were submitted by Degussa Engineered Carbons (Degussa); Dow Chemical Company (Dow); Houston Sierra Club (HSC); the Honorable Robert N. Cluck, M.D., Mayor of the City of Arlington (Mayor Cluck); Powell and Associates (Powell); Texas Chemical Council (TCC); and the EPA Region 6. Mayor Cluck indicated general support for the rules. Degussa, Dow, HSC, Powell, TCC, and the EPA Region 6 did not indicate whether they were for or against the adoption of the rules, but provided specific comments on the rules.

RESPONSE TO COMMENTS

HSC suggested that the commission define "minor changes" in §117.114(a)(4)(A) and §117.214(a)(1)(D)(i).

RESPONSE

The term "minor" modification is consistent with provisions in other commission rules and EPA regulations regarding modifications to test methods and monitoring requirements. An exact definition of a minor modification is not possible because what constitutes a minor modification is dependent on the specific method, situation, source type, and technical nature of the requested modification. Specifying an exhaustive list of "minor" modifications within the rules is not practical and would limit the executive director's ability to deal with unique situations that may arise during testing events. The technical staff of the commission determine on a case-by-case basis if a requested modification is minor in nature and is acceptable for the specific source and situation. Therefore, the commission declines to make the suggested change.

HSC suggested that in §117.203(a)(13) the commission only exempt cogeneration boilers that recover waste heat from one or more carbon black reactors if the source is a minor source, but not if the source is a major source. HSC states that NO_x emissions will be needed to meet the new eight-hour ozone standard, and therefore the commission should not exempt any major sources that can provide NO_x reductions. The EPA Region 6 requested that the commission elaborate on the facilities affected by the new exemption in §117.203(a)(13) and the associated emissions.

RESPONSE

The emission reductions necessary for the BPA attainment demonstration SIP were based on the modeling episode from September 6, 1993 - September 11, 1993, and the controlling day, September 10, 1993. Modeling for the controlling day indicated that a point source NO_x reduction of approximately 40% from 1997 levels, or about 60 tons per day, was necessary. The staff analyzed the most recent available point source NO_x emissions inventory, which was 1997. Emission specifications to achieve the necessary reductions were developed for the four largest of the source categories: industrial boilers, process heaters, electric utility boilers, and engines. This exemption is

added because it was not the commission's intent that these units be subject to Chapter 117, Subchapter B, Division 3. This exemption does not impact the BPA area SIP demonstration because NO_x reductions from these units are not included in the attainment demonstration. Thus, there will be no emissions increases or decreases associated with the SIP with the addition of this exemption. The commission will continue to analyze emissions inventories for future attainment demonstrations and determine what reductions may or may not be necessary or achievable.

DEC commented that §117.203(a)(13) should be clarified and suggested the language read "any combustion unit in the BPA area that recovers heat from, or utilizes as a fuel source, the tail gas from one or more carbon black reactors."

RESPONSE

The commission agrees with the commenter's suggested language regarding "recovers heat from, or utilizes as a fuel source, the tail gas from one or more carbon black reactors." This revision will clarify that the exemption covers units that use tail gas for either heat recovery or fuel. However, this exemption is limited to cogeneration boilers, therefore, the commission declines to make the requested change regarding the term "combustion unit."

HSC suggested that the portion of the preamble that describes the changes to §117.206(h)(1) clarify that owners/operators "must" use the maximum rated capacity of units subject to §117.206(c) to determine requirements.

RESPONSE

The commission has clarified the preamble by stating that the maximum rated capacity of units subject to §117.206(c) "must" be used to determine requirements.

TCC commented that the commission should delete the language proposed in §117.206(h)(1) concerning prohibition of circumvention. TCC wants to retain the ability to take an enforceable permit condition to lower the maximum rated capacity below the CEMS monitoring limit and stated that the compliance deadline for CEMS installation is too near for the agency to impose this new requirement.

RESPONSE

The language in §117.206(h)(1) is to clarify the commission's intent regarding the provisions under the prohibition of circumvention and derating of a unit. In response to comments in the adopted revisions to Chapter 117, Subchapter B, Division 3, published in the *Texas Register* on October 12, 2001 (26 TexReg 8142), the commission indicated that the maximum rated capacity on December 31, 2000, would establish the applicability of the monitoring requirements for those units in §117.213(c)(1) for which a maximum rated capacity threshold applies. The commission maintains that the commenter does not have the option to derate a unit to avoid monitoring requirements. The adopted revisions to §117.206(h)(1) clarify this intent and, therefore, the provision is not a new requirement for CEMS.

TCC expressed support for the proposed language in §117.213(a) that allows calculation of fuel flow to pilots in lieu of separate metering of pilot fuel flow rate.

RESPONSE

The commission appreciates this comment in support of the rule.

TCC commented that it was impractical for large sites to review each individual fuel flow meter and guarantee that all meters meet the proposed ± 5% accuracy requirements for TFF meters proposed in §117.213(a). TCC added that some preexisting fuel flow meters may not meet this specification and replacement may be difficult to achieve the March 31, 2005, compliance date. Dow also objected to the proposed new 5% accuracy specification for TFF meters in §117.213(a), commenting that many of its combustion sources have existing fuel flow meters or have already made installations for the existing version of the rule. Dow commented that Dow facilities in Texas have more than 200 meters already in this service and that the proposed accuracy requirement may or may not be achievable for all existing meters. TCC and Dow suggested that TCEQ either delete the proposed required accuracy specification for the TFF meters required in §117.213(a) or allow some sort of variance for existing meters.

RESPONSE

The commission expects that owners or operators will have knowledge of the accuracy of a TFF meter in order to quantify emissions for MECT and emissions inventory reporting, and to ensure proper facility operations. Owners or operators may demonstrate compliance with this requirement based on pre-installed calibrations or manufacturer's specifications. However, the commission has amended the rule language to allow owners or operators additional time to comply with the ± 5% accuracy requirements for existing TFF meters that do not meet this requirement. These existing TFF meters must be replaced or recertified to meet the ± 5% accuracy requirement by March 31, 2007. All TFF meters installed after March 31, 2005, must meet the ± 5% accuracy requirement.

HSC suggested that in §117.213(a)(1)(B)(xiii) the commission only exempt dilute vapor streams resulting from vessel cleaning and routed to an incinerator if the source is a minor source, not if the source is a major source. HSC states that NO_x emission reductions will be needed to meet the new eight-hour ozone standard, and therefore the commission should not exempt any major sources that can provide NO_x reductions.

RESPONSE

The changes in §117.213(a)(1)(B)(xiii) do not exempt dilute vapor streams resulting from vessel cleaning from controls or vapor destruction requirements. The change would only remove the requirement to install a TFF meter in a vapor line containing a stream originating from the process of cleaning vessels. This change would not impact the emission reductions necessary for attainment because the changes will not allow an increase in emissions nor will the changes exempt units from the emission specifications in §117.206 or the MECT. The commission revises the proposed language to clarify that the incinerator used in conjunction with vessel cleaning itself is not exempt from the TFF metering requirements. Only the vapor stream resulting from the cleaning of vessels would be exempt from the TFF metering requirements. All other fuel sources and vapor streams routed to incinerators remain subject to the TFF metering requirements.

HSC suggested that in §117.213(a)(1)(B)(xiii) the commission define "good engineering methods." TCC suggested that TCEQ delete proposed language in §117.213(a)(1)(B)(xiii), "including calculation methods in general use and accepted in new source review permitting in Texas." TCC commented that "accepted" calculation methods for new source review permits are not defined, and should, therefore be deleted.

RESPONSE

Good engineering practice will vary depending on the specific operation and source and, therefore, cannot be specifically defined. The requirement to use calculation methods in new source review permitting is in place to establish the commission's expectation for what constitutes good engineering practices for the purposes of §117.213(a)(1)(B)(xiii). The language addressed by the commenters is consistent with language used in other commission rules such as the MECT rules in Chapter 101.

TCC suggested that TCEQ should add language in §117.213(a)(2) concerning alternatives to fuel flow monitoring for small heaters less than 10 million British thermal units per hour (MMBtu/hr) or infrequently used heaters operating less than 45 calendar days per year. Specifically, TCC suggested that these small or infrequently used heaters should be allowed to use maximum design fuel flow rate to estimate fuel flow in lieu of metering.

RESPONSE

The exemption in §117.203(a)(9) already establishes the minimum size process heater that is subject to the requirements of the major source rules. This exemption is consistent with the requirements for sources subject to the minor source rules in Chapter 117, Subchapter D, Division 2. Also, an infrequently used (i.e., operating less than 45 days per year) process heater could have emissions exceeding those of a frequently used unit depending upon the operating parameters and emission rates of the units. The commission maintains that fuel monitoring for the demonstration of compliance with large, small, and/or infrequently used units is necessary to ensure that the reductions for attainment are accurately quantified and enforceable. Therefore, the commission makes no changes as a result of the comments.

TCC expressed support for the proposed language in §117.213(a)(2)(C) concerning monthly fuel use records as an alternative to TFF meters for diesel engines operating with run time meters.

RESPONSE

The commission appreciates this comment in support of this part of the rule proposal.

HSC suggested that the commission explain the missing data procedures in §117.213(c). TCC commented that TCEQ should delete the proposed language in §117.213(c)(3)(A) concerning data substitution for NO_x monitors that are CEMS, indicating that the data substitution requirements in 40 CFR Part 75 are onerous, unnecessary, and contradict §101.354(b). TCC also commented that TCEQ should clarify §117.213(c)(3)(D) regarding whether the use of the data substitution method in §117.213(c)(3)(A) is optional and that an owner or operator can use the maximum block one-hour emission rate as measured during the initial demonstration of compliance.

RESPONSE

The language added to §117.213(c)(3) regarding data substitution is intended to clarify the rule requirements for missing data during periods of CEMS or PEMS downtime. TCC's comment regarding §117.213(c)(3)(D) is correct; §117.213(c)(3)(D) is provided as an option to the methods specified in §117.213(c)(3)(A) - (C). Therefore, the commission's references to 40 CFR Part 75 are not mandatory unless the owner or operator chooses to follow 40 CFR Part 75 procedures or the unit is already subject to 40 CFR Part 75. The prescriptions in §101.354 are for allowance deductions in the MECT program. The MECT allowance deduction methods are not intended to supercede the monitoring requirements of Chapter 117.

TCC commented that TCEQ should clarify that §117.213(f)(7), concerning PEMS, does not require submittal of information to the ED for approval.

RESPONSE

The language in §117.213(f) stating that , "The PEMS shall be subject to the approval of the executive director," regarding PEMS requirements is similar to the language in §117.213(e)(6) regarding CEMS requirements. Neither of these provisions are intended to specifically require submitting information to the executive director for prior approval before installation and certification of a CEMS or PEMS for the monitoring requirements of this rule. Rather, these provisions clarify that the executive director may require changes if some aspect of the CEMS or PEMS is determined to be inadequate.

TCC commented that the commission should clarify the applicability of testing and monitoring related to engines. In particular, TCC requested clarification for the diesel engine monitoring requirements under §117.213(g) and whether diesel engines are subject to the testing requirements of §117.211.

RESPONSE

The language in §117.214(b)(2)(B), specifying periodic testing requirements, was added to clarify that all engines must be monitored in accordance with §117.213(g)(1), including diesel engines. Diesel engines that are subject to an emission limitation of Division 3 are subject to the testing requirements of §117.211.

TCC commented that TCEQ should consider changing the mass balance equation in §117.214(a)(1)(D)(i) to {a/b x 1,000,000 - (c)(d)} and change the definition of variable "(d)" to be "the measured molar ratio of NO_x removal per mole of ammonia added, as determined by the stack sampling...." TCC also commented that the reference to §117.111(a)(2) in §117.214(a)(1)(D)(i) regarding the definition of variable "d," should reference §117.211(a)(2).

RESPONSE

The suggested change to the mass balance equation would require additional testing to accurately determine the ratio of NO to NO_2 in order to adjust for the molar ratio of NO_x removal. Furthermore, the proposed change would only correct for errors in the calculated ammonia slip resulting from a source having a significant amount of NO_2 present; other potential sources of error in the calculated ammonia slip would not be corrected by the suggested equation. The variable "d," as adopted, is a general bias correction factor that corrects for any error introduced to the calculated ammonia slip since "d" is determined based on measured ammonia versus the theoretical ammonia slip. This correction factor includes error that may result from the NO to NO_2 ratio as well as other sources of potential errors. Therefore, the commission declines to make the suggested change to the mass balance equation. The commission agrees with TCC's suggested change regarding the rule reference in §117.214(a)(1)(D)(i) and has changed the rule accordingly.

Powell commented that §117.473(b) should be modified to allow any boiler or process heater with a maximum rated capacity greater than 2.0 MMBtu/hr that has an annual heat input less than or equal to 9.0 (10^9) BTU per calendar year to be exempt.

RESPONSE

The commission's proposal did not modify §117.473. Therefore, the commission declines to make the suggested change because affected persons would not have an opportunity for notice and comment on the change.

Powell suggested that §117.479(a)(1) be modified to allow a utility company's gas meter to be used as an acceptable TFF meter. Powell further stated that this change would save school districts money and would aid in compliance.

RESPONSE

The suggested change is not necessary. Any gas meter that satisfies the requirements of §117.479(a)(1) may be used by an owner or operator; this might include a utility company's gas meter. The owner or operator is responsible for verifying that the particular gas meter installed by the utility company supplying natural gas to the site meets all requirements in the rules. No change to the rule has been made in response to this comment.

Powell also suggested that school districts would save money if §117.479(a)(1) were modified to allow one totalizing gas meter for multiple boilers claiming the exemption in §117.473(b).

RESPONSE

The commission has provided two alternatives in §117.479(a)(2)(B) and (D) that would allow an owner or operator to use one TFF meter for more than one unit. The commission has included in the adopted rule a new alternative in §117.479(a)(2)(E) specifically intended for school districts. In addition, adopted §117.479(a)(2)(F) clarifies that TFF meter sharing is allowed for units exempted under §117.473(b), provided that all units at the same site qualify for the exemption and the total fuel usage for the entire site meets the appropriate fuel usage limitation.

Powell suggested that school districts would also be provided some financial relief if the commission removed all references to "emission limitations of §117.475 of this title" from §117.479, including requirements for TFF meters, recordkeeping, etc.

RESPONSE

This suggested change would not provide financial relief because if this language were removed, the sources would still be subject to the requirements specified in §117.479. The testing, monitoring, recordkeeping, and reporting requirements specified in §117.479 for units subject to the ESADs are necessary for the commission to verify compliance. The adopted rule provides financial relief by providing alternatives to the TFF meter requirements as previously noted in this preamble.

Powell suggests rewording §117.479(e) to allow portable combustion analyzers to be used. Powell stated that this would allow for more a practical test run time period, and would reduce costs to school districts.

RESPONSE

During the recent adopted revisions to 40 CFR Part 60, Subpart GG, "Standards of Performance for Stationary Gas Turbines," in the July 8, 2004, Federal Register (69 FR 41346 - 41364), the EPA allowed the use of ASTM D6522-00, "Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers," for conducting performance tests required for Subpart GG. While not all methods that use portable analyzers may be appropriate for conducting performance tests, the commission recognizes that the EPA has evaluated the use of portable analyzers according to ASTM D6522-00 and determined that the method is acceptable for conducting performance tests on certain sources. The commission has also reviewed ASTM D6522-00 and determined that portable analyzers, if used according to the procedures specified in the ASTM method, can generate results of sufficient quality to satisfy the intent of the performance testing requirements of this rule. In addition, the commission recognizes that some cost savings may be realized by owners or operators if this ASTM method is allowed as an alternative to the EPA test methods already specified in §117.479(e). Therefore, the commission has revised §117.479(e) to allow the use of ASTM D6522-00 for performance tests on natural gas-fired reciprocating engines, combustion turbines, boilers, and process heaters. The use of ASTM D6522-00 for performance testing on all other sources will be considered on a case-by-case basis as provided in §117.479(e)(3)(F).

Dow and TCC commented that the commission should take a more flexible approach to CEMS and PEMS requirements for combustion sources that plan to cease operations shortly after March 31, 2005, and suggested revised rule language for §117.520(c)(2)(G). Specifically, Dow and TCC suggested changing the date that units must be permanently shut down from May 31, 2005, to September 31, 2005. The commenters also suggested that the requirement to conduct a reference method test between March 31, 2005, and May 31, 2005, was overly restrictive and that an owner or operator should be allowed to use earlier test results. Finally, Dow and TCC commented that a provision should be included to allow the executive director to grant extensions beyond September 30, 2005, on a case-by-case basis.

RESPONSE

The commission agrees with the commenters' suggested change to extend the date that the unit must be permanently shut down to September 30, 2005. This six-month time frame is necessary to address most situations the commission is aware of that companies have planned a permanent shutdown shortly after March 31, 2005, and does not adversely impact the long-term enforcement or effectiveness of the rule. The adopted rulemaking allows a unit that is required to install CEMS to operate until September 30, 2005, without a CEMS. However, the commission maintains that the requirements to install CEMS are necessary to demonstrate compliance with the emission specifications and the MECT and that the compliance with the associated reductions is the mechanism for demonstrating attainment with the NAAQS. The requirement to conduct a new stack test is necessary to provide the commission with accurate and current representations of the emissions during that period. Older tests may not reflect recent adjustments made to the unit for more current operating scenarios and demands. The cost savings realized by not having to install the required CEMS or PEMS will greatly outweigh the cost associated with performing a new stack test. Also, the suggested provision to allow open-ended extensions beyond the compliance date on a case-by-case basis would erode the enforcement of the rules and would impact the approvability of the SIP. Therefore, the commission declines to make the suggested changes regarding the use of prior test results and case-by-case extensions.

Dow and TCC urged the commission to adopt the technical correction prior to the March 31, 2005, compliance date to ensure that the regulated community does not have to comply with rules that are in the process of being changed.

RESPONSE

The commission will consider this proposal for adoption on April 27, 2005.

The EPA Region 6 recommended that the commission include an appropriate corresponding CO emission specification for the 0.5 g NO_x/hp-hr emission specification for lean-burn and rich-burn engines.

RESPONSE

It was the intent of the commission that units subject to §117.206(b)(3) be subject to the 3.0 g CO/hp-hr emission specification in §117.205(d) or §117.206(b)(2). However, the proposed applicability section, §117.201, inadvertently exempted engines in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties from the CO limit specified in §117.205(d) or §117.206(b)(2). Therefore, the commission has revised §117.206(b)(3) to include the 3.0 g/hp-hr CO emission specification.

Mayor Cluck stated support for the commission's work with the EPA to bring cleaner air to north Texans.

RESPONSE

The commission appreciates the support of Mayor Cluck and will continue to work with the EPA to improve air quality in the north Texas region.

SUBCHAPTER B. COMBUSTION AT MAJOR SOURCES

DIVISION 1. UTILITY ELECTRIC GENERATION IN OZONE NONATTAINMENT AREAS

30 TAC §117.114

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants. The amendment is also adopted under 42 USC, §7410, that requires states to introduce pollution control measures in order to reach specific air quality standards in particular areas of the state.

The adopted amendment implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, and 382.016.

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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Texas Commission on Environmental Quality
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DIVISION 3. INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL COMBUSTION SOURCES IN OZONE NONATTAINMENT AREAS

30 TAC §§117.201, 117.203, 117.206, 117.213, 117.214

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants. The amendments are also adopted under 42 USC, §7410, that requires states to introduce pollution control measures in order to reach specific air quality standards in particular areas of the state.

The adopted amendments implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, and 382.016.

§117.203. Exemptions.

(a) Units exempted from the provisions of this division (relating to Industrial, Commercial, and Institutional Combustion Sources in Ozone Nonattainment Areas), except as may be specified in §§117.206(i), 117.209(c)(1), 117.213(i), 117.214(a)(2), 117.216(a)(5), and 117.219(f)(6) and (10) of this title (relating to Emission Specifications for Attainment Demonstrations; Initial Control Plan Procedures; Continuous Demonstration of Compliance; Emission Testing and

Monitoring for the Houston-Galveston Attainment Demonstration; Final Control Plan Procedures for Attainment Demonstration Emission Specifications; and Notification, Recordkeeping, and Reporting Requirements), include the following:

(1) any new units placed into service after November 15, 1992, except for new units which are qualified, at the option of the owner or operator, as functionally identical replacement for existing units under §117.205(a)(3) of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)). Any emission credits resulting from the operation of such replacement units shall be limited to the cumulative maximum rated capacity of the units replaced;

(2) any industrial, commercial, or institutional boiler or process heater with a maximum rated capacity of less than 40 million British thermal units per hour (MMBtu/hr);

(3) heat treating furnaces and reheat furnaces. This exemption shall no longer apply to any heat treating furnace or reheat furnace with a maximum rated capacity of 20 MMBtu/hr or greater in the Houston-Galveston ozone nonattainment area after the appropriate compliance date(s) for emission specifications for attainment demonstrations specified in §117.520 of this title (relating to Compliance Schedule for Industrial, Commercial, and Institutional Combustion Sources in Ozone Nonattainment Areas);

(4) flares, incinerators, pulping liquor recovery furnaces, sulfur recovery units, sulfuric acid regeneration units, molten sulfur oxidation furnaces, and sulfur plant reaction boilers. This exemption shall no longer apply to the following units in the Houston-Galveston ozone nonattainment area after the appropriate compliance date(s) for emission specifications for attainment demonstrations specified in §117.520 of this title:

(A) incinerators with a maximum rated capacity of 40 MMBtu/hr or greater; and

(B) pulping liquor recovery furnaces;

(5) dryers, kilns, or ovens used for drying, baking, cooking, calcining, and vitrifying. This exemption shall no longer apply to the following units in the Houston-Galveston ozone nonattainment area after the appropriate compliance date(s) for emission specifications for attainment demonstrations specified in §117.520 of this title:

(A) magnesium chloride fluidized bed dryers; and

(B) lime kilns and lightweight aggregate kilns;

(6) stationary gas turbines and stationary internal combustion engines, which are used as follows:

(A) in research and testing;

(B) for purposes of performance verification and testing;

(C) solely to power other engines or gas turbines during startups;

(D) exclusively in emergency situations, except that operation for testing or maintenance purposes is allowed for up to 52 hours per year, based on a rolling 12-month average. Any new, modified, reconstructed, or relocated stationary diesel engine placed into service on or after October 1, 2001, in the Houston-Galveston ozone nonattainment area is ineligible for this exemption. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title (relating to General Definitions) and 40 Code of Federal Regulations (CFR) §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a used engine from anywhere outside that account;

(E) in response to and during the existence of any officially declared disaster or state of emergency;

(F) directly and exclusively by the owner or operator for agricultural operations necessary for the growing of crops or raising of fowl or animals; or

(G) as chemical processing gas turbines;

(7) stationary gas turbines with a megawatt (MW) rating of less than 1.0 MW;

(8) stationary internal combustion engines which are:

(A) located in the Houston-Galveston ozone nonattainment area with a horsepower (hp) rating of less than 150 hp; or

(B) located in the Beaumont-Port Arthur or Dallas-Fort Worth ozone nonattainment area with a hp rating of less than 300 hp;

(9) any boiler or process heater with a maximum rated capacity of 2.0 MMBtu/hr or less;

(10) any stationary diesel engine in the Beaumont-Port Arthur or Dallas-Fort Worth ozone nonattainment area;

(11) any stationary diesel engine placed into service before October 1, 2001, in the Houston-Galveston ozone nonattainment area which:

(A) operates less than 100 hours per year, based on a rolling 12-month average; and

(B) has not been modified, reconstructed, or relocated on or after October 1, 2001. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account;

(12) any new, modified, reconstructed, or relocated stationary diesel engine placed into service in the Houston-Galveston ozone nonattainment area on or after October 1, 2001, which:

(A) operates less than 100 hours per year, based on a rolling 12-month average, in other than emergency situations; and

(B) meets the corresponding emission standard for nonroad engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998) and in effect at the time of installation, modification, reconstruction, or relocation. For the purposes of this paragraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account; and

(13) any cogeneration boiler in the Beaumont-Port Arthur ozone nonattainment area that recovers waste heat from, or utilizes as a fuel source the tail gas from one or more carbon black reactors.

(b) The exemptions in subsection (a)(1), (2), (7), and (8)(A) of this section shall no longer apply in the Houston-Galveston ozone nonattainment area after the appropriate compliance date(s) for emission specifications for attainment demonstrations specified in §117.520 of this title.

(c) The exemption in subsection (a)(1) of this section will no longer apply to units subject to §117.206(b)(3) of this title.

§117.206. Emission Specifications for Attainment Demonstrations.

(a) Beaumont-Port Arthur. No person shall allow the discharge into the atmosphere from any gas-fired boiler or process heater with a maximum rated capacity equal to or greater than 40 million British thermal units per hour (MMBtu/hr) in the Beaumont-Port Arthur ozone nonattainment area, emissions of nitrogen oxides (NO_x) in excess of the following, except as provided in subsections (f) and (g) of this section:

(1) boilers, 0.10 pound (lb) NO_x per MMBtu of heat input; and

(2) process heaters, 0.08 lb NO_x per MMBtu of heat input.

(b) Dallas-Fort Worth. No person shall allow the discharge into the atmosphere emissions in excess of the following emission specifications, except as provided in subsections (f) and (g) of this section.

(1) Gas-fired boilers in Collin, Dallas, Denton, and Tarrant Counties with a maximum rated capacity equal to or greater than 40 MMBtu/hr, must comply with 30 parts per million by volume (ppmv) NO_x, at 3.0% oxygen (O_2), dry basis, according to the applicable schedule in §117.520(b)(1) of this title (relating to Compliance Schedule for Industrial, Commercial, and Institutional Combustion Sources in Ozone Nonattainment Areas).

(2) Gas-fired and dual-fuel, lean-burn, stationary reciprocating internal combustion engines in Collin, Dallas, Denton, and Tarrant Counties rated 300 horsepower (hp) or greater, must comply with 2.0 grams NO_x per horsepower hour (g NO_x/hp-hr) and 3.0 g carbon monoxide (CO)/hp-hr, according to the applicable schedule in §117.520(b)(1) of this title.

(3) Gas-fired stationary reciprocating internal combustion engines in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties rated 300 hp or greater, must comply with the following emission limits, according to the applicable schedule in §117.520(b)(2) of this title:

(A) lean-burn engines, 2.0 g NO_x/hp-hr;

(B) rich-burn engines:

(i) placed into service before January 1, 2000, which have not been modified, reconstructed, or relocated on or after January 1, 2000, 2.0 g NO_x/hp-hr. For the purposes of this clause, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title (relating to General Definitions) and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a used engine from anywhere outside that account; and

(ii) installed, modified, and reconstructed, or relocated on or after January 1, 2000, 0.50 g NO_x/hp-hr; and

(C) all lean-burn and rich-burn engines, 3.0 g CO/hp-hr.

(c) Houston-Galveston. In the Houston-Galveston ozone nonattainment area, the emission rate values used to determine allocations for Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) shall be the lower of any applicable permit limit in a permit issued before January 2, 2001; any permit issued on or after January 2, 2001, for which the owner or operator submitted an application determined to be administratively complete by the executive director before January 2, 2001; any limit in a permit by rule under which construction commenced by January 2, 2001; or the following emission specifications:

(1) gas-fired boilers:

(A) with a maximum rated capacity equal to or greater than 100 MMBtu/hr, 0.020 lb NO_x per MMBtu;

(B) with a maximum rated capacity equal to or greater than 40 MMBtu/hr, but less than 100 MMBtu/hr, 0.030 lb NO_x per MMBtu; and

(C) with a maximum rated capacity less than 40 MMBtu/hr, 0.036 lb NO_x per MMBtu (or alternatively, 30 ppmv NO_x, at 3.0% O_2, dry basis);

(2) fluid catalytic cracking units (including CO boilers, CO furnaces, and catalyst regenerator vents), one of the following:

(A) 40 ppmv NO_x at 0.0% O_2, dry basis;

(B) a 90% NO_x reduction of the exhaust concentration used to calculate the June - August 1997 daily NO_x emissions. To ensure that this emission specification will result in a real 90% reduction in actual emissions, a consistent methodology shall be used to calculate the 90% reduction; or

(C) alternatively, for units which did not use a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) to determine the June - August 1997 exhaust concentration, the owner or operator may:

(i) install and certify a NO_x CEMS or PEMS as specified in §117.213(e) or (f) of this title (relating to Continuous Demonstration of Compliance) no later than June 30, 2001;

(ii) establish the baseline NO_x emission level to be the third quarter 2001 data from the CEMS or PEMS;

(iii) provide this baseline data to the executive director no later than October 31, 2001; and

(iv) achieve a 90% NO_x reduction of the exhaust concentration established in this baseline;

(3) boilers and industrial furnaces (BIF units) which were regulated as existing facilities by the EPA at 40 Code of Federal Regulations (CFR) Part 266, Subpart H (as was in effect on June 9, 1993):

(A) with a maximum rated capacity equal to or greater than 100 MMBtu/hr, 0.015 lb NO_x per MMBtu; and

(B) with a maximum rated capacity less than 100 MMBtu/hr:

(i) 0.030 lb NO_x per MMBtu; or

(ii) an 80% reduction from the emission factor used to calculate the June - August 1997 daily NO_x emissions. To ensure that this emission specification will result in a real 80% reduction in actual emissions, a consistent methodology shall be used to calculate the 80% reduction;

(4) coke-fired boilers, 0.057 lb NO_x per MMBtu;

(5) wood fuel-fired boilers, 0.060 lb NO_x per MMBtu;

(6) rice hull-fired boilers, 0.089 lb NO_x per MMBtu;

(7) liquid-fired boilers, 2.0 lb NO_x per 1,000 gallons of liquid burned;

(8) process heaters:

(A) other than pyrolysis reactors:

(i) with a maximum rated capacity equal to or greater than 40 MMBtu/hr, 0.025 lb NO_x per MMBtu; and

(ii) with a maximum rated capacity less 40 MMBtu/hr, 0.036 lb NO_x per MMBtu (or alternatively, 30 ppmv NO_x, at 3.0% O_2, dry basis); and

(B) pyrolysis reactors, 0.036 lb NO_x per MMBtu;

(9) stationary, reciprocating internal combustion engines:

(A) gas-fired rich-burn engines:

(i) fired on landfill gas, 0.60 g NO_x/hp-hr; and

(ii) all others, 0.50 g NO_x/hp-hr;

(B) gas-fired lean-burn engines, except as specified in subparagraph (C) of this paragraph:

(i) fired on landfill gas, 0.60 g NO_x/hp-hr; and

(ii) all others, 0.50 g NO_x/hp-hr;

(C) dual-fuel engines:

(i) with initial start of operation on or before December 31, 2000, 5.83 g NO_x/hp-hr; and

(ii) with initial start of operation after December 31, 2000, 0.50 g NO_x/hp-hr; and

(D) diesel engines, excluding dual-fuel engines:

(i) placed into service before October 1, 2001, which have not been modified, reconstructed, or relocated on or after October 1, 2001, the lower of 11.0 g NO_x/hp-hr or the emission rate established by testing, monitoring, manufacturer's guarantee, or manufacturer's other data. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title (relating to General Definitions) and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a used engine from anywhere outside that account; and

(ii) for engines not subject to clause (i) of this subparagraph:

(I) with a horsepower rating of less than 11 hp which are installed, modified, reconstructed, or relocated:

(-a-) on or after October 1, 2001, but before October 1, 2004, 7.0 g NO_x/hp-hr; and

(-b-) on or after October 1, 2004, 5.0 g NO_x/hp-hr;

(II) with a horsepower rating of 11 hp or greater, but less than 25 hp, which are installed, modified, reconstructed, or relocated:

(-a-) on or after October 1, 2001, but before October 1, 2004, 6.3 g NO_x/hp-hr; and

(-b-) on or after October 1, 2004, 5.0 g NO_x/hp-hr;

(III) with a horsepower rating of 25 hp or greater, but less than 50 hp, which are installed, modified, reconstructed, or relocated:

(-a-) on or after October 1, 2001, but before October 1, 2003, 6.3 g NO_x/hp-hr; and

(-b-) on or after October 1, 2003, 5.0 g NO_x/hp-hr;

(IV) with a horsepower rating of 50 hp or greater, but less than 100 hp, which are installed, modified, reconstructed, or relocated:

(-a-) on or after October 1, 2001, but before October 1, 2003, 6.9 g NO_x/hp-hr;

(-b-) on or after October 1, 2003, but before October 1, 2007, 5.0 g NO_x/hp-hr; and

(-c-) on or after October 1, 2007, 3.3 g NO_x/hp-hr;

(V) with a horsepower rating of 100 hp or greater, but less than 175 hp, which are installed, modified, reconstructed, or relocated:

(-a-) on or after October 1, 2001, but before October 1, 2002, 6.9 g NO_x/hp-hr;

(-b-) on or after October 1, 2002, but before October 1, 2006, 4.5 g NO_x/hp-hr; and

(-c-) on or after October 1, 2006, 2.8 g NO_x/hp-hr;

(VI) with a horsepower rating of 175 hp or greater, but less than 300 hp, which are installed, modified, reconstructed, or relocated:

(-a-) on or after October 1, 2001, but before October 1, 2002, 6.9 g NO_x/hp-hr;

(-b-) on or after October 1, 2002, but before October 1, 2005, 4.5 g NO_x/hp-hr; and

(-c-) on or after October 1, 2005, 2.8 g NO_x/hp-hr;

(VII) with a horsepower rating of 300 hp or greater, but less than 600 hp, which are installed, modified, reconstructed, or relocated:

(-a-) on or after October 1, 2001, but before October 1, 2005, 4.5 g NO_x/hp-hr; and

(-b-) on or after October 1, 2005, 2.8 g NO_x/hp-hr;

(VIII) with a horsepower rating of 600 hp or greater, but less than or equal to 750 hp, which are installed, modified, reconstructed, or relocated:

(-a-) on or after October 1, 2001, but before October 1, 2005, 4.5 g NO_x/hp-hr; and

(-b-) on or after October 1, 2005, 2.8 g NO_x/hp-hr; and

(IX) with a horsepower rating of 750 hp or greater which are installed, modified, reconstructed, or relocated:

(-a-) on or after October 1, 2001, but before October 1, 2005, 6.9 g NO_x/hp-hr; and

(-b-) on or after October 1, 2005, 4.5 g NO_x/hp-hr;

(10) stationary gas turbines:

(A) rated at ten megawatts (MW) or greater, 0.032 lb NO_x per MMBtu;

(B) rated at 1.0 MW or greater, but less than ten MW, 0.15 lb NO_x per MMBtu; and

(C) rated at less than 1.0 MW, 0.26 lb NO_x per MMBtu;

(11) duct burners used in turbine exhaust ducts, the corresponding gas turbine emission specification of paragraph (10) of this subsection;

(12) pulping liquor recovery furnaces, either:

(A) 0.050 lb NO_x per MMBtu; or

(B) 1.08 lb NO_x per air-dried ton of pulp (ADTP);

(13) kilns:

(A) lime kilns, 0.66 lb NO_x per ton of calcium oxide (CaO); and

(B) lightweight aggregate kilns, 1.25 lb NO_x per ton of product;

(14) metallurgical furnaces:

(A) heat treating furnaces, 0.087 lb NO_x per MMBtu; and

(B) reheat furnaces, 0.062 lb NO_x per MMBtu;

(15) magnesium chloride fluidized bed dryers, a 90% reduction from the emission factor used to calculate the 1997 ozone season daily NO_x emissions;

(16) incinerators, either of the following:

(A) an 80% reduction from the emission factor used to calculate the June - August 1997 daily NO_x emissions. To ensure that this emission specification will result in a real 80% reduction in actual emissions, a consistent methodology shall be used to calculate the 80% reduction; or

(B) 0.030 lb NO_x per MMBtu; and

(17) as an alternative to the emission specifications in paragraphs (1) - (16) of this subsection for units with an annual capacity factor of 0.0383 or less, 0.060 lb NO_x per MMBtu. For units placed into service on or before January 1, 1997, the 1997 - 1999 average annual capacity factor shall be used to determine whether the unit is eligible for the emission specification of this paragraph. For units placed into service after January 1, 1997, the annual capacity factor shall be calculated from two consecutive years in the first five years of operation to determine whether the unit is eligible for the emission specification of this paragraph, using the same two consecutive years chosen for the activity level baseline. The five-year period begins at the end of the adjustment period as defined in §101.350 of this title (relating to Definitions).

(d) NO_x averaging time.

(1) In the Beaumont-Port Arthur and Dallas-Fort Worth ozone nonattainment areas, the emission limits of subsections (a) and (b) of this section shall apply:

(A) if the unit is operated with a NO_x CEMS or PEMS under §117.213 of this title, either as:

(i) a rolling 30-day average period, in the units of the applicable standard;

(ii) a block one-hour average, in the units of the applicable standard, or alternatively;

(iii) a block one-hour average, in pounds per hour, for boilers and process heaters, calculated as the product of the boiler's or process heater's maximum rated capacity and its applicable limit in lb NO_x per MMBtu; and

(B) if the unit is not operated with a NO_x CEMS or PEMS under §117.213 of this title, a block one-hour average, in the units of the applicable standard. Alternatively for boilers and process heaters, the emission limits may be applied in lbs per hour, as specified in subparagraph (A)(iii) of this paragraph.

(2) In the Houston-Galveston ozone nonattainment area, the averaging time for the emission limits of subsection (c) of this section shall be as specified in Chapter 101, Subchapter H, Division 3 of this title, except that electric generating facilities (EGFs) shall also comply with the daily and 30-day system cap emission limitations of §117.210 of this title (relating to System Cap).

(e) Related emissions. No person shall allow the discharge into the atmosphere from any unit subject to NO_x emission specifications in subsection (a), (b), or (c) of this section, emissions in excess of the following, except as provided in §117.221 of this title (relating to Alternative Case Specific Specifications) or paragraph (3) or (4) of this subsection:

(1) CO, 400 ppmv at 3.0% O_2, dry basis (or alternatively, 3.0 g/hp-hr for stationary internal combustion engines; or 775 ppmv at 7.0% O_2, dry basis for wood fuel-fired boilers or process heaters):

(A) on a rolling 24-hour averaging period, for units equipped with CEMS or PEMS for CO; and

(B) on a one-hour average, for units not equipped with CEMS or PEMS for CO; and

(2) for units which inject urea or ammonia into the exhaust stream for NO_x control, ammonia emissions of ten ppmv at 3.0% O_2, dry, for boilers and process heaters; 15% O_2, dry, for stationary gas turbines (including duct burners used in turbine exhaust ducts), gas-fired lean-burn engines, and lightweight aggregate kilns; 0.0% O_2, dry, for fluid catalytic cracking units (including CO boilers, CO furnaces, and catalyst regenerator vents); 7.0% O_2, dry, for BIF units which were regulated as existing facilities by the EPA at 40 CFR Part 266, Subpart H (as was in effect on June 9, 1993), wood-fired boilers, and incinerators; and 3.0% O_2, dry, for all other units, based on:

(A) a block one-hour averaging period for units not equipped with a CEMS or PEMS for ammonia; or

(B) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for ammonia.

(3) The correction of CO emissions to 3.0% O_2, dry basis, in paragraph (1) of this subsection does not apply to the following units:

(A) lightweight aggregate kilns; and

(B) boilers and process heaters operating at less than 10% of maximum load and with stack O_2 in excess of 15% (i.e., hot-standby mode).

(4) The CO limits in paragraph (1) of this subsection do not apply to the following units:

(A) stationary internal combustion engines subject to subsection (b)(2) of this section or §117.205(e) of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT));

(B) BIF units which were regulated as existing facilities by the EPA at 40 CFR Part 266, Subpart H (as was in effect on June 9, 1993) and which are subject to subsection (c)(3) of this section; and

(C) incinerators subject to the CO limits of one of the following:

(i) §111.121 of this title (relating to Single-, Dual-, and Multiple-Chamber Incinerators);

(ii) §113.2072 of this title (relating to Emission Limits) for hospital/medical/infectious waste incinerators; or

(iii) 40 CFR Part 264 or 265, Subpart O, for hazardous waste incinerators.

(f) Compliance flexibility.

(1) In the Beaumont-Port Arthur and Dallas-Fort Worth ozone nonattainment areas, an owner or operator may use any of the following alternative methods to comply with the NO_x emission specifications of this section:

(A) §117.207 of this title (relating to Alternative Plant-wide Emission Specifications);

(B) §117.223 of this title (relating to Source Cap); or

(C) §117.570 (relating to Use of Emissions Credits for Compliance).

(2) Section 117.221 of this title is not an applicable method of compliance with the NO_x emission specifications of this section.

(3) An owner or operator may petition the executive director for an alternative to the CO or ammonia limits of this section in accordance with §117.221 of this title.

(4) In the Houston-Galveston ozone nonattainment area, an owner or operator may not use the alternative methods specified in §§117.207, 117.223, and 117.570 of this title to comply with the NO_x emission specifications of this section. The owner or operator shall use the mass emissions cap and trade program in Chapter 101, Subchapter H, Division 3 of this title to comply with the NO_x emission specifications of this section, except that EGFs shall also comply with the daily and 30-day system cap emission limitations of §117.210 of this title. An owner or operator may use the alternative methods specified in §117.570 of this title for purposes of complying with §117.210 of this title.

(g) Exemptions. Units exempted from the emissions specifications of this section include the following in the Beaumont-Port Arthur and Dallas-Fort Worth ozone nonattainment areas:

(1) any industrial, commercial, or institutional boiler or process heater with a maximum rated capacity less than 40 MMBtu/hr; and

(2) units exempted from emission specifications in §117.205(h)(2) - (5) and (9) of this title.

(h) Prohibition of circumvention. In the Houston-Galveston ozone nonattainment area:

(1) the maximum rated capacity used to determine the applicability of the emission specifications in subsection (c) of this section and the initial control plan, compliance demonstration, monitoring, testing requirements, and final control plan in §§117.209, 117.211, 117.213, 117.214, and 117.216 of this title (relating to Initial Control Plan Procedures; Initial Demonstration of Compliance; Continuous Demonstration of Compliance; Emission Testing and Monitoring for the Houston-Galveston Attainment Demonstration; and Final Control Plan Procedures for Attainment Demonstration Emission Specifications) shall be:

(A) the greater of the following:

(i) the maximum rated capacity as of December 31, 2000; or

(ii) the maximum rated capacity after December 31, 2000; or

(B) alternatively, the maximum rated capacity authorized by a permit issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) on or after January 2, 2001, for which the owner or operator submitted an application determined to be administratively complete by the executive director before January 2, 2001, provided that the maximum rated capacity authorized by the permit issued on or after January 2, 2001, is no less than the maximum rated capacity represented in the permit application as of January 2, 2001;

(2) a unit's classification is determined by the most specific classification applicable to the unit as of December 31, 2000. For example, a unit that is classified as a boiler as of December 31, 2000, but subsequently is authorized to operate as a BIF unit, shall be classified as a boiler for the purposes of this chapter. In another example, a unit that is classified as a stationary gas-fired engine as of December 31, 2000, but subsequently is authorized to operate as a dual-fuel engine, shall be classified as a stationary gas-fired engine for the purposes of this chapter;

(3) changes after December 31, 2000, to a unit subject to an emission specification in subsection (c) of this section (ESAD unit) which result in increased NO_x emissions from a unit not subject to an emission specification in subsection (c) of this section (non-ESAD unit), such as redirecting one or more fuel or waste streams containing chemical-bound nitrogen to an incinerator with a maximum rated capacity of less than 40 MMBtu/hr or a flare, is only allowed if:

(A) the increase in NO_x emissions at the non-ESAD unit is determined using a CEMS or PEMS which meets the requirements of §117.213(e) or (f) of this title, or through stack testing which meets the requirements of §117.211(e) of this title; and

(B) a deduction in allowances equal to the increase in NO_x emissions at the non-ESAD unit is made as specified in §101.354 of this title (relating to Allowance Deductions);

(4) a source which met the definition of major source on December 31, 2000, shall always be classified as a major source for purposes of this chapter. A source which did not meet the definition of major source (i.e., was a minor source, or did not yet exist) on December 31, 2000, but which at any time after December 31, 2000, becomes a major source, shall from that time forward always be classified as a major source for purposes of this chapter; and

(5) the availability under subsection (c)(17) of this section of an emission specification for units with an annual capacity factor of 0.0383 or less is based on the unit's status on December 31, 2000. Reduced operation after December 31, 2000, cannot be used to qualify for a more lenient emission specification under subsection (c)(17) of this section than would otherwise apply to the unit.

(i) Operating restrictions. In the Houston-Galveston ozone nonattainment area, no person shall start or operate any stationary diesel or dual-fuel engine for testing or maintenance between the hours of 6:00 a.m. and noon, except:

(1) for specific manufacturer's recommended testing requiring a run of over 18 consecutive hours;

(2) to verify reliability of emergency equipment (e.g., emergency generators or pumps) immediately after unforeseen repairs. Routine maintenance such as an oil change is not considered to be an unforeseen repair; or

(3) firewater pumps for emergency response training conducted in the months of April through October.

§117.213. Continuous Demonstration of Compliance.

(a) Totalizing fuel flow meters. The owner or operator of units listed in this subsection shall install, calibrate, maintain, and operate a totalizing fuel flow meter, with an accuracy of ± 5%, to individually and continuously measure the gas and liquid fuel usage. A computer which collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. The owner or operator of units with totalizing fuel flow meters installed prior to March 31, 2005, that do not meet the accuracy requirements of this subsection shall either recertify or replace existing meters to meet the ± 5% accuracy required as soon as practicable but no later than March 31, 2007. For the purpose

of compliance with this subsection for units having pilot fuel supplied by a separate fuel system or from an unmonitored portion of the same fuel system, the fuel flow to pilots may be calculated using the manufacturer's design flow rates rather than measured with a fuel flow meter. The calculated pilot fuel flow rate must be added to the monitored fuel flow when fuel flow is totaled.

(1) The units are the following:

(A) for units which are subject to §117.205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)), for stationary gas turbines which are exempt under §117.205(h)(7) of this title, and for units in the Beaumont-Port Arthur and Dallas-Fort Worth ozone nonattainment areas which are subject to §117.206 of this title (relating to Emission Specifications for Attainment Demonstrations):

(i) if individually rated more than 40 million British thermal units (Btu) per hour (MMBtu/hr):

(I) boilers;

(II) process heaters;

(III) boilers and industrial furnaces which were regulated as existing facilities by the EPA at 40 Code of Federal Regulations (CFR) Part 266, Subpart H, as was in effect on June 9, 1993; and

(IV) gas turbine supplemental-fired waste heat recovery units;

(ii) stationary, reciprocating internal combustion engines not exempt by §117.203(a)(6) or (8) of this title (relating to Exemptions), or §117.205(h)(9) or (10) of this title;

(iii) stationary gas turbines with a megawatt (MW) rating greater than or equal to 1.0 MW operated more than 850 hours per year; and

(iv) fluid catalytic cracking unit boilers using supplemental fuel; and

(B) for units in the Houston-Galveston ozone nonattainment area which are subject to §117.206 of this title:

(i) boilers (excluding wood-fired boilers that must comply by maintaining records of fuel usage as required in §117.219(f) of this title (relating to Notification, Recordkeeping, and Reporting Requirements) or monitoring in accordance with paragraph (2)(A) of this subsection);

(ii) process heaters;

(iii) boilers and industrial furnaces which were regulated as existing facilities by the EPA at 40 CFR Part 266, Subpart H, as was in effect on June 9, 1993;

(iv) duct burners used in turbine exhaust ducts;

(v) stationary, reciprocating internal combustion engines;

(vi) stationary gas turbines;

(vii) fluid catalytic cracking unit boilers and furnaces using supplemental fuel;

(viii) lime kilns;

(ix) lightweight aggregate kilns;

(x) heat treating furnaces;

(xi) reheat furnaces;

(xii) magnesium chloride fluidized bed dryers; and

(xiii) incinerators (excluding vapor streams resulting from vessel cleaning routed to an incinerator, provided that fuel usage is quantified using good engineering practices, including calculation methods in general use and accepted in new source review permitting in Texas. All other fuel and vapor streams shall be monitored in accordance with subsection (a) of this section.)

(2) The following are alternatives to the fuel flow monitoring requirements of paragraph (1) of this subsection.

(A) Units operating with a nitrogen oxides (NO_x) and diluent continuous emissions monitoring system (CEMS) under subsection (e) of this section may monitor stack exhaust flow using the flow monitoring specifications of 40 CFR Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A.

(B) Units that vent to a common stack with a NO_x and diluent CEMS under subsection (e) of this section may use a single totalizing fuel flow meter.

(C) Diesel engines operating with run time meters may meet the fuel flow monitoring requirements of this subsection through monthly fuel use records maintained for each engine.

(b) Oxygen (O_2) monitors.

(1) The owner or operator shall install, calibrate, maintain, and operate an O_2 monitor to measure exhaust O_2 concentration on the following units operated with an annual heat input greater than $2.2(10^{11})$ Btu per year (Btu/yr):

(A) boilers with a rated heat input greater than or equal to 100 MMBtu/hr; and

(B) process heaters with a rated heat input:

(i) greater than or equal to 100 MMBtu/hr and less than 200 MMBtu/hr; and

(ii) greater than or equal to 200 MMBtu/hr, except as provided in subsection (f) of this section.

(2) The following are not subject to this subsection:

(A) units listed in §117.205(h)(3) - (5) and (8) - (10) of this title;

(B) process heaters operating with a carbon dioxide (CO_2) CEMS for diluent monitoring under subsection (e) of this section; and

(C) wood-fired boilers.

(3) The O_2 monitors required by this subsection are for process monitoring (predictive monitoring inputs, boiler trim, or process control) and are only required to meet the location specifications and quality assurance procedures referenced in subsection (e) of this section if O_2 is the monitored diluent under that subsection. However, if new O_2 monitors are required as a result of this subsection, the criteria in subsection (e) of this section should be considered the appropriate guidance for the location and calibration of the monitors.

(c) NO_x monitors.

(1) The owner or operator of units listed in this paragraph shall install, calibrate, maintain, and operate a CEMS or predictive emissions monitoring system (PEMS) to monitor exhaust NO_x. The units are:

(A) boilers with a rated heat input greater than or equal to 250 MMBtu/hr and an annual heat input greater than $2.2(10^{11})$ Btu/yr;

(B) process heaters with a rated heat input greater than or equal to 200 MMBtu/hr and an annual heat input greater than $2.2(10^{11})$ Btu/yr;

(C) boilers and process heaters located in the Beaumont-Port Arthur ozone nonattainment area which are vented through a common stack and the total rated heat input from the units combined is greater than or equal to 250 MMBtu/hr and the annual heat input combined is greater than $2.2(10^{11})$ Btu/yr;

(D) stationary gas turbines with an MW rating greater than or equal to 30 MW operated more than 850 hours per year;

(E) units which use a chemical reagent for reduction of NO_x;

(F) units for which the owner or operator elects to comply with the NO_x emission specifications of §117.205 or §117.206(a) or (b) of this title using a pound per MMBtu (lb/MMBtu) limit on a 30-day rolling average;

(G) lime kilns and lightweight aggregate kilns in the Houston-Galveston ozone nonattainment area;

(H) units with a rated heat input greater than or equal to 100 MMBtu/hr which are subject to §117.206(c) of this title; and

(I) fluid catalytic cracking units (including carbon monoxide (CO) boilers, CO furnaces, and catalyst regenerator vents). In addition, the owner or operator shall monitor the stack exhaust flow rate with a flow meter using the flow monitoring specifications of 40 CFR Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A.

(2) The following are not required to install CEMS or PEMS under this subsection:

(A) for purposes of §117.205 or §117.206(a) or (b) of this title, units listed in §117.205(h)(3) - (5) and (8) - (10) of this title; and

(B) units subject to the NO_x CEMS requirements of 40 CFR Part 75.

(3) The owner or operator shall use one of the following methods to provide substitute emissions compliance data during periods when the NO_x monitor is off-line:

(A) if the NO_x monitor is a CEMS:

(i) subject to 40 CFR Part 75, use the missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures); or

(ii) subject to 40 CFR Part 75, Appendix E, use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures);

(B) use 40 CFR Part 75, Appendix E monitoring in accordance with §117.113(d) of this title (relating to Continuous Demonstration of Compliance);

(C) if the NO_x monitor is a PEMS:

(i) use the methods specified in 40 CFR Part 75, Subpart D; or

(ii) use calculations in accordance with §117.113(f) of this title; or

(D) if the methods specified in subparagraphs (A) - (C) of this paragraph are not used, the owner or operator shall use the maximum block one-hour emission rate as measured during the initial demonstration of compliance required in §117.211(f) of this title (relating to Initial Demonstration of Compliance).

(d) CO monitoring. The owner or operator shall monitor CO exhaust emissions from each unit listed in subsection (c)(1) of this section using one or more of the following methods:

(1) install, calibrate, maintain, and operate a:

(A) CEMS in accordance with subsection (e) of this section; or

(B) PEMS in accordance with subsection (f) of this section; or

(2) sample CO as follows:

(A) with a portable analyzer (or 40 CFR Part 60, Appendix A reference method test apparatus) after manual combustion tuning or manual burner adjustments conducted for the purpose of minimizing NO_x emissions whenever, following such manual changes, either of the following occur:

(i) NO_x emissions are sampled with a portable analyzer or 40 CFR Part 60, Appendix A reference method test apparatus; or

(ii) the resulting NO_x emissions measured by CEMS or predicted by PEMS are lower than levels for which CO emissions data was previously gathered; and

(B) sample CO emissions using the test methods and procedures of 40 CFR Part 60 in conjunction with any relative accuracy test audit (RATA) of the NO_x and diluent analyzer.

(e) CEMS requirements. The owner or operator of any CEMS used to meet a pollutant monitoring requirement of this section must comply with the following.

(1) Except as specified in paragraph (5) of this subsection, the CEMS shall meet the requirements of 40 CFR Part 60 as follows:

(A) Section 60.13;

(B) Appendix B:

(i) Performance Specification 2, for NO_x in terms of the applicable standard (in parts per million by volume (ppmv), lb/MMBtu, or grams per horsepower-hour (g/hp-hr)). An alternative relative accuracy requirement of ± 2.0 ppmv from the reference method mean value is allowed;

(ii) Performance Specification 3, for diluent; and

(iii) Performance Specification 4, for CO, for owners or operators electing to use a CO CEMS; and

(C) after the final compliance date or date of required submittal of CEMS performance evaluation, conduct audits in accordance with §5.1 of Appendix F, quality assurance procedures for NO_x, CO and diluent analyzers, except that a cylinder gas audit or relative accuracy audit may be performed in lieu of the annual RATA required in §5.1.1. However, if the optional alternative relative accuracy requirement of subparagraph (B)(i) of this paragraph (or equivalent) from the reference method mean value is used, then an annual RATA must be performed.

(2) Monitor diluent, either O_2 or CO_2, unless using an exhaust flow meter as provided in subsection (a)(2) of this section.

(3) For units that are subject to §117.205 of this title, and for units in the Beaumont-Port Arthur and Dallas-Fort Worth ozone nonattainment areas:

(A) each individual stack must be analyzed separately for single units with multiple exhaust stacks; and

(B) one CEMS may be shared among units or among multiple exhaust stacks on a single unit, provided:

(i) the exhaust stream of each stack is analyzed separately; and

(ii) the CEMS meets the certification requirements of paragraph (1) of this subsection for each exhaust stream while the CEMS is operating in the time-shared mode.

(4) For units in the Houston-Galveston ozone nonattainment area that are subject to §117.206 of this title:

(A) all bypass stacks must be monitored, in order to quantify emissions directed through the bypass stack:

(i) if the CEMS is located upstream of the bypass stack then:

(I) no effluent streams from other potential sources of NO_x emissions may be introduced between the CEMS and the bypass stack; and

(II) the owner/operator shall install, operate, and maintain a continuous monitoring system to automatically record the date, time, and duration of each event when the bypass stack is open; and

(ii) process knowledge and engineering calculations may be used to determine volumetric flow rate for purposes of calculating mass emissions for each event when the bypass stack is open, provided that:

(I) the maximum potential calculated flow rate is used for emission calculations; and

(II) the owner/operator maintains, and makes available upon request by the executive director, records of all process information and calculations used for this determination;

(B) one CEMS may be shared among units or among multiple exhaust stacks on a single unit, provided:

(i) the exhaust stream of each stack is analyzed separately;

(ii) the CEMS meets the certification requirements of paragraph (1) of this subsection for each stack while the CEMS is operating in the time-shared mode;

(C) exhaust streams of units that vent to a common stack do not need to be analyzed separately ; and

(D) each individual stack must be analyzed separately for units with multiple exhaust stacks.

(5) As an alternative to paragraph (1) of this subsection, an owner or operator may choose to comply with the CEMS requirements of 40 CFR Part 75 as follows:

(A) general operation requirements in Subpart B, §75.10(a)(2);

(B) certification procedures and test methods in Subpart C, §75.20(c) and §75.22;

(C) recordkeeping requirements of the monitoring plan in Subpart D, §75.53(a) - (c);

(D) appropriate specifications and test procedures in Appendix A, as follows:

(i) Section 1 (Installation and Measurement Location);

(ii) Section 2 (Equipment Specifications);

(iii) Section 3 (Performance Specifications);

(iv) Section 4 (Data Acquisition and Handling Systems);

(v) Section 5 (Calibration Gas);

(vi) Section 6 (Certification Tests and Procedures); and

(vii) meet either the relative accuracy requirement of 40 CFR Part 75 in percentage only, or the alternative relatively accuracy requirement of ± 2.0 ppmv from the reference method mean value; and

(E) appropriate quality assurance/quality control procedures in Appendix B, as follows:

(i) Section 1 (Quality Assurance/Quality Control Program); and

(ii) Section 2 (Frequency of Testing).

(6) The CEMS shall be subject to the approval of the executive director.

(f) PEMS requirements. The owner or operator of any PEMS used to meet a pollutant monitoring requirement of this section must comply with the following.

(1) The PEMS must predict the pollutant emissions in the units of the applicable emission limitations of this division (relating to Continuous Demonstration of Compliance).

(2) Monitor diluent, either O_2 or CO_2:

(A) using a CEMS:

(i) in accordance with subsection (e)(1)(B)(ii) of this section; or

(ii) with a similar alternative method approved by the executive director and the EPA; or

(B) using a PEMS.

(3) Any PEMS shall meet the requirements of 40 CFR Part 75, Subpart E, except as provided in paragraphs (4) and (5) of this subsection.

(4) The owner or operator may vary from 40 CFR Part 75, Subpart E if the owner or operator:

(A) demonstrates to the satisfaction of the executive director and the EPA that the alternative is substantially equivalent to the requirements of 40 CFR Part 75, Subpart E; or

(B) demonstrates to the satisfaction of the executive director that the requirement is not applicable.

(5) The owner or operator may substitute the following as an alternative to the test procedure of Subpart E for any unit:

(A) perform the following alternative initial certification tests:

(i) conduct initial RATA at low, medium, and high levels of the key operating parameter affecting NO_x using 40 CFR Part 60, Appendix B:

(I) Performance Specification 2, subsection 13.2 (pertaining to NO_x) in terms of the applicable standard (in ppmv,

lb/MMBtu, or g/hp-hr). An alternative relative accuracy requirement of ± 2.0 ppmv from the reference method mean value is allowed;

(II) Performance Specification 3, subsection 13.2 (pertaining to O_2 or CO_2); and

(III) Performance Specification 4, subsection 13.2 (pertaining to CO), for owners or operators electing to use a CO PEMS; and

(ii) conduct an F-test, a t-test, and a correlation analysis using 40 CFR Part 75, Subpart E at low, medium, and high levels of the key operating parameter affecting NO_x:

(I) calculations shall be based on a minimum of 30 successive emission data points at each tested level that are either 15-minute, 20-minute, or hourly averages;

(II) the F-test shall be performed separately at each tested level;

(III) the t-test and the correlation analysis shall be performed using all data collected at the three tested levels;

(IV) waivers from the statistical tests and default reference method standard deviation values for the F-test shall be allowed according to the "TNRCC PEMS Protocol Draft," May 16, 1994;

(V) the correlation analysis may only be temporarily waived following review of the waiver request submittal if:

(-a-) the process design is such that it is technically impossible to vary the process to result in a concentration change sufficient to allow a successful correlation analysis statistical test. Any waiver request must also be accompanied with documentation of the reference method measured concentration, and documentation that it is less than 50% of the emission limit or standard. The waiver is to be based on the measured value at the time of the waiver. Should a subsequent RATA effort identify a change in the reference method measured value by more than 30%, the statistical test must be repeated at the next RATA effort to verify the successful compliance with the correlation analysis statistical test requirement; or

(-b-) the data for a measured compound (e.g., NO_x, O_2) are determined to be autocorrelated according to the procedures of 40 CFR §75.41(b)(2). A complete analysis of autocorrelation with support information shall be submitted with the request for waiver. The statistical test shall be repeated at the next RATA effort to verify the successful compliance with the correlation analysis statistical test requirement; and

(VI) all requests for waivers must be submitted to the executive director for review. The executive director shall approve or deny each waiver request;

(B) further demonstrate PEMS accuracy and precision for at least one unit of a category of equipment by performing RATA and statistical testing in accordance with subparagraph (A) of this paragraph for each of three successive quarters, beginning:

(i) no sooner than the quarter immediately following initial certification; and

(ii) no later than the first quarter following the final compliance date; and

(C) after the final compliance date, perform RATA for each unit:

(i) at normal load operations;

(ii) using the Performance Specifications of subparagraph (A)(i)(I) - (III) of this paragraph; and

(iii) at the following frequency:

(I) semiannually; or

(II) annually, if following the first semiannual RATA, the relative accuracy during the previous audit for each compound monitored by PEMS is less than or equal to 7.5% (or within ± 2.0 ppmv) of the mean value of the reference method test data at normal load operation; or alternatively,

(-a-) for diluent, is no greater than 1.0% O_2 or CO_2, for diluent measured by reference method at less than 5% by volume; or

(-b-) for CO, is no greater than 5.0 ppmv.

(6) The owner or operator shall, for each alternative fuel fired in a unit, certify the PEMS in accordance with paragraph (5)(A) of this subsection unless the alternative fuel effects on NO_x, CO, and O_2 (or CO_2) emissions were addressed in the model training process.

(7) The PEMS shall be subject to the approval of the executive director.

(g) Engine monitoring. The owner or operator of any stationary gas engine subject to the emission specifications of this division shall stack test engine NO_x and CO emissions as follows.

(1) Engines not using NO_x CEMS or PEMS.

(A) Use the methods specified in §117.211(e) of this title.

(B) Sample:

(i) on a biennial calendar basis; or

(ii) within 15,000 hours of engine operation after the previous emission test, under the following conditions:

(I) install and operate an elapsed operating time meter; and

(II) submit, in writing, to the executive director and any local air pollution agency having jurisdiction, biennially after the initial demonstration of compliance:

(-a-) documentation of the actual recorded hours of engine operation since the previous emission test; and

(-b-) an estimate of the date of the next required sampling.

(C) Engines used exclusively in emergency situations are not required to conduct the testing specified in subparagraph (B) of this paragraph.

(2) Engines using NO_x CEMS or PEMS. Engines that use a chemical reagent for reduction of NO_x shall monitor in accordance with subsection (c)(1)(E) of this section and shall comply with the applicable requirements of this section for CEMS and PEMS.

(h) Monitoring for stationary gas turbines less than 30 MW. The owner or operator of any stationary gas turbine rated less than 30 MW using steam or water injection to comply with the emission specifications of §117.205 or §117.207 of this title (relating to Alternative Plant-wide Emission Specifications) shall either:

(1) install, calibrate, maintain, and operate a NO_x CEMS or PEMS in compliance with this section and monitor CO in compliance with subsection (d) of this section; or

(2) install, calibrate, maintain, and operate a continuous monitoring system to monitor and record the average hourly fuel and steam or water consumption:

(A) the system shall be accurate to within ± 5.0%;

(B) the steam-to-fuel or water-to-fuel ratio monitoring data shall constitute the method for demonstrating continuous compliance with the applicable emission specification of §117.205 or §117.207 of this title; and

(C) steam or water injection control algorithms are subject to executive director approval.

(i) Run time meters. The owner or operator of any stationary gas turbine or stationary internal combustion engine claimed exempt using the exemption of §117.205(h)(2) or (9) or §117.203(a)(6)(D), (11), or (12) of this title shall record the operating time with an elapsed run time meter. Any run time meter installed on or after October 1, 2001, will be non-resettable.

(j) Hydrogen (H_2) monitoring. The owner or operator claiming the H_2 multiplier of §117.205(b)(6) or §117.207(g)(4) or (h) of this title shall sample, analyze, and record every three hours the fuel gas composition to determine the volume percent H_2.

(1) The total H_2 volume flow in all gaseous fuel streams to the unit will be divided by the total gaseous volume flow to determine the volume percent of H_2 in the fuel supply to the unit.

(2) Fuel gas analysis shall be tested according to American Society of Testing and Materials (ASTM) Method D1945-81 or ASTM Method D2650-83, or other methods that are demonstrated to the satisfaction of the executive director and the EPA to be equivalent.

(3) A gaseous fuel stream containing 99% H_2 by volume or greater may use the following procedure to be exempted from the sampling and analysis requirements of this subsection.

(A) A fuel gas analysis shall be performed initially using one of the test methods in this subsection to demonstrate that the gaseous fuel stream is 99% H_2 by volume or greater.

(B) The process flow diagram of the process unit that is the source of the H_2 shall be supplied to the executive director to illustrate the source and supply of the hydrogen stream.

(C) The owner or operator shall certify that the gaseous fuel stream containing H_2 will continuously remain, as a minimum, at 99% H_2 by volume or greater during its use as a fuel to the combustion unit.

(k) Data used for compliance.

(1) After the initial demonstration of compliance required by §117.211 of this title, the methods required in this section shall be used to determine compliance with the emission specifications of §117.205 or §117.206(a) or (b) of this title. For enforcement purposes, the executive director may also use other commission compliance methods to determine whether the source is in compliance with applicable emission limitations.

(2) For units subject to the emission specifications of §117.206(c) of this title, the methods required in this section and §117.214 of this title (relating to Emission Testing and Monitoring for the Houston-Galveston Attainment Demonstration) shall be used in conjunction with the requirements of Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) to determine compliance. For enforcement purposes, the executive director may also use other commission compliance methods to determine whether the source is in compliance with applicable emission limitations.

(l) Enforcement of NO_x RACT limits. If compliance with §117.205 of this title is selected, no unit subject to §117.205 of this title shall be operated at an emission rate higher than that allowed by the emission specifications of §117.205 of this title. If compliance with §117.207 of this title is selected, no unit subject to §117.207 of this title shall be operated at an emission rate higher than that approved by the executive director under §117.215(b) of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology).

(m) Loss of NO_x RACT exemption. The owner or operator of any unit claimed exempt from the emission specifications of this division using the low annual capacity factor exemption of §117.205(h)(2) of this title shall notify the executive director within seven days if the Btu/yr or hour-per-year limit specified in §117.10 of this title (relating to Definitions), as appropriate, is exceeded.

(1) If the limit is exceeded, the exemption from the emission specifications of this division shall be permanently withdrawn.

(2) Within 90 days after loss of the exemption, the owner or operator shall submit a compliance plan detailing a plan to meet the applicable compliance limit as soon as possible, but no later than 24 months after exceeding the limit. The plan shall include a schedule of increments of progress for the installation of the required control equipment.

(3) The schedule shall be subject to the review and approval of the executive director.

§117.214. Emission Testing and Monitoring for the Houston-Galveston Attainment Demonstration.

(a) Monitoring requirements.

(1) The owner or operator of units that are subject to the emission limits of §117.206(c) of this title (relating to Emission Specifications for Attainment Demonstrations) must comply with the following monitoring requirements.

(A) The nitrogen oxides (NO_x) monitoring requirements of §117.213(c), (e), and (f) of this title (relating to Continuous Demonstration of Compliance) apply.

(B) The carbon monoxide (CO) monitoring requirements of §117.213(d) of this title apply.

(C) The totalizing fuel flow meter requirements of §117.213(a) of this title apply.

(D) One of the following ammonia monitoring procedures shall be used to demonstrate compliance with the ammonia emission specification of §117.206(e)(2) of this title for gas-fired or liquid-fired units that inject urea or ammonia into the exhaust stream for NO_x control.

(i) Mass balance. Calculate ammonia emissions as the difference between the input ammonia, measured by the ammonia injection rate, and the ammonia reacted, measured by the differential NO_x upstream and downstream of the control device that injects urea or ammonia into the exhaust stream. The ammonia emissions must be calculated using the following equation.
Figure: 30 TAC §117.214(a)(1)(D)(i)

(ii) Oxidation of ammonia to nitric oxide (NO). Convert ammonia to NO using molybdenum oxidizer and measure ammonia slip by difference using a NO analyzer. The NO analyzer shall be quality assured in accordance with manufacturer's specifications and with a quarterly cylinder gas audit with a ten parts per million by volume (ppmv) reference sample of ammonia passed through the probe and confirming monitor response to within ± 2.0 ppmv.

(iii) Stain tubes. Measure ammonia using a sorbent or stain tube device specific for ammonia measurement in the 5.0 to 10.0 ppmv range. The frequency of sorbent/stain tube testing shall be daily for the first 60 days of operation, after which the frequency may

be reduced to weekly testing if operating procedures have been developed to prevent excess amounts of ammonia from being introduced in the control device and when operation of the control device has been proven successful with regard to controlling ammonia slip. Daily sorbent or stain tube testing shall resume when the catalyst is within 30 days of its useful life expectancy. Every effort shall be made to take at least one weekly sample near the normal highest ammonia injection rate.

(iv) Other methods. Monitor ammonia using another continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) procedure subject to prior approval of the executive director.

(v) Records. The owner or operator shall maintain records that are sufficient to demonstrate compliance with the requirements of the appropriate clause of this subparagraph. For the sorbent or stain tube option, these records shall include the ammonia injection rate and NO_x stack emissions measured during each sorbent or stain tube test. The records shall be maintained for a period of at least five years. Records must be available for inspection by the executive director, the EPA, and any local air pollution control agency having jurisdiction upon request.

(E) Installation of monitors shall be performed in accordance with the schedule specified in §117.520(c)(2) of this title (relating to Compliance Schedule for Industrial, Commercial, and Institutional Combustion Sources in Ozone Nonattainment Areas).

(2) The owner or operator of any stationary diesel engine claimed exempt using the exemption of §117.203(a)(6)(D), (11), or (12) of this title (relating to Exemptions) shall comply with the run time meter requirements of §117.213(i) of this title.

(b) Testing and operating requirements.

(1) The owner or operator of units that are subject to the emission limits of §117.206(c) of this title shall test the units as specified in §117.211 of this title (relating to Initial Demonstration of Compliance) in accordance with the schedule specified in §117.520(c)(2) of this title.

(2) Each stationary internal combustion engine that is not equipped with a CEMS or PEMS must:

(A) be checked for proper operation of the engine by recorded measurements of NO_x and CO emissions at least quarterly and as soon as practicable within two weeks after each occurrence of engine maintenance that may reasonably be expected to increase emissions, oxygen (O_2) sensor replacement, or catalyst cleaning or catalyst replacement. Stain tube indicators specifically designed to measure NO_x concentrations may be acceptable for this documentation, provided a hot air probe or equivalent device is used to prevent error due to high stack temperature, and three sets of concentration measurements are made and averaged. Portable NO_x analyzers are also acceptable for this documentation. Quarterly emission testing is not required for those engines whose monthly run time does not exceed ten hours. This exemption does not diminish the requirement to test emissions after the installation of controls, major repair work, and any time the owner or operator believes emissions may have changed; and

(B) be periodically tested as specified in §117.213(g)(1) of this title.

(3) Each stationary internal combustion engine controlled with nonselective catalytic reduction (NSCR) shall be equipped with an automatic air-fuel ratio (AFR) controller that operates on exhaust O_2 or CO control and maintains AFR in the range required to meet the engine's applicable emission limits.

(c) Emission allowances.

(1) The NO_x testing and monitoring data of subsections (a) and (b) of this section, together with the level of activity, as defined in §101.350 of this title (relating to Definitions), shall be used to establish the emission factor for calculating actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program).

(2) For units not operating with CEMS or PEMS, the following apply.

(A) Retesting as specified in subsection (b)(1) of this section is required within 60 days after any modification that could reasonably be expected to increase the NO_x emission rate.

(B) Retesting as specified in subsection (b)(1) of this section may be conducted at the discretion of the owner or operator after any modification that could reasonably be expected to decrease the NO_x emission rate, including, but not limited to, installation of post-combustion controls, low-NO_x burners, low excess air operation, staged combustion (for example, overfire air), flue gas recirculation (FGR), and fuel-lean and conventional (fuel-rich) reburn.

(C) The NO_x emission rate determined by the retesting shall establish a new emission factor to be used to calculate actual emissions from the date of the retesting forward. Until the date of the retesting, the previously determined emission factor shall be used to calculate actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title.

(D) All test reports must be submitted to the executive director for review and approval within 60 days after completion of the testing.

(3) The emission factor in paragraph (1) or (2) of this subsection is multiplied by the unit's level of activity to determine the unit's actual emissions for compliance with Chapter 101, Subchapter H, Division 3 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 April 29, 2005.

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Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
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SUBCHAPTER D. SMALL COMBUSTION SOURCES
DIVISION 2. BOILERS, PROCESS HEATERS, AND STATIONARY ENGINES AND GAS TURBINES AT MINOR SOURCES

30 TAC §117.479

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and

§5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants. The amendment is also adopted under 42 USC, §7410, that requires states to introduce pollution control measures in order to reach specific air quality standards in particular areas of the state.

The adopted amendment implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, and 382.016.

§117.479. Monitoring, Recordkeeping, and Reporting Requirements.

(a) Totalizing fuel flow meters.

(1) The owner or operator of each unit subject to the emission limitations of §117.475 of this title (relating to Emission Specifications) and subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) or claimed exempt under §117.473(b) of this title (relating to Exemptions) shall install, calibrate, maintain, and operate totalizing fuel flow meters with an accuracy of ± 5%, to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. The owner or operator of units with totalizing fuel flow meters installed prior to March 31, 2005, that do not meet the accuracy requirements of this subsection shall either recertify or replace existing meters to meet the ± 5% accuracy required as soon as practicable, but no later than March 31, 2007. For the purpose of compliance with this subsection for units having pilot fuel supplied by a separate fuel system or from an unmonitored portion of the same fuel system, the fuel flow to pilots may be calculated using the manufacturer's design flow rates rather than measured with a fuel flow meter. The calculated pilot fuel flow rate must be added to the monitored fuel flow when fuel flow is totaled.

(2) The following are alternatives to the fuel flow monitoring requirements of this subsection.

(A) Units operating with a nitrogen oxides (NO_x) and diluent continuous emissions monitoring system (CEMS) under subsection (c) of this section may monitor stack exhaust flow using the flow monitoring specifications of 40 Code of Federal Regulations (CFR) Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A.

(B) Units that vent to a common stack with a NO_x and diluent CEMS under subsection (c) of this section may use a single totalizing fuel flow meter.

(C) Diesel engines operating with run time meters may meet the fuel flow monitoring requirements of this subsection through monthly fuel use records.

(D) Units of the same category of equipment subject to Chapter 101, Subchapter H, Division 3 of this title may share a single totalizing fuel flow meter provided:

(i) the owner or operator performs a stack test in accordance with subsection (e) of this section for each unit sharing the totalizing fuel flow meter; and

(ii) the testing results from the unit with the highest emission rate (in pounds per million British thermal units (lb/MMBtu) or grams per horsepower-hour (g/hp-hr)) are used for reporting purposes in §101.359 of this title (relating to Reporting) for all units sharing the totalizing fuel flow meter.

(E) The owner or operator of a unit or units claimed exempt under §117.473(b) of this title, located at an independent school district may demonstrate compliance with the exemption by the following:

(i) in addition to the records required by subsection (g)(1) of this section, maintain the following monthly records in either electronic or written format. These records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency (EPA), or local air pollution control agencies having jurisdiction;

(I) total fuel usage for the entire site;

(II) the estimated hours of operation for each unit;

(III) the estimated average operating rate (e.g., a percentage of maximum rated capacity) for each unit; and

(IV) the estimated fuel usage for each unit, and

(ii) within 60 days of written request by the executive director, submit for review and approval all methods, engineering calculations, and process information used to estimate the hours of operation, operating rates, and fuel usage for each unit.

(F) The owner or operator of units claimed exempt under §117.473(b) of this title may share a single totalizing fuel flow meter to demonstrate compliance with the exemption, provided that:

(i) all affected units at the site qualify for the exemption under §117.473(b) of this title; and

(ii) the total fuel usage for all units at the site is less than:

(I) the annual fuel usage limitation in §117.473(b)(1) of this title; or

(II) the annual fuel usage limitation in §117.473(b)(2) of this title when all affected units at the site are equal to or greater than 5.0 MMBtu/hr.

(b) Oxygen (O_2) monitors. If the owner or operator installs an O_2 monitor, the criteria in §117.213(e) of this title (relating to Continuous Demonstration of Compliance) should be considered the appropriate guidance for the location and calibration of the monitor.

(c) NO_x monitors. If the owner or operator installs a CEMS or predictive emissions monitoring system (PEMS), it shall meet the requirements of §117.213(e) or (f) of this title.

(d) Monitor installation schedule. Installation of monitors shall be performed in accordance with the schedule specified in §117.534 of this title (relating to Compliance Schedule for Boilers, Process Heaters, and Stationary Engines and Gas Turbines at Minor Sources).

(e) Testing requirements. The owner or operator of any unit subject to the emission limitations of §117.475 of this title shall comply with the following testing requirements.

(1) Each unit shall be tested for NO_x, carbon monoxide (CO), and O_2 emissions.

(2) One of the ammonia monitoring procedures specified in §117.214(a)(1)(D) of this title (relating to Emission Testing and Monitoring for the Houston-Galveston Attainment Demonstration) must be used to demonstrate compliance with the ammonia emission specification of §117.475(i)(2) of this title for units that inject urea or ammonia into the exhaust stream for NO_x control.

(3) All testing must be conducted while operating at the maximum rated capacity, or as close as practicable. Compliance shall be determined by the average of three one-hour emission test runs. Shorter test times may be used, if approved by the executive director. The following test methods must be used:

(A) Test Method 7E or 20 (40 CFR Part 60, Appendix A) for NO_x;

(B) Test Method 10, 10A, or 10B (40 CFR Part 60, Appendix A) for CO;

(C) Test Method 3A or 20 (40 CFR Part 60, Appendix A) for O_2;

(D) Test Method 2 (40 CFR Part 60, Appendix A) for exhaust gas flow and following the measurement site criteria of Test Method 1, §2.1 (40 CFR Part 60, Appendix A), or Test Method 19 (40 CFR Part 60, Appendix A) for exhaust gas flow in conjunction with the measurement site criteria of Performance Specification 2, §3.2 (40 CFR Part 60, Appendix B);

(E) American Society of Testing and Materials (ASTM) Method D1945-91 or ASTM Method D3588-93 for fuel composition; ASTM Method D1826-88 or ASTM Method D3588-91 for calorific value; or

(F) EPA-approved alternate test methods or minor modifications to these test methods as approved by the executive director, as long as the minor modifications meet the following conditions:

(i) the change does not affect the stringency of the applicable emission limitation; and

(ii) the change affects only a single source or facility application.

(G) In lieu of the test methods specified in subparagraphs (A) - (C) of this paragraph, the owner or operator may use ASTM D6522-00 to perform the NO_x, CO, and O_2 testing required by this subsection on natural gas-fired reciprocating engines, combustion turbines, boilers, and process heaters. If the owner or operator elects to use ASTM D6522-00 for the testing requirements, the report must contain the information specified in §117.211(g) of this title (relating to Initial Demonstration of Compliance).

(4) Test results shall be reported in the units of the applicable emission limits and averaging periods. If compliance testing is based on 40 CFR Part 60, Appendix A reference methods, the report must contain the information specified in §117.211(g) of this title.

(5) For units equipped with CEMS or PEMS, the CEMS or PEMS shall be installed and operational before testing under this subsection. Verification of operational status shall, as a minimum, include completion of the initial monitor certification and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device.

(6) Initial compliance with the emission specifications of §117.475 of this title for units operating with CEMS or PEMS shall be demonstrated after monitor certification testing using the NO_x CEMS or PEMS.

(7) For units not operating with CEMS or PEMS, the following apply.

(A) Retesting as specified in paragraphs (1) - (4) of this subsection is required within 60 days after any modification that could reasonably be expected to increase the NO_x emission rate.

(B) Retesting as specified in paragraphs (1) - (4) of this subsection may be conducted at the discretion of the owner or operator after any modification that could reasonably be expected to decrease the NO_x emission rate, including, but not limited to, installation of post-combustion controls, low-NO_x burners, low excess air operation, staged combustion (for example, overfire air), flue gas recirculation (FGR), and fuel-lean and conventional (fuel-rich) reburn.

(C) The NO_x emission rate determined by the retesting shall establish a new emission factor to be used to calculate actual emissions from the date of the retesting forward. Until the date of the retesting, the previously determined emission factor shall be used to calculate actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title.

(8) Testing shall be performed in accordance with the schedule specified in §117.534 of this title.

(9) All test reports must be submitted to the executive director for review and approval within 60 days after completion of the testing.

(f) Emission allowances.

(1) For sources that are subject to Chapter 101, Subchapter H, Division 3 of this title, the NO_x testing and monitoring data of subsections (a) - (e) of this section, together with the level of activity, as defined in §101.350 of this title (relating to Definitions), shall be used to establish the emission factor calculating actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title.

(2) The emission factor in subsection (e)(7) of this section or paragraph (1) of this subsection is multiplied by the unit's level of activity to determine the unit's actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title.

(g) Recordkeeping. The owner or operator of a unit subject to the emission limitations of §117.475 of this title or claimed exempt under §117.473(b) of this title shall maintain written or electronic records of the data specified in this subsection. Such records shall be kept for a period of at least five years and shall be made available upon request by authorized representatives of the executive director, the EPA, or local air pollution control agencies having jurisdiction. The records must include:

(1) records of annual fuel usage;

(2) for each unit using a CEMS or PEMS in accordance with subsection (c) of this section, monitoring records of:

(A) hourly emissions and fuel usage (or stack exhaust flow) for units complying with an emission limit enforced on a block one-hour average; and

(B) daily emissions and fuel usage (or stack exhaust flow) for units complying with an emission limit enforced on a rolling 30-day average. Emissions must be recorded in units of:

(i) pound per million British thermal units (Btu) heat input; and

(ii) pounds or tons per day;

(3) for each stationary internal combustion engine subject to the emission limitations of §117.475 of this title, records of:

(A) emissions measurements required by §117.478(b)(5) of this title (relating to Operating Requirements); and

(B) catalytic converter, air-fuel ratio controller, or other emissions-related control system maintenance, including the date and nature of corrective actions taken;

(4) records of CO measurements specified in §117.478(b)(5) of this title;

(5) records of the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring systems; and

(6) records of the results of performance testing, including the testing conducted in accordance with subsection (e) of this section.

(h) Records for exempt engines. Written records of the number of hours of operation for each day's operation shall be made for each engine claimed exempt under §117.473(a)(2)(E), (H), or (I) of this title or §117.478(b)(5) of this title. In addition, for each engine claimed exempt under §117.473(a)(2)(E) of this title, written records shall be maintained of the purpose of engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date(s) of the emergency situation. The records must be maintained for at least five years and must be made available upon request to representatives of the executive director, the EPA, or any local air pollution control agency having jurisdiction.

(i) Run time meters. The owner or operator of any stationary diesel engine claimed exempt using the exemption of §117.473(a)(2)(E), (H), or (I) of this title shall record the operating time with an elapsed run time meter. Any run time meter installed on or after October 1, 2001, shall be non-resettable.

(j) Records of operation for testing and maintenance. The owner or operator of each stationary diesel or dual-fuel engine shall maintain the following records for at least five years and make them available upon request by authorized representatives of the executive director, the EPA, or local air pollution control agencies having jurisdiction:

(1) date(s) of operation;

(2) start and end times of operation;

(3) identification of the engine; and

(4) total hours of operation for each month and for the most recent 12 consecutive months.

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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Stephanie Bergeron Perdue

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-6087

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SUBCHAPTER E. ADMINISTRATIVE PROVISIONS

30 TAC §117.520

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants. The amendment is also adopted under 42 USC, §7410, that requires states to introduce pollution control measures in order to reach specific air quality standards in particular areas of the state.

The adopted amendment implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, and 382.016.

§117.520. Compliance Schedule for Industrial, Commercial, and Institutional Combustion Sources in Ozone Nonattainment Areas.

(a) The owner or operator of each industrial, commercial, and institutional source in the Beaumont-Port Arthur ozone nonattainment area shall comply with the requirements of Subchapter B, Division 3 of this chapter (relating to Industrial, Commercial, and Institutional Combustion Sources in Ozone Nonattainment Areas) as soon as practicable, but no later than the dates specified in this subsection.

(1) Reasonably available control technology (RACT). The owner or operator shall for all units, comply with the requirements of Subchapter B, Division 3 of this chapter, except as specified in paragraph (2) of this subsection (relating to lean-burn engines) and paragraph (3) of this subsection (relating to emission specifications for attainment demonstration), by November 15, 1999 (final compliance date), and submit to the executive director:

(A) for units operating without a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS), the results of applicable tests for initial demonstration of compliance as specified in §117.211 of this title (relating to Initial Demonstration of Compliance); by April 1, 1994, or as early as practicable, but in no case later than November 15, 1999;

(B) for units operating with CEMS or PEMS in accordance with §117.213 of this title (relating to Continuous Demonstration of Compliance), the results of:

(i) the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.213(e)(1)(A) and (B) and (f)(3) - (5)(A) of this title; and

(ii) the applicable tests for the initial demonstration of compliance as specified in §117.211 of this title;

(iii) no later than:

(I) November 15, 1999, for units complying with the nitrogen oxides (NO_x) emission limit on an hourly average; and

(II) January 15, 2000, for units complying with the NO_x emission limit on a rolling 30-day average;

(C) a final control plan for compliance in accordance with §117.215 of this title (relating to Final Control Plan Procedures), no later than November 15, 1999; and

(D) the first semiannual report required by §117.219(d) or (e) of this title (relating to Notification, Recordkeeping, and Reporting Requirements), covering the period November 15, 1999, through December 31, 1999, no later than January 31, 2000.

(2) Lean-burn engines. The owner or operator shall for each lean-burn, stationary, reciprocating internal combustion engine subject to §117.205(e) of this title (relating to Emission Specifications), comply with the requirements of Subchapter B, Division 3 of this chapter for those engines as soon as practicable, but no later than November 15, 2001 (final compliance date for lean-burn engines); and

(A) no later than November 15, 2001, submit a revised final control plan that contains:

(i) the information specified in §117.215 of this title as it applies to the lean-burn engines; and

(ii) any other revisions to the source's final control plan as a result of complying with the lean-burn engine emission specifications; and

(B) no later than January 31, 2002, submit the first semiannual report required by §117.219(e) of this title covering the period November 15, 2001, through December 31, 2001.

(3) Emission specifications for attainment demonstration. The owner or operator shall comply with the requirements of §117.206(a) of this title (relating to Emission Specifications for Attainment Demonstrations) as soon as practicable, but no later than:

(A) May 1, 2003, demonstrate that at least two-thirds of the NO_x emission reductions required by §117.206(a) of this title have been accomplished, as measured either by:

(i) the total number of units required to reduce emissions in order to comply with §117.206(a) of this title using direct compliance with the emission specifications, counting only units still required to reduce after May 11, 2000; or

(ii) the total amount of emissions reductions required to comply with §117.206(a) of this title using the alternative methods to comply, either:

(I) §117.207 of this title (relating to Alternative Plant-wide Emission Specifications);

(II) §117.223 of this title (relating to Source Cap); or

(III) §117.570 of this title (relating to Use of Emissions Credits for Compliance);

(B) May 1, 2003, submit to the executive director:

(i) identification of enforceable emission limits that satisfy the conditions of subparagraph (A) of this paragraph;

(ii) for units operating without CEMS or PEMS or for units operating with CEMS or PEMS and complying with the NO_x emission limit on an hourly average, the results of applicable tests for initial demonstration of compliance as specified in §117.211 of this title;

(iii) for units newly operating with CEMS or PEMS to comply with the monitoring requirements of §117.213(c)(1)(C) of this title or §117.223 of this title, the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.213(e)(1)(A) and (B) and (f)(3) - (5)(A) of this title;

(iv) the information specified in §117.216 of this title (relating to Final Control Plans Procedures for Attainment Demonstration Emission Specifications); and

(v) any other revisions to the source's final control plan as a result of complying with the emission specifications in §117.206(a) of this title;

(C) July 31, 2003, submit to the executive director:

(i) the applicable tests for the initial demonstration of compliance as specified in §117.211 of this title, for units complying with the NO_x emission limit on a rolling 30-day average; and

(ii) the first semiannual report required by §117.213(c)(1)(C), §117.219(e), and §117.223(e) of this title, covering the period May 1, 2003, through June 30, 2003;

(D) May 1, 2005, comply with §117.206(a) of this title;

(E) May 1, 2005, submit a revised final control plan that contains:

(i) a demonstration of compliance with §117.206(a) of this title;

(ii) the information specified in §117.216 of this title; and

(iii) any other revisions to the source's final control plan as a result of complying with the emission specifications in §117.206(a) of this title; and

(F) July 31, 2005, submit to the executive director the applicable tests for the initial demonstration of compliance as specified in §117.211 of this title, if using the 30-day average source cap NO_x emission limit to comply with the emission specifications in §117.206(a) of this title.

(b) The owner or operator of each industrial, commercial, and institutional source in the Dallas-Fort Worth ozone nonattainment area shall:

(1) comply with the requirements of Subchapter B, Division 3 of this chapter as soon as practicable, but no later than March 31, 2002 (final compliance date), except as specified in paragraph (2) of this subsection. The owner or operator shall:

(A) install all NO_x abatement equipment and implement all NO_x control techniques no later than March 31, 2002; and

(B) submit to the executive director:

(i) for units operating without CEMS or PEMS, the results of applicable tests for initial demonstration of compliance as specified in §117.211 of this title as early as practicable, but in no case later than March 31, 2002;

(ii) for units operating with CEMS or PEMS in accordance with §117.213 of this title, the results of:

(I) the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.213(e)(1)(A) and (B) and (f)(3) - (5)(A) of this title;

(II) the applicable tests for the initial demonstration of compliance as specified in §117.211 of this title; and

(III) no later than:

(-a-) March 31, 2002, for units complying with the NO_x emission limit on an hourly average; and

(-b-) May 31, 2002, for units complying with the NO_x emission limit on a rolling 30-day average;

(iii) a final control plan for compliance in accordance with §117.215 of this title, no later than March 31, 2002; and

(iv) the first semiannual report required by §117.219(d) or (e) of this title, covering the period March 31, 2002, through June 30, 2002, no later than July 31, 2002; and

(2) comply with the requirements of §117.206(b)(3) of this title as soon as practicable, but no later than June 15, 2007 (the final compliance date). The owner or operator shall:

(A) install all NO_x abatement equipment and implement all NO_x control techniques no later than June 15, 2007; and

(B) submit to the executive director:

(i) for units operating without CEMS or PEMS, the results of applicable tests for initial demonstration of compliance as specified in §117.211 of this title as early as practicable, but in no case later than June 15, 2007;

(ii) for units operating with CEMS or PEMS in accordance with §117.213 of this title, the results of:

(I) the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.213(e)(1)(A) and (B) and (f)(3) - (5)(A) of this title;

(II) the applicable tests for the initial demonstration of compliance as specified in §117.211 of this title; and

(III) no later than:

(-a-) June 15, 2007, for units complying with the NO_x emission limit on an hourly average; and

(-b-) June 15, 2007, for units complying with the NO_x emission limit on a rolling 30-day average;

(iii) a final control plan for compliance in accordance with §117.215 of this title, no later than June 15, 2007; and

(iv) the first semiannual report required by §117.219(d) or (e) of this title, covering the period June 15, 2007, through December 31, 2007, no later than January 31, 2008.

(c) The owner or operator of each industrial, commercial, and institutional source in the Houston-Galveston ozone nonattainment area shall comply with the requirements of Subchapter B, Division 3 of this chapter as soon as practicable, but no later than the dates specified in this subsection.

(1) Reasonably available control technology. The owner or operator shall, for all units, comply with the requirements of Subchapter B, Division 3 of this chapter, except as specified in paragraph (2) of this subsection (relating to emission specifications for attainment demonstration), by November 15, 1999 (final compliance date); and

(A) submit a plan for compliance in accordance with §117.209 of this title (relating to Initial Control Plan Procedures) according to the following schedule:

(i) for major sources of NO_x that have units subject to emission specifications under this chapter, submit an initial control plan for all such units no later than April 1, 1994;

(ii) for major sources of NO_x that have no units subject to emission specifications under this chapter, submit an initial control plan for all such units no later than September 1, 1994; and

(iii) for major sources of NO_x subject to either clause (i) or (ii) of this subparagraph, submit the information required by §117.209(c)(6), (7), and (9) of this title no later than September 1, 1994;

(B) install all NO_x abatement equipment and implement all NO_x control techniques no later than November 15, 1999; and

(C) submit to the executive director:

(i) for units operating without CEMS or PEMS, the results of applicable tests for initial demonstration of compliance as specified in §117.211 of this title; by April 1, 1994, or as early as practicable, but in no case later than November 15, 1999;

(ii) for units operating with CEMS or PEMS in accordance with §117.213 of this title, submit the results of:

(I) the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.213(e)(1)(A) and (B) and (f)(3) - (5)(A) of this title; and

(II) the applicable tests for the initial demonstration of compliance as specified in §117.211 of this title;

(III) no later than:

(-a-) November 15, 1999, for units complying with the NO_x emission limit on an hourly average; and

(-b-) January 15, 2000, for units complying with the NO_x emission limit on a rolling 30-day average;

(iii) a final control plan for compliance in accordance with §117.215 of this title, no later than November 15, 1999; and

(iv) the first semiannual report required by §117.219(d) or (e) of this title, covering the period November 15, 1999, through December 31, 1999, no later than January 31, 2000.

(2) Emission specifications for attainment demonstration.

(A) The owner or operator shall comply with the requirements of §117.214 of this title (relating to Emission Testing and Monitoring for the Houston-Galveston Attainment Demonstration) as follows:

(i) As soon as practicable, but no later than March 31, 2005, the owner or operator shall install any totalizing fuel flow meters, run time meters, and emissions monitors required by §117.214 of this title, except that if flue gas cleanup (for example, controls that use a chemical reagent for reduction of NO_x) is installed on a unit before March 31, 2005, then the emissions monitors required by §117.214 of this title must be installed and operated at the time of startup following the installation of flue gas cleanup on that unit. However, an owner or operator may choose to demonstrate compliance with the ammonia monitoring requirements through annual ammonia stack testing until March 31, 2005.

(I) Within 60 days after startup of a unit following installation of emissions monitors, the owner or operator shall submit to the executive director the results of the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.213(e)(1)(A) and (B) and (f)(3) - (5)(A) of this title; or

(II) If the unit is shut down as of March 31, 2005, the CEMS or PEMS performance evaluation and quality assurance procedures must be submitted to the executive director within 60 days after the startup of the unit after March 31, 2005.

(ii) Within 60 days after startup of a unit following installation of emissions controls, the owner or operator shall submit to the executive director the results of:

(I) stack tests conducted in accordance with §117.211 of this title. For a stack test conducted before March 31, 2005, on a unit not equipped with CEMS or PEMS for which CEMS or PEMS must be installed no later than March 31, 2005, the requirements of §117.211(c) of this title do not apply; or, as applicable,

(II) the applicabldurone CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.213(e)(1)(A) and (B) and (f)(3) - (5)(A) of this title.

(B) The owner or operator of each electric generating facility (EGF) shall:

(i) no later than June 30, 2001, submit to the executive director the certification of level of activity, H_s, specified in §117.210 of this title (relating to System Cap) for EGFs that were in operation as of January 1, 1997;

(ii) no later than 60 days after the second consecutive third quarter of actual level of activity data are available, selected from the first five years of operation, submit to the executive director the certification of activity level, H_i, specified in §117.210 of this title for EGFs that were not in operation prior to January 1, 1997; and

(iii) comply with the requirements of §117.210 of this title as soon as practicable, but no later than March 31, 2007.

(C) For any units subject to §117.206(c) of this title for which stack testing or CEMS/PEMS performance evaluation and quality assurance has not been conducted under paragraph (2)(A) of this subsection or units placed into service after March 31, 2005, that do not have flue gas cleanup, the owner or operator shall submit to the executive director as soon as practicable, but no later than March 31, 2007, the results of:

(i) stack tests conducted in accordance with §117.211 of this title; or, as applicable,

(ii) the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.213(e)(1)(A) and (B) and (f)(3) - (5)(A) of this title.

(D) The owner or operator shall comply with the emission reduction requirements of Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) as soon as practicable, but no later than the appropriate dates specified in that program.

(E) For diesel and dual-fuel engines, the owner or operator shall comply with the restriction on hours of operation for maintenance or testing, and associated recordkeeping, as soon as practicable, but no later than April 1, 2002.

(F) The owner or operator shall comply with all other requirements of Subchapter B, Division 3 of this chapter as soon as practicable, but no later than March 31, 2005.

(G) The owner or operator of a unit that will be permanently shut down on or before September 30, 2005, may elect to comply with §117.214(a) of this title by performing testing in lieu of the monitoring requirements, provided that following conditions are met;

(i) submit written notification to the executive director no later than March 31, 2005, containing the following:

(I) a list of units, by emission point number, that the owner or operator will permanently shut down on or before September 30, 2005;

(II) the projected date(s) that each unit will be permanently shut down; and

(III) the projected date(s) of the testing will be performed in accordance with clause (ii) of this subparagraph;

(ii) the testing is performed in accordance with §117.211 of this title after March 31, 2005, and prior to September 30, 2005, while operating at maximum rated capacity, or as near thereto as practicable. For the time period from March 31, 2005, to September 30, 2005, the results of this testing must be used for demonstrating compliance with the emission specifications in §117.206(c) of this title or to quantify the emissions for units subject to the mass emissions cap and trade program of Chapter 101, Subchapter H, Division 3 of this title;

(iii) for units in which a totalizing fuel flow meter has not been installed as required in §117.214(a)(1)(C) of this title, the maximum rated capacity of the unit must be used to quantify the emissions for units subject to the mass emissions cap and trade program of Chapter 101, Subchapter H, Division 3 of this title; and

(iv) if the unit is not shut down by September 30, 2005, the owner or operator will be considered in violation of this section as of March 31, 2005, and extensions beyond September 30, 2005, will not be granted.

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 April 29, 2005.

TRD-200501757
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: May 19, 2005
Proposal publication date: December 3, 2004
For further information, please call: (512) 239-6087

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 95. YOUTH DISCIPLINE
SUBCHAPTER A. DISCIPLINARY PRACTICES

37 TAC §95.3

The Texas Youth Commission (the commission) adopts an amendment to §95.3, concerning Rules of Conduct, with changes to the proposed text as published in the March 18, 2005, issue of the *Texas Register*(30 TexReg 1601).

The justification for amending the section is providing a safe environment for youth and staff. The amendment includes cigarette lighters and matches as items considered to be weapons, and therefore youth possession of such in a residential placement would constitute a category I rule violation.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted rule implements the Human Resources Code, §61.034.

§95.3. Rules of Conduct.

(a) Purpose. The purpose of this rule is to establish rules of conduct youth will be expected to follow agency-wide. Violations of the rules result in disciplinary consequences that are proportional to the severity and extent of the violation and follow appropriate due process.

(b) Texas Youth Commission (TYC) facilities and programs shall maintain youth discipline to the extent necessary to keep order and provide a safe and constructive environment for youth, staff and visitors.

(c) Rules in this policy may be restated in greater detail or otherwise adapted to accommodate a particular program in order to help clarify expected behavior in that program. All adapted or restated rules shall remain consistent with the general rules of conduct.

(d) The rules are posted in a conspicuous area accessible to youth in each facility and program.

(e) Rules of Conduct. It is a violation to knowingly violate or attempt to violate or help someone else violate any of the Rules of Conduct. Repeated violations of any rule of conduct will result in more serious disciplinary consequences.

(f) Category I Rule Violations. A category I rule violation is an act of misconduct that constitutes a crime, involves harm to the youth or others, or threatens facility safety, security, and order. These are the baseline rules which, when crossed, result in the most severe consequences. These consequences include referral to criminal court, disciplinary movement, reclassification, multi-phase demotion, and/or assignment of a disciplinary minimum length of stay. Category I rule violations are as follows:

(1) Violate any Law--youth violates any city or county ordinance, or any state or federal law

(2) Escape--youth leaves the property of the assigned location without authorization or fails to return from an authorized leave.

(3) Attempted Escape--youth, with specific intent to escape, commits an act amounting to more than planning, but fails to effect the intended escape.

(4) Abscond--youth assigned to a minimum or home level restriction leaves any TYC-designated location without permission of staff and his/her whereabouts are unknown to supervising staff. (A youth that fails to report to the assigned parole officer, but whose whereabouts are known, is not an absconder.)

(5) Fleeing Apprehension--youth is in an undesignated area and intentionally flees apprehension by TYC staff.

(6) Failure to Report--youth assigned to minimum or home level restriction fails to report to a pre-scheduled appointment with a parole staff.

(7) Assault on Staff/Volunteer (Bodily Injury)--youth intentionally, knowingly, or recklessly causes bodily injury to staff a staff or volunteer. Staff is defined as a TYC employee, contract program employee, contract program employee, or any person who is providing contract services at a contract program or TYC-operated facility.

(8) Assault on Staff/ Volunteer (Offensive Contact)--youth intentionally or knowingly causes physical contact with a staff or volunteer when the youth knows or should reasonably believe that the staff or volunteer will regard the contact as offensive or provocative (includes hitting without injury, spitting, touching of staff's buttocks or breasts, etc.) Staff is defined as a TYC employee, contract program employee, or any person who is providing contract services at a contract program or TYC-operated facility.

(9) Assault of Youth/Other (Bodily Injury)--youth intentionally or knowingly, or recklessly causes bodily injury to another.

(10) Assault of Youth/Other (Offensive Contact)--youth intentionally or knowingly causes physical contact with another when the youth knows or should reasonably believe that the other will regard the contact as offensive or provocative (includes hitting without injury, spitting, touching of other's buttocks or breasts, etc.).

(11) Assault by Threat (Imminent Bodily Injury)--by word, gesture, or conduct a youth intentionally or knowingly threatens another with imminent bodily injury.

(12) Injury to Self--a youth intentionally or knowingly engages in bodily harm to self.

(13) Possession of a Weapon--youth is found to be in possession of a weapon or item(s) which has been made, or adapted for use as a weapon. This includes cigarette lighters or matches in a residential placement.

(14) Possession or Use of Unauthorized Substance or Intoxicant--youth is found to be using or possessing any unauthorized substance or intoxicant. This also includes tobacco for youth in a residential placement.

(15) Refusing a Drug Screen--youth refuses to take a drug screen when requested to do so by staff, or youth tampers with or contaminates the urine sample provided for a drug screen.

(16) Vandalism ($50 or more)--youth intentionally damages state or personal property having an estimated value of $50 or more.

(17) Participation in a Riot--youth intentionally participates with two (2) or more persons in conduct that threatens imminent harm to persons or property and substantially obstructs the performance of facility operations or programs. Incident must take place in a TYC facility or contract program.

(18) Two or More Failures to Comply with Written Reasonable Request--youth fails on two (2) or more occasions to comply with the conditions of release under supervision and/or a specific written reasonable request of staff that is either present in the ICP or is validly related to previous high-risk behavior. If the expectation is daily or weekly, the two (2) failures to comply must be within a 30-day period. If the expectation is monthly, the two (2) failures to comply must be within a 90-day period.

(19) Inappropriate Sexual Contact--youth engages in inappropriate sexual contact including touching or fondling the anus, buttocks, breast, or genitals of another for sexual stimulation. This also includes kissing.

(20) Indecent Exposure--youth engages in intentional or reckless exposure of anus, buttocks, breasts, or genitals.

(21) Extortion--youth uses his/her perceived position or power to obtain property, funds, or action from another person.

(22) Chunking Bodily Fluids--with the intent to harass, alarm, or annoy another person, a youth causes a person to contact

the blood, seminal fluid, vaginal fluid, urine, and/or feces of another person. Does not include saliva.

(23) Stealing ($50 or more)--youth takes, without permission, an item or items with an estimated value of $50 or more.

(24) Tampering with Information Technology Resources or Safety Equipment--youth tampers or interferes with the operations of safety or other emergency related equipment, or information technology/computer, video and/or communications equipment, to include improperly accessing information therein.

(25) Tattooing/Body Piercing--youth engages in tattooing or body piercing of either self or others. (Although youth in halfway house and parole may have pierced ears, they may not pierce each other's ears.)

(26) Attempting, Aiding, or Abetting Commission of a Category I Rule Violation--youth attempts to commit a category I rule violation, or assists or helps another youth to commit a category I rule violation.

(27) Failing to Report Category I Rule Violation--youth fails to report personal knowledge of facts concerning a rule violation by another youth, which are not known to staff.

(g) Category II Rule Violations. A category II rule violation is an act of misconduct that reflects a youth's immaturity, lack of responsibility, and intractability which, if unchecked, could lead to more serious category I violations. It is willful behavior that breaks rules for which minor consequences, called on-site disciplinary consequences, may be levied. Minor consequences include loss of privileges, restriction, or confiscation of contraband. Category II rule violations are as follows:

(1) Stealing/Under $50--youth takes, without permission, an item or items with an estimated value of less than $50.

(2) Vandalism/Under $50--youth intentionally damages, state or personal property having an estimated value of less than $50.

(3) Contraband--youth possesses an item(s) that is considered improper for children to see or possess or that may threaten the safety, security, or order of the facility. Consult §91.7 of this title (relating to Youth Personal Property) for definition of contraband.

(4) Danger to Others--youth intentionally or recklessly, by word, gesture or conduct, threatens to cause bodily harm to others.

(5) Threat of Harm to Self--By word, gesture, or conduct, the youth has expressed intent to engage in bodily harm to self.

(6) Lending/Borrowing/Trading Items--youth lends or gives to another youth, borrows or takes from another youth, and/or trades with another youth possessions, including food items, without permission from staff.

(7) Disruption of Program--youth engages in behavior which requires intervention to the extent that the youth's current program is disrupted. Types of disruption might include:

(A) disrupting a scheduled activity;

(B) being loud or disruptive without staff permission;

(C) using profanity or engaging in disrespectful behavior;

(D) refusing to participate in a scheduled activity or abide by program rules;

(E) engaging in rough boisterous behavior and/or physical contact intended for aggravating or annoying another person; or

(F) engaging in disruptive behavior after bedtime.

(8) Undesignated Area--youth is in any area without the appropriate permission to be in that area.

(9) Refusal to Follow Staff Instructions (Verbal)--youth deliberately does not comply with a specific and reasonable verbal or written request or instruction made by a staff member.

(10) Miss Scheduled Activities or Curfew--youth fails to attend a scheduled activity or violates curfew. Not applicable to youth in a high restriction facility.

(11) Gambling--youth engages in a bet or wager with another person.

(12) Failure to Abide by Dress Code--youth fails to follow the rules of dress and appearance in accordance with §91.5 of this title (relating to Clothing, Hair, and Symbolic Expression) or as conditions of parole.

(13) Attempting, Aiding, or Abetting Commission of a Category II Rule Violation--youth attempts to commit a category II rule violation, or assists or helps another youth to commit a category II rule violation.

(14) Failing to Report Category II Rule Violation--youth fails to report personal knowledge of facts concerning a rule violation by another youth, which are not known to staff.

(15) Breaching Group Confidentiality--youth discloses or discusses information provided to him/her in a correctional therapy group session to another person not present in that group session.

(16) Violating Security Program/Rules--youth is not complying with the standardized program or rules of the security unit while in the security unit.

(17) Improper Use of Telephone/Mail--youth uses the mail or telephone system for communication which is prohibited under §93.13 of this title (relating to Use of Telephone) or §93.15 of this title (relating to Youth Mail).

(18) Failure to do Proper Housekeeping--youth does not complete the daily chores of cleaning his/her living environment to the expected standard.

(19) Gang Related Activity--youth engages in a behavior or activity associated with an organized group or gang including, but not limited to, tagging, displaying gang hand signals, using gang slang language, and/or possessing gang writing/symbols of any kind including on clothing.

(20) Lying/Falsifying Documentation/Cheating--youth lies or withholds information from staff, falsifies a document and/or cheats in an assignment or test.

(21) Threat of Escape--by word, gesture, or conduct, a youth expresses an intention to escape a residential placement assignment.

(h) Contraband. Consistent with the Rules of Conduct, youth in a residential program which is under contract to TYC or operated by TYC shall not have contraband. Contraband items will be confiscated and disposed of in accordance with §97.11 of this title (relating to Control of Unauthorized Items Seized). Contraband is defined in §91.7 of this title (relating to Youth Personal Property).

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 April 26, 2005.

TRD-200501711
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: May 16, 2005
Proposal publication date: March 18, 2005
For further information, please call: (512) 424-6014

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CHAPTER 97. SECURITY AND CONTROL
SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §97.10

The Texas Youth Commission (the commission) adopts an amendment to §97.10, concerning Entry Searches, without changes to the proposed text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1601).

The justification for amending the section is to provide a safe environment for youth and staff. The amended section will include metal containers as one of the items prohibited in the commission's secure facilities.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted rule implements the Human Resources Code, §61.034.

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 April 26, 2005.

TRD-200501714
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: May 16, 2005
Proposal publication date: March 18, 2005
For further information, please call: (512) 424-6014

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Texas Veterans Commission

Title 40, Part 15

The Texas Veterans Commission (TVC) will review and consider for re-adoption, Chapter 453 "Historically Underutilized Business Program". The rule to be reviewed is located in Title 40, Part 15, of the *Texas Administrative Code.*

As required by the Texas Government Code, §2001.039, the Commission will assess whether reasons for adopting this rule continue to exist. The TVC will also accept public comments on the rule for a period of 30 days from the publication of this rule.

Comments or questions regarding this rule may be submitted in writing to Cruz G. Montemayor, Director of Administration and Training, Texas Veterans Commission, P.O. Box 12277, Austin, Texas 78711-2277, (512) 463-5538.

TRD-200501775
James E. Nier
Executive Director
Texas Veterans Commission
Filed: May 2, 2005

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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 §5.195(c)

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47.076 Education and Human Resources

SMALL BUSINESS ADMINISTRATION

59.037 Small Business Development Center

DEPARTMENT OF VETERANS AFFAIRS

64.005 Grants to States for Construction of State Home Facilities
64.201 National Cemeteries
64.203 State Cemetery Grants

ENVIRONMENTAL PROTECTION AGENCY

66.001 Air Pollution Control Program Support
66.034 Survey Studies, Investigation Demonstrations and Special Purpose Activities
66.306 Environmental Justice Collaborative Problem Solve Program
66.418 Construction Grants for Wastewater Treatment Works
66.419 Water Pollution Control State and Interstate Program Support
66.424 Surveys/Studies/Demons./Spec. Purpose-Safe Drinking Water Act

66.433 State Underground Water Source Protection
66.436 Surveys/Studies/Investigations/Demos/Training/Coop. Agreements.-Clean Water Act
66.439 Targeted Watershed Grants
66.454 Water Quality Management Planning
66.456 National Estuary Program
66.458 Capitalization Grants for Clean Water State Revolving Funds
66.460 Non-point Source Implementation Grants
66.461 Wetland Program Grants
66.463 Water Quality Cooperative Agreements
66.467 Wastewater Operator Training Grant Program (Technical Assistance)
66.468 Capitalization Grants for Drinking Water State Revolving Funds
66.471 State Grants to Reimburse Operators of Small Water Systems/Training/Certification Costs
66.472 Beach Monitoring and Notification Program Implementation Grants
66.474 Water Protection Grants to the States
66.475 Gulf of Mexico Program
66.476 Security Planning Grants for Large Drinking Water Utilities
66.500 Environmental Protection-Consolidated Research
66.508 Senior Environmental Employment Program
66.509 Science To Achieve Results (STAR) Program

ENVIRONMENTAL PROTECTION AGENCY

66.510 Surveys, Studies, Investigations and Special Purpose Grants within the Office of R&D
66.511 Office of Research and Development Consolidated Research
66.515 Greater Opportunities Research Program
66.516 P3 Award: National Student Design Comp. for Sustainability
66.600 Environmental Protection Consolidated Grants-Program Support
66.604 Environmental Justice Hazardous Substances Research Small Grants/Community Groups
66.605 Performance Partnership Grants
66.606 Surveys, Studies, Investigations and Special Purpose Grants
66.610 Surveys, Studies, Investigations and Special Purpose Grants-Office of the Administrator
66.611 Environmental Policy and Innovation Grants
66.700 Consolidated Pesticide Enforcement Cooperative Agreements
66.701 Toxic Substances Compliance Monitoring Cooperative Agreements
66.707 TSCA Title IV State Lead Grants Certification of Lead-Based Paint Professionals
66.708 Pollution Prevention Grants Program
66.709 Capacity Building Grants and Cooperative Agreements for States and Tribes
66.714 Pesticide Environmental Stewardship - Regional Grants
66.716 Surveys, Studies, Investigations, Training Demonstrations and Educational Outreach
66.717 Source Reduction Assistance
66.801 Hazardous Waste Management State Program Support
66.802 Superfund State, Political Subdivision, and Indian Tribe Site-Specific Coop. Agreements
66.804 State and Tribal Underground Storage Tanks Program
66.805 Leaking Underground Storage Tank Trust Fund Program
66.808 Solid Waste Management Assistance
66.809 Superfund State and Indian Tribe Core Program Cooperative Agreements
66.814 Brownfields Training, Research, and Technical Assistance/Cooperative Agreements
66.815 Brownfield Job Training Cooperative Agreements
66.817 State and Tribal Response Program Grants
66.818 Brownfields Assessment and Cleanup Cooperative Agreements

DEPARTMENT OF ENERGY

81.041 State Energy Program
81.049 Office of Science Financial Assistance Program

DEPARTMENT OF EDUCATION

84.002 Adult Education - State Grant Program
84.011 Migrant Education - State Grant Program
84.031 Higher Education-Institutional Aid
84.042 TRIO-Student Support Services
84.048 Vocational Education-Basic Grants to States
84.116 Fund for the Improvement of Postsecondary Education
84.132 Centers for Independent Living
84.144 Migrant Education-Coordination Program
84.160 Training Interpreters for Individuals who are Deaf and Individuals who are Deaf-Blind
84.165 Magnet Schools Assistance
84.173 Special Education-Preschool Grants
84.181 Special Education-Grants for Infants and Families with Disabilities
84.184 Safe and Drug-Free Schools and Communities-National Programs
84.186 Safe and Drug-Free Schools and Communities-State Grants
84.196 Education for Homeless Children and Youth
84.214 Even Start-Migrant Education
84.215 Fund for the Improvement of Education
84.235 Rehabilitation Services Demonstration and Training Programs
84.243 Tech-Prep Education
84.255 Literacy Programs for Prisoners
84.287 Twenty-First Century Community Learning Centers
84.298 State Grants for Innovative Programs

DEPARTMENT OF EDUCATION

84.319 Educational Technology State Grants
84.323 Special Education-State Program Improvement Grants for Children with Disabilities
84.324 Special Education-Research/Innovation to Improve Services/Results for Children w/Disabilities
84.327 Special Education-Technology/Media Services for Individuals with Disabilities
84.329 Special Education-Studies and Evaluations
84.330 Advanced Placement Program
84.332 Comprehensive School Reform Demonstration
84.334 Gaining Early Awareness and Readiness for Undergraduate Programs
84.336 Teacher Quality Enhancement Grants
84.341 Community Technology Centers
84.342 Preparing Tomorrow's Teachers to Use Technology
84.344 TRIO-Dissemination Partnership Grants
84.349 Early Childhood Educator Professional Development
84.351 Arts in Education
84.353 Tech-Prep Demonstration Grants
84.357 Reading First State Grants
84.364 Literacy through School Libraries

ELECTION ASSISTANCE COMMISSION

90.400 Help America College Vote Program

DEPARTMENT OF HEALTH AND HUMAN SERVICES

93.003 Project Grants for Facilities to Improve the Health Status of Minority Populations
93.005 State and Territorial Tech. Asst. Capacity Develop. Minority HIV Demonstration Program
93.006 Medical Reserve Corps Small Grant Program
93.041 Spec. Program. for the Aging-Title VII, Ch. 2-Long Term Care Ombudsman Services
93.042 Special Programs for the Aging-Title III-Disease Prevention and Health Promotion Services
93.043 Special Programs for the Aging-Title III-Grants for Supportive Services and Senior Centers
93.044 Special Programs for the Aging-Title III, Part C-Nutrition Services
93.045 National Family Caregiver Support
93.052 Nutrition Services Incentive Program
93.053 Centers for Genomics and Public Health
93.063 Health Disparities in Minority Health
93.100 Comprehensive Comm. Mental Health Srvcs.-Children w/Serious Emotional Disturbances
93.104 Bilingual/Bicultural Service Demonstration Grants
93.116 Acquired Immunodeficiency Syndrome (AIDS) Activity
93.118 Emergency Medical Services for Children
93.127 Tech. and Non-Financial Asst. to Health Centers/Ntnl. Health Srvc Corps Delivery Sites
93.134 Community Programs to Improve Minority Health Grant Program
93.137 AIDS Education and Training Centers
93.145 Health Center Grants for Homeless Populations
93.161 Grants for State Loan Repayment
93.165 Disabilities Prevention
93.185 National Research Services Awards
93.197 Surveillance of Hazardous Substance Emergency Events
93.204 Human Health Studies-Applied Research and Development
93.211 Hansen's Disease National Ambulatory Care Program
93.215 Family Planning-Services
93.217 Development and Coordination of Rural Health Services
93.223 Community Health Centers
93.224 Demonstration Coop. Agreement for Development/Implementation of CJ Treatment Networks
93.230 Traumatic Brain Injury-State Demonstration Grant Program
93.234 Coop. Agreements State Treatment Outcomes and Performance Pilot Studies Enhancement
93.238 State Capacity Building
93.240 Innovative Food Safety Projects
93.245 Health Centers Grants for Migrant and Seasonal Farm Workers

DEPARTMENT OF HEALTH AND HUMAN SERVICES

93.246 Universal Newborn Hearing Screening
93.251 Healthy Community Access Program
93.252 Grants for Education, Prevention/Early Detection of Radiogenic Cancers and Diseases
93.257 Family Planning-Personnel Training
93.260 Expansion/Antiretroviral Therapy Programs HIV-Africa/Caribbean
93.268 Drug-Free Communities Support Program Grants
93.276 Centers for Disease Control and Prevention-Investigations and Technical Assistance
93.283 National Community Centers of Excellence in Women's Health
93.302 National Center for Research Resources
93.392 Transitional Living for Homeless Youth

93.550 Abandoned Infants
93.551 Education/Prevention Grants to Reduce Sex. Abuse of Runaway, Homeless/Street Youth
93.557 Child Support Enforcement
93.563 Community Services Block Grant-Discretionary Awards
93.570 Community Services Block Grant Discretionary Awards-Community Food and Nutrition
93.571 Refugee and Entrant Assistance-Discretionary Grants
93.576 Refugee and Entrant Assistance-Wilson/Fish Program
93.583 Family Violence Prevent. Srvcs. for Battered Women's Shelters-Discretionary Grants
93.592 Job Opportunities for Low-Income Individuals
93.593 Welfare Reform Research, Evaluations and National Studies
93.595 Services to Victims of a Severe Form of Trafficking
93.598 Head Start
93.600 Child Support Enforcement Demonstrations and Special Projects
93.602 Assistance to Torture Victims
93.616 Voting Access for Individuals with Disabilities-Grants to States
93.623 Developmental Disabilities Basic Support and Advocacy Grants
93.630 Developmental Disabilities Projects of National Significance
93.643 Child Welfare Services - State Grants
93.645 Social Services Research and Demonstration
93.647 Child Abuse and Neglect State Grants
93.669 Child Abuse and Neglect Discretionary Activities
93.670 Family Violence Prevention Srvcs/Grants for Battered Women's Shelters-States/Tribes
93.671 Healthy Communities Access Program Demonstration Authority
93.890 Family and Community Violence Prevention Program
93.910 Rural Health Outreach and Rural Network Development Program
93.912 Grants to States for Operation of Offices of Rural Health
93.913 HIV Emergency Relief Project Grants
93.914 Grants to Provide Outpatient Early Intervention Services with Respect to HIV Disease
93.919 Healthy Start Initiative
93.926 Health Centers Grants for Residents of Public Housing
93.938 HIV Prevention Activities-Non-Governmental Organization Based
93.939 HIV Prevention Activities-Health Department Based
93.940 HIV Demonstration, Research, Public and Professional Education Projects
93.941 Human Immunodeficiency Virus (HIV)/AIDS Surveillance
93.944 Assistance Programs for Chronic Disease Prevention and Control
93.945 Coop. Agreements to Support State-Based Safe Motherhood/Infant Health Initiative Programs
93.952 Trauma Care Systems Planning and Development
93.953 Health and Safety Programs for Construction Work
93.977 Coop. Agreements for State-Based Diabetes Control Programs Evaluation/Surveillance
93.988 National Health Promotion
93.995 Adolescent Family Life-Demonstration Projects

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

94.002 Retired and Senior Volunteer Program
94.011 Foster Grandparent Program
94.013 Volunteers in Service to America
94.016 Senior Companion Program

DEPARTMENT OF HOMELAND SECURITY

97.003 Agricultural Inspection
97.004 State Domestic Preparedness Equipment Support Program
97.005 State and Local Homeland Security Training Program
97.006 State and Local Homeland Security Exercise Support
97.008 Urban Areas Security Initiative
97.012 Cuban/Haitian Entrant Program
97.013 State Access to the Oil Spill Liability Trust Fund
97.014 Bridge Alteration
97.029 Flood Mitigation Assistance
97.030 Community Disaster Loans
97.034 Disaster Unemployment Assistance
97.036 Public Assistance Grants
97.042 Emergency Management Performance Grants
97.048 Federal Assistance to Individuals and Households-Housing
97.049 Federal Assistance to Individuals and Households-Disaster Housing Operations
97.050 Federal Assistance to Individuals and Households-Other Needs
97.051 State and Local All Hazards Emergency Operations Planning
97.052 Emergency Operations Centers
97.053 Citizen Corps
97.054 Community Emergency Response Teams
97.055 Interoperable Communications Equipment
97.067 Homeland Security Grant Program
97.068 Competitive Training Grants
97.069 Aviation Research Grants
97.070 Map Modernization Management Support
97.071 Metropolitan Medical Response System
97.072 National Explosives Detection Canine Team Program

TABLE II

State Programs Requiring TRACS Review

Housing and Urban Development

TDHCA Planning/Capacity Building Program

Reclamation, Historic Preservation and Recreation

Texas Recreation and Parks Account

Environmental Protection

Municipal Solid Waste Tipping Fee-funded projects (TCEQ)

Energy

State of Texas Oil Overcharge Program

Health and Human Services

State Funds for Community-Based Alcohol/Drug Problems

Figure: 19 TAC §109.1002(c)

Document Date: May 2005

School FIRST - Rating Worksheet

School Year ____-____

Fiscal Year Ended June 30, ____ Or August 31, ____

County District # _____-_____

District Name :_____

Critical Indicators

1	Was Total Fund Balance Less Reserved Fund Balance Greater Than Zero In The General Fund?
2	Was The Total Unrestricted Net Asset Balance (Net Of Accretion OF Interest On Capital Appreciation Bonds) In The Governmental Activities Column In The Statement Of Net Assets Greater Than Zero?
3	Were There No Disclosures In The Annual Financial Report And/Or Other Sources Of Information Concerning Default On Bonded Indebtedness Obligations?
4	Was The Annual Financial Report Filed Within One Month After November 27th or January 28th Deadline Depending Upon The District's Fiscal Year End Date (June 30th or August 31st)?
5	Did The District's Academic Rating Exceed Academically Unacceptable?
6	Was There An Unqualified Opinion In Annual Financial Report?
7	Did The Annual Financial Report Not Disclose Any Instance(s) Of Material Weaknesses In Internal Controls?

	Fiscal Efficiencies And Academic Performance	Determination of Points 5	4	3	2	1	0
8	Were Operating Expenditures Per WADA In The General Fund And Special Revenue Fund Less Than Or Equal to $4,500 (Exclude Expenditures Under Expenditure Object Code 6141, Social Security/Medicare, And Function Codes 34, Student (Pupil) Transportation, and 35, Food Services)?	<= $4,500	> $4,500 =< $4,950	> $4,950 =< $5,400	> $5,400 =< $5,850	> $5,850 =< $6,300	> $6,300
9	Were Operating Expenditures Per WADA In The General Fund Less Than Or Equal to $4,000 (Exclude Expenditures Under Expenditure Object Code 6141, Social Security/Medicare, And Function Codes 34, Student (Pupil) Transportation, and 35, Food Services)?	<= $4,000	> $4,000 =< $4,400	> $4,400 =< $4,800	> $4,800 =< $5,200	> $5,200 =< $5,600	> $5,600
10	Did The District Have A Recognized Or Exemplary Academic Rating?	Yes					No
	Fiscal Responsibility						
11	Was The Three-Year Average Percent Of Total Tax Collections (Including Delinquent) Greater Than 98%?	> 98%	> 96% =< 98%	> 92% =< 95%	> 89% =< 92%	> 86% =< 89%	=< 86%
12	Did The Comparison Of PEIMS Data To Like Information In Annual Financial Report Result In An Aggregate Variance Of Less Than 3 Percent Of Expenditures Per Fund Type (Data Quality Measure)?	Yes					No
13	Were Debt Related Expenditures (Net Of IFA And/Or EDA Allotment) Less Than $250.00 Per Student? (If The District's Five-Year Percent Change In Students Was A 7% Increase Or More, Or If Property Taxes Collected Per Penny Of Tax Effort Were More Than $200,000, Then The District Receives 5 Points)	< $250	=> $250 < $500	=> $500 < $750	=> $750 < $1,000	=> $1,000 < $1,250	=> $1,250
14	Was There No Disclosure In The Annual Audit Report Of Material Noncompliance?	Yes					No
15	Did The District Have Full Accreditation Status In Relation To Financial Management Practices? (e.g., No Master Or Monitor Assigned)	Yes					No
	Budgeting						
16	Was The Percent Of Operating Expenditures Expended For Instruction More Than 65%? (Exclude From The Denominator Expenditures Under Expenditure Object Code 6141, Social Security/Medicare, And Function Code 34, Student (Pupil) Transportation, and Operating Expenditures In The District's Child Nutrition Program Fund Up To The Amount Of Revenues Reported In The Child Nutrition Program Fund)	> 65%	> 62% =< 65%	> 59% =< 62%	> 55% =< 59%	> 52% =< 55%	=< 52%
17	Was The Aggregate Of Budgeted Expenditures And Other Uses Less Than The Aggregate Of Total Revenues, Other Resources and Fund Balance in General Fund?	Yes					No
18	If The District's Aggregate Fund Balance In The General Fund And Capital Projects Fund Was Less Than Zero, Were Construction Projects Adequately Financed? (Were Construction Projects Adequately Financed Or Adjusted By Change Orders Or Other Legal Means To Avoid Creating Or Adding To The Fund Balance Deficit Situation?)	Yes					No
19	Was The Ratio Of Cash And Investments To Deferred Revenues (Excluding Amount Equal To Net Delinquent Taxes Receivable) In The General Fund Greater Than Or Equal To 1:1? (If Deferred Revenues Are Less Than Net Delinquent Taxes Receivable, Then The District Receives 5 Points)	=> 1.00	=> 0.95 < 1.00	=> 0.90 < 0.95	=> 0.85 < 0.90	=> 0.80 < 0.85	< 0.80
	Personnel						
20	Was The Administrative Cost Ratio Less Than The Threshold Ratio? (See Ranges Below)	Yes					No
21	Was The Ratio Of Students To Teachers Within The Ranges Shown Below According To District Size?	UL* <= 100%	> 100% =< 105%	> 105% =< 110%	> 110% =< 115%	> 115% =< 120%	> 120%
		LL** => 100%	=> 95% < 100%	=> 90% < 95%	=> 85% < 90%	=> 80% < 85%	< 80%
22	Was The Ratio Of Students To Total Staff Within The Ranges Shown Below According To District Size?	UL <= 100%	> 100% =< 105%	> 105% =< 110%	> 110% =< 115%	> 115% =< 120%	> 120%
		LL => 100%	=> 95% < 100%	=> 90% < 95%	=> 85% < 90%	=> 80% < 85%	< 80%
	Cash Management						
23	Was The Total Fund Balance In The General Fund More Than 50% And Less Than 150% of Optimum According To The Fund Balance and Cash Flow Calculation Worksheet in the Annual Financial Report?	UL < 150%	> 150% =< 152.5%	> 152.5% =< 155.0%	> 155.0% =< 157.5%	> 157.5% =< 160.0%	> 160.0%
		LL > 50%	> 47.5% =< 50%	> 45.0% =< 47.5%	> 42.5% =< 45.0%	> 40.0% =< 42.5%	=< 40.0%
24	Was The Decrease In Undesignated Unreserved Fund Balance Less Than 20% Over Two Fiscal Years? (If 1.5 Times Optimum Fund Balance Is Less Than Total Fund Balance In General Fund Or If Total Revenues Exceeded Operating Expenditures In The General Fund, Then The District Receives 5 Points).	< 20%	=> 20% < 21%	=> 21% < 22%	=> 22% < 23%	=> 23% < 24%	=> 24%
25	Was The Aggregate Total Of Cash And Investments In The General Fund More Than $0?	Yes					No
26	Were Investment Earnings In All Funds (Excluding Debt Service Fund and Capital Projects Fund) More Than $40 Per Student?	> $40	> $38 =< $40	> $36 =< $38	> $34 =< $36	> $32 =< $34	=< $32
					Total Points Per Column		

Determination Of Rating

A.	Did The District Answer No To Indicators 1, 2, 3, 4 Or 5; OR Both 6 And 7	
	If The District Answered No To Either, The District's Rating Is Requires Improvement	
B.	Determine Rating By Applicable Number Of Points	Points
	A	>=85 AND Yes To Indicator 10
	B	>=75 <85 OR >=85 AND No To Indicator 10
	C	>=65 <75
	Requires Improvement *(If Less Than 65 Points OR If The District Answered No To Indicators 1, 2, 3, 4 Or 5; OR Both 6 And 7)*	<65 OR Answered No To One Default Indicator

* UL - Upper limit

** LL - Lower limit

For Questions Call The Division Of School Financial Audits At (512) 463-9095

Administrative Cost Ratio Indicator 20

ADA Group	Standard
10,000 and Above	0.1105
5,000 to 9,999	.1250
1,000 to 4,999	.1401
500 to 999	.1561
Less than 500	.2654
Sparse	0.3514

Student To Teacher Ratio Indicator 21

District Size - Number of Students Between	Ranges for Ratios Low	High
<500	7.0	22
500 - 999	10.0	22
1000 - 4999	11.5	22
5000 - 9999	13.0	22
=>10,000	13.5	22

Student To Staff Ratio Indicator 22

District Size - Number of Students Between	Ranges for Ratios Low	High
<500	5.0	14
500 - 999	5.8	14
1000 - 4999	6.3	14
5000 - 9999	6.8	14
=>10,000	7.0	14

Completed By:_____ Date:_____

Notes:

School FIRST - Rating Worksheet Calculations		
	Indicator	**Calculation Defined**
1	Was Total Fund Balance Less Reserved Fund Balance Greater Than Zero In The General Fund?	A > 0 Where A = [Aggregate Of Unreserved, Designated Fund Balance And Unreserved, Undesignated Fund Balance In General Fund At June 30 or August 31 Depending On Fiscal Year End]
2	Was the Total Unrestricted Net Asset Balance (Net of the Accretion of Interest for Capital Appreciation Bonds) in the Governmental Activities Column in the Statement of Net Assets Greater Than Zero?	A + B> 0 Where A = Total Unreserved Net Asset Balance in the Governmental Activities Column in Exhibit A-1, Statement of Net Assets in the Annual Financial Report; B= Accretion of Interest for Capital Appreciation Bonds
3	Were There **No** Disclosures In The Annual Financial Report And/Or Other Sources Of Information Concerning Default On Bonded Indebtedness Obligations?	No Calculation Involved
4	Was The Annual Financial Report Filed Within One Month After November 27th or January 28th Deadline Depending Upon The District's Fiscal Year End Date (June 30th or August 31st)?	No Calculation Involved
5	Did The District's Academic Rating Exceed Academically Unacceptable?	No Calculation Involved
6	Was There An Unqualified Opinion In Annual Financial Report?	No Calculation Involved
7	Did The Annual Financial Report **Not** Disclose Any Instance(s) Of Material Weaknesses In Internal Controls?	No Calculation Involved
8	Were Operating Expenditures Per WADA In The General Fund And Special Revenue Fund Less Than Or Equal to $4,500 (Exclude Expenditures Under Expenditure Object Code 6141, Social Security/Medicare, And Function Codes 34, Student (Pupil) Transportation, and 35, Food Services)?	((A+B) / C) Where A = [Expenditures In General Fund And Special Revenue Fund (Excluding Expenditure Object Code 6141, Social Security/Medicare, And Expenditures Under SSA Fund Codes) In Function Codes 11-33 and 36-61 And Object Codes 6112-6499]; B = [Expenditures Reported On Behalf Of District By Fiscal Agent In 033 District Finance Data - Shared Services Arrangement Actual PEIMS Record]; C = [WADA]

School FIRST - Rating Worksheet Calculations		
	Indicator	**Calculation Defined**
9	Were Operating Expenditures Per WADA In The General Fund Less Than Or Equal to $4,000 (Exclude Expenditures Under Expenditure Object Code 6141, Social Security/Medicare, And Function Codes 34, Student (Pupil) Transportation, and 35, Food Services)?	((A + B)/ C) Where A = [Expenditures In General Fund (Excluding Expenditure Object Code 6141, Social Security/Medicare) In Function Codes 11-33 and 36-61 Object Codes 6112-6499]; B = [Expenditures In General Fund In Function Code 93 And Object Code 6492]; C = [WADA]
10	Did The District Have A Recognized Or Exemplary Academic Rating?	No Calculation Involved
11	Was The Three-Year Average Percent Of Total Tax Collections (Including Delinquent) Greater Than 98%?	((A / B) X 100) Where A = [Tax Collections For Three Years]; B = [Tax Levy For Three Years] Reported In Exhibit J-1 Schedule of Delinquent Taxes Receivable In The Annual Financial Report
12	Did The Comparison Of PEIMS Data To Like Information In Annual Financial Report Result In An Aggregate Variance Of Less Than 3 Percent Of Expenditures Per Fund Type (Data Quality Measure)?	((A / B) X 100) Of C Where A = [Absolute Value Of All Differences In Expenditures In Exhibit C-2 Statement of Revenues, Expenditures, and Changes in Fund Balance And PEIMS]; B = [Sum Of Expenditure In PEIMS Per Fund Type Presented In Exhibit C-2]; C = [Fund Class]
13	Were Debt Related Expenditures (Net Of IFA And/Or EDA Allotment) Less Than $250.00 Per Student? (If The District's Five-Year Percent Change In Students Was A 7% Increase Or More, Or If Property Taxes Collected Per Penny Of Tax Effort Were More Than $200,000 Per Student, Then The District Receives 5 Points)	If ((B – D)/ D) X 100 < 7 % Or E / F < $200,000, Then Continue Calculation ((A - C)/ B) Where A = [Function 71 Expenditures Report In The Debt Service And General Funds (Excluding Expenditure Object Codes 6524 and 6525)]; B = [Number Of Students In Year 5 From Base Year]; C = [IFA + EDA Allotments]; D = [Number Of Students In Base Year]; E = [Total Tax Collections]; F = [Total Tax Rate In Pennies]
14	Was There **No** Disclosure In The Annual Audit Report Of Material Noncompliance?	No Calculation Involved
15	Did The District Have Full Accreditation Status In Relation To Financial Management Practices? (e.g., No Master Or Monitor Assigned)	No Calculation Involved

School FIRST - Rating Worksheet Calculations		
	Indicator	**Calculation Defined**
16	Was The Percent Of Operating Expenditures Expended For Instruction More Than 65%? (Exclude from the Denominator Expenditures Under Expenditure Object Code 6141, Social Security/Medicare, And Function Code 34, Student (Pupil) Transportation, and Operating Expenditures In The District's Child Nutrition Program Fund Up To The Amount Of Revenues Reported In The Child Nutrition Program Fund)	((A / B + C) X 100) Where A = [Expenditures In General Fund, Special Revenue Funds (Excluding Object Code 6141, Social Security/Medicare And SSA Fund Codes) and Capital Projects In Function 11 And Object Codes 6112-6499]; B = [Expenditures In General Fund, Special Revenue Fund (Excluding Fund Codes 101, 240, 701 And SSA Fund Codes) And Capital Projects Fund; Functions 11 through 61 (Excluding Function Code 34, Student (Pupil) Transportation,; Object Codes 6112 through 6499, (Excluding Object Code 6141, Social Security/Medicare)]; C = [Expenditures In Fund Codes 101, 240 And 701 In Object Codes 61XX – 64XX (Excluding Object Code 6141 And Functions 71 – 99) In Excess of Revenues In Object 57XX – 59XX and 795X – 798X]
17	Was The Aggregate Of Budgeted Expenditures And Other Uses **Less Than** The Aggregate Of Total Revenues, Other Resources and Fund Balance in General Fund?	(A + B) - (C + D + E) < 0 Where A = [Budgeted Appropriations In General Fund]; B = [Budgeted Other Uses In The General Fund]; C = [Budgeted Revenues In General Fund]; D = [Budgeted Other Resources In The General Fund]; E = [Fund Balance In General Fund At July 1 or September 1 Depending On Fiscal Year End]
18	If The District's Aggregate Fund Balance In The General Fund And Capital Projects Fund Was **Less Than** Zero, Were Construction Projects Adequately Financed? (Were Construction Projects Adequately Financed Or Adjusted By Change Orders Or Other Legal Means To Avoid Creating Or Adding To The Fund Balance Deficit Situation?)	If (C + D) < 0 Then Continue Calculation As (A - B - (C + D)) < 0 Where A = [Expenditures Function 81 In General Fund and Capital Projects Fund]; B = [Other Resources For Real Property Financing In General Fund and Capital Projects Fund]; C = [Fund Balance In General Fund At July 1 or September 1 Depending On Fiscal Year End]; D = [Fund Balance In Capital Projects Fund At July 1 or September 1 Depending On Fiscal Year End]
19	Was The Ratio Of Cash And Investments To Deferred Revenues (Excluding Amount Equal To Net Delinquent Taxes Receivable) In The General Fund Greater Than Or Equal To 1:1? (If Deferred Revenues Are Less Than Net Delinquent Taxes Receivable, Then The District Receives 5 Points)	If B > 0 Then Continue Calculation As (A / B) Where A = [Cash And Investments In General Fund]; B = [Deferred Revenue In General Fund – Property Tax Receivable Net Of Uncollectible]

School FIRST - Rating Worksheet Calculations		
	Indicator	**Calculation Defined**
20	Was The Administrative Cost Ratio Less Than The Threshold Ratio? (See Ranges Below)	(A>B) A = [Acceptable Administrative Cost Ratio]; B = [Administrative Cost Ratio Of The District]
21	Was The Ratio Of Students To Teachers Within The Ranges Shown Below According To District Size? (See Ranges Below)	(A / B) Where A = [Number Of Students]; B = [Number Of Teachers FTEs]
22	Was The Ratio Of Students To Total Staff Within The Ranges Shown Below According To District Size? (See Ranges Below)	(A / B) Where A = [Number Of Students]; B = [Total Staff FTEs]
23	Was The Total Fund Balance In The General Fund More Than 50% And Less Than 150% of Optimum According To The Fund Balance and Cash Flow Calculation Worksheet in the Annual Financial Report?	Deficient Fund Balance Amount In General Fund Is Defined As A < ((B X .5) And Excess Is Defined As A > (B X 1.5) Where A = [Total General Fund Balance At June 30, 20XX or August 31, 20XX Depending On Fiscal Year End]; B = Line 10 in Exhibit J-3, Fund Balance and Cash Flow Calculation Worksheet in the Annual Financial Report.
24	Was The Decrease In Undesignated Unreserved Fund Balance Less Than 20% Over Two Fiscal Years? (If 1.5 Times Optimum Fund Balance Is Less Than Total Fund Balance In General Fund Or If Total Revenues Exceeded Operating Expenditures In The General Fund, Then The District Receives 5 Points).	If (A – B) > 0 And Optimum Fund Balance X 1.5 Is Less Than Total Fund Balance In General Fund And [C] X .80 > [D], Then Continue Calculation [A] - [B] Where A = [Expenditures In General Fund In Functions 11 Through 61 And Expenditure Object Codes 6100 Through 6400]; B = [Total Revenues In General Fund]; C = [Undesignated, Unreserved Fund Balance In General Fund At June 30 or August 31, Depending On Fiscal Year End, Two Fiscal Years Prior]; D= [Undesignated, Unreserved Fund Balance In General Fund For The Last Fiscal Year]
25	Was The Aggregate Total Of Cash And Investments In The General Fund More Than $0?	A > 0 Where A = [Cash and Investments In General Fund]
26	Were Investment Earnings In All Funds (Excluding Debt Service Fund And Capital Projects Fund) More Than $40 Per Student?	(A / B) Where A = [Investment Earnings In All Funds Except Debt Service Fund And Capital Projects Fund]; B = [Number Of Students]

Indicator 20	
ADA Group	Standard
10,000 and Above	0.1105
5,000 to 9,999	.1250
1,000 to 4,999	.1401
500 to 999	.1561
Less than 500	.2654
Sparse	0.3614

		Ranges for Ratios	
District Size - Number of Students Between		Low	High
Indicator 21			
	<500	7.0	22
500	999	10.0	22
1,000	4,999	11.5	22
5,000	9,999	13.0	22
=>10,000		13.5	22
Indicator 22			
	<500	5.0	14
500	999	5.8	14
1,000	4,999	6.3	14
5,000	9,999	6.8	14
=>10,000		7.0	14

For Questions Call The Division Of School Financial Audits At (512) 463-9095

Figure: 30 TAC §117.214(a)(1)(D)(i)

$$NH_3@O_2 = \left[\left(\frac{a}{b} \times 10^6\right) - c\right] \times d$$

Where:

$NH_3@O_2$ = ammonia parts per million by volume (ppmv) at reference oxygen. Reference oxygen on a dry basis is 3.0% for boilers and process heaters; 0.0% for fluid catalytic cracking units (including CO boilers, CO furnaces, and catalyst regenerator vents); 7.0% for boilers and industrial furnaces (BIF units) that were regulated as existing facilities by the EPA at 40 Code of Federal Regulations Part 266, Subpart H (as was in effect on June 9, 1993), wood-fired boilers, and incinerators; 15% for stationary gas turbines (including duct burners used in turbine exhaust ducts), gas-fired lean-burn engines, and lightweight aggregate kilns; and 3.0% for all other units.

a = ammonia injection rate (in pounds per hour (lb/hr))/17 pound per pound-mole (lb/lb-mol)

b = dry exhaust flow rate (lb/hr)/29 lb/lb-mol

c = change in measured nitrogen oxides (NO_x) concentration across catalyst (ppmv at reference oxygen)

d = correction factor, the ratio of measured slip to calculated ammonia slip, where the measured slip is obtained from the stack sampling for ammonia required by §117.211(a)(2) of this title (relating to Initial Demonstration of Compliance), using either the Phenol-Nitroprusside Method, the Indophenol Method, or EPA Conditional Test Method 27. Minor modifications to these methods or EPA-approved alternative test methods may be approved by the executive director, as specified in §117.211(e)(6) of this title.

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.

Ark-Tex Council of Governments

Request for Proposal for Provision of a Regional Law Enforcement Training Program

The Ark-Tex Council of Governments (ATCOG) is soliciting proposals for the provision of regional law enforcement training through a grant provided by the Texas Governor's Office, Criminal Justice Division.

The types of training to be provided include: Basic Law Enforcement Officer, Basic Jailer Certification, Basic Tele-Communicators, and Advanced Law Enforcement Training. The period of performance is September 1, 2004 through August 31, 2005.

The service delivery area includes the following counties in Texas: Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River, and Titus.

Potential respondents may obtain a copy of the request for proposal, scoring guidelines, and project scoring criteria by contacting Brenda Stone, Ark-Tex Council of Governments, P. O. Box 5307, Texarkana, Texas 75505-5307, or call (903) 832-8636. The deadline for proposal submission is June 25, 2005, at 5:00 p.m. The Ark-Tex Council of Governments Regional Criminal Justice Advisory Committee will score multiple proposals received. Respondents will be notified in writing of the date, time, and place of the meeting at which the proposals will be scored.

TRD-200501781
L.D. Williamson
Executive Director
Ark-Tex Council of Governments
Filed: May 3, 2005

♦ ♦ ♦

Department of Assistive and Rehabilitative Services

Announcement of Completion of Application for Federal Individuals with Disabilities Education Act, Part C Funding for Federal Fiscal Year 2006

The Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention, announces completion of its application for federal Individuals with Disabilities Education Act, Part C funding for federal fiscal year 2006.

A copy of the application is available for review at DARS/ECI offices located at 4900 North Lamar Blvd., Austin, Texas 78751. Written comments will be accepted through June 30, 2005.

For additional information, contact DARS/ECI at the address above or by telephone at 512-424-6753.

TRD-200501766
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Filed: May 2, 2005

♦ ♦ ♦

Office of the Attorney General

Agreed Final Judgment

The State of Texas hereby gives notice of the proposed resolution of an environmental enforcement lawsuit brought pursuant to the Texas Water Code. Before the State may settle a judicial enforcement action, pursuant to Section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Law.

Case Title and Court: *The State of Texas v. McCauley Dirt Company, Inc.*, Cause No. GV4-02023 in the 353rd District Court of Travis County, Texas.

Nature of Suit: This is a suit for illegal discharges of pollutants into waters in the state from a sand mining facility in Mansfield, Tarrant County, Texas. The Defendant, McCauley Dirt Company, was the operator of the facility, which is now closed.

Proposed Agreed Judgment: The proposed Agreed Final Judgment settles all of the State's claims in the suit. The Agreed Final Judgment awards the State $7,500 in civil penalties and $6,725 in attorney's fees.

The Office of the Attorney General will accept written comments relating to this proposed judgment for thirty (30) days from the date of the publication of this notice. Copies of the proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas. A copy of the proposed judgment may also be obtained in person or by mail at the above address for the cost of copying. Requests for copies of the judgment and written comments on the proposed judgment should be directed to Jane E. Atwood, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052.

For information regarding this publication, contact A.G. Younger, Agency Liaison, at 512-463-2110.

TRD-200501748
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: April 28, 2005

♦ ♦ ♦

Brazos Valley Council of Governments

Request for Proposal for Auditing Services

DESCRIPTION: This request for auditing services is filed under the provisions of the Government Code, Chapter 2254. The Brazos Valley Affordable Housing Corporation (BVAHC), a 501c3 non-profit organization organized to assist economically disadvantaged persons for the

acquisition and maintenance of affordable housing for the Brazos Valley Region, announces its request for proposal (RFP) to perform an Independent Financial Single Audit in accordance with the office of Management and Budget (OMB) Circular A-133, for the Fiscal Year 2005 (FY02), October 1, 2004 through September 30, 2005. The responsibility for financial oversight of the Brazos Valley Affordable Housing Corporation (BVAHC) is centralized in the Fiscal Department of the Brazos Valley Council of Governments, a regional planning commission located in Bryan, Texas.. The audit must be completed by February 28, 2006. Our FY04 single audit was performed by Patillo, Brown & Hill, LLP, from Waco, Texas.

PERSONS TO CONTACT: Further information may be obtained from Mr. John Jackson, Director of Finance at the Brazos Valley Council of Governments, or Mr. Tom Wilkinson, President of the Brazos Valley Affordable Housing Corporation, 3971 East 29th Street, P.O. Drawer 4128, Bryan, TX 77805-4128, or by phone (979) 595-2809.

DEADLINE FOR SUBMISSION OF RESPONSE: Proposals are due on Friday, June 6, 2005 by 5:00 p.m. at the Brazos Valley Council of Government offices located at 3971 East 29th Street in Bryan, TX.

EVALUATION CRITERIA:

A. Demonstrated Performance/Experience

1. Demonstrated Competence/Qualifications

2. Relevant Experience of Key Staff

B. Schedule Design

1. Meets BVCOG's Goals/Objectives/Includes Quality Control Procedures

2. Provides Quality Planned Follow-up Activity

3. Degree of Proposed Technical Assistance

C. Reasonableness of Cost

1. Cost Effectiveness

2. Costs: Necessary, Reasonable, Allowable & Allocable

3. Competitiveness of Costs

4. Value of in-kind services

D. HUB Status

GENERAL INFORMATION: BVCOG reserves the right to accept or reject any (or all) proposals submitted. BVCOG is under no legal requirement to execute a resulting contract, if any, on the basis of this advertisement and intends the material herein as a general description of the services desired by BVCOG.

The proposal should be for a period of one year although BVCOG will have the option of extending the contract for an additional two years.

FORM AND FORMAT: Five (5) copies of the proposal are requested and should be sent by mail, express service or delivered in person within the time frame specified in a sealed envelope marked "PROPOSAL FOR INDEPENDENT SINGLE AUDIT OF FEDERAL AND STATE GRANT AWARDS", addressed to Mr. Tom Wilkinson, Jr., Executive Director, Brazos Valley Council of Governments, P.O. Drawer 4128, Bryan, TX 77805-4128. The proposal should be typed, preferably double spaced - minimum of 10 point font - on 8 1/2 inch by 11 inch paper with all papers sequentially numbered and bound together with binder clips. Proposals should include a letter of transmittal summarizing the proposal and a table of contents.

For further information, please call (979) 595-2800.

TRD-200501771

John Jackson
Director of Finance
Brazos Valley Council of Governments
Filed: May 2, 2005

♦ ♦ ♦

Notice of Release of Request for Quote for Child Care Provider Training Services

On May 3, 2005, the Brazos Valley Council of Governments (BVCOG) and Workforce Solutions Brazos Valley Board (WSBVB) will release a Request for Quote (RFQ) for Child Care Provider Training services. One or more trainers are needed to provide training to child care provider staff in the Brazos Valley (Brazos, Washington, Robertson, Burleson, Madison, Leon and Grimes counties). Training will take place on certain dates listed in the RFQ, at the Center for Regional Services, 3991 East 29th Street, Bryan, Texas. Workforce Solutions Brazos Valley Board will receive responses to the RFQ until **4:00 P.M. May 17, 2005.** No responses will be accepted after this deadline. Potential respondents may view and print the RFQ from the web on **www.bvjobs.org.** The contact person for this RFQ is Shawna Goolsby, sgoolsby@bvcog.org, (979) 595-2800.

TRD-200501774
Patricia Buck
Manager, Workforce Solutions Brazos Valley
Brazos Valley Council of Governments
Filed: May 2, 2005

♦ ♦ ♦

Request for Proposal for Auditing Services

DESCRIPTION: This request for auditing services is filed under the provisions of the Government Code, Chapter 2254. The Brazos Valley Council of Governments (BVCOG), a regional planning commission who, was organized under State of Texas and administers funds from local, state, federal governments, announces its request for proposal (RFP) to perform an Independent Financial Single Audit in accordance with the office of Management and Budget (OMB) Circular A-133, for the Fiscal Year 2005 (FY02), October 1, 2004 through September 30, 2005, to be included in their Comprehensive Annual Financial Report (CAFR) which will be used to apply for the Governmental Financial Officers Association Award of Excellence. The audit must be completed by February 17, 2006. Our FY04 single audit was performed by Patillo, Brown & Hill, LLP, from Waco, Texas.

PERSONS TO CONTACT: Further information may be obtained from Mr. John Jackson, Director of Finance or Mr. Tom Wilkinson, Executive Director, at the Brazos Valley Council of Governments, 3991 East 29th Street, P.O. Drawer 4128, Bryan, TX 77805-4128, or by phone (979) 595-2800.

DEADLINE FOR SUBMISSION OF RESPONSE: Proposals are due on Friday, June 6, 2005 by 5:00 p.m. at the Brazos Valley Council of Government offices located at 3991 East 29th Street in Bryan, TX.

EVALUATION CRITERIA:

A. Demonstrated Performance/Experience

1. Demonstrated Competence/Qualifications

2. Relevant Experience of Key Staff

B. Schedule Design

1. Meets BVCOG's Goals/Objectives/Includes Quality Control Procedures

2. Provides Quality Planned Follow-up Activity

3. Degree of Proposed Technical Assistance

C. Reasonableness of Cost

1. Cost Effectiveness

2. Costs: Necessary, Reasonable, Allowable & Allocable

3. Competitiveness of Costs

4. Value of in-kind services

D. HUB Status

GENERAL INFORMATION: BVCOG reserves the right to accept or reject any (or all) proposals submitted. BVCOG is under no legal requirement to execute a resulting contract, if any, on the basis of this advertisement and intends the material herein as a general description of the services desired by BVCOG.

The proposal should be for a period of one year although BVCOG will have the option of extending the contract for an additional two years.

FORM AND FORMAT: Five (5) copies of the proposal are requested and should be sent by mail, express service or delivered in person within the time frame specified in a sealed envelope marked "PROPOSAL FOR INDEPENDENT SINGLE AUDIT OF FEDERAL AND STATE GRANT AWARDS", addressed to Mr. Tom Wilkinson, Jr., Executive Director, Brazos Valley Council of Governments, P.O. Drawer 4128, Bryan, TX 77805-4128. The proposal should be typed, preferably double spaced - minimum of 10 point font - on 8 1/2 inch by 11 inch paper with all papers sequentially numbered and bound together with binder clips. Proposals should include a letter of transmittal summarizing the proposal and a table of contents.

For further information, please call (979) 595-2800.

TRD-200501770
John Jackson
Director of Finance
Brazos Valley Council of Governments
Filed: May 2, 2005

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 22, 2005, through April 28, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on May 4, 2005. The public comment period for these projects will close at 5:00 p.m. on June 3, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: BOSS Exploration and Production Corporation; Location: The applicant proposes drill a new oil well from an existing surface structure. The project is located in Corpus Christi Bay in State Tract 341, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, Texas. Approximate UTM Coordinates in NAD 27 (meters): Existing surface structure: Zone 14; Easting: 681589; Northing: 3080980. Proposed bottom-hole location: Zone 14; Easting: 681813; Northing: 3080990. Project Description: The applicant proposes drill a new oil well from an existing surface structure to a new bottom-hole location. The new well would involve operation and maintenance of structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of typical marine barges and keyways, and shell and gravel pads. The pad would occupy approximately 32,000 square feet (282 by 112 feet) and consist of approximately 3,800 cubic yards of crushed rock, shell, or washed gravel. Water depth at the proposed site is approximately -8.0 feet MLT. During drilling activities, the applicant proposes to use a 500-foot radius around the drilling rig as a work area. Upon completion of drilling, the applicant proposes to leave in place an 8- by 20-foot well head and platform with a USCG navigational light atop it. CCC Project No.: 05-0237-F1; Type of Application: U.S.A.C.E. permit application #09669(12)/048 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Duncan Oil, Inc.; Location: The well is located on Pleasure Island, between the existing placement area levee and the perimeter road, in wetlands adjacent to the outfall canal that drains into the Port Arthur Canal, Jefferson County, Texas. The well can be located on the U.S.G.S. quadrangle map entitled: Port Arthur South, Texas. Approximate UTM Coordinates in NAD 27 meters: Zone 15; Easting: 409649; Northing: 3296211. The mitigation site is located in an open water area south of the Gulf Intracoastal Waterway, Cameron Parish, Louisiana. The mitigation site can be located on the U.S.G.S. quadrangle map entitled: Cameron Farms, Louisiana. Approximate UTM Coordinates in NAD 27 meters: Zone 15; Easting: 440077; Northing: 3324602. Project Description: The applicant proposes to construct a 400-foot by 175-foot drill site for oil and gas exploration at the M-102427 Well No. 1. The drill site will impact 1.61 acres of estuarine wetlands adjacent to Sabine Lake. There will be 639 cubic yards of excavation and subsequent fill of material required to construct a 3-foot levee around the drill site. Inside the levee, the applicant will place a board mat to serve as a work platform during drilling operations. If the well is productive, the applicant will permanently fill a 0.76-acre area for the production pad, mitigate for the permanent impacts, and restore the 0.85-acre area that will not be used for the production pad. The applicant proposes to mitigate for the permanent impacts by creating 0.5 acre of vegetated terraces and 0.21 acre of vegetated plug. The plug will help restore the hydrology within an existing oilfield access canal. If the well is not productive, the applicant will restore the entire site to pre-project conditions. The site will use a closed loop mud system during drilling. CCC Project No.: 05-0240-F1; Type of Application: U.S.A.C.E. permit application #23721(Rev.) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Azimuth Energy, LLC; Location: The project is located in Texas State Tract 77 in Trinity Bay, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Smith Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 327014; Northing: 3276086. Project Description: The applicant proposes to erect and maintain structures and to perform work to drill and produce the Caravan Well Prospect. This activity consists of the permanent placement of a 20-foot by 10-foot well

platform. During drilling operations the applicant will place 1,493 cubic yards of shell, gravel or crushed rock for the marine barge pad. The 200-foot by 50-foot drilling barge will be temporarily anchored in place with six 3-pile clusters during drilling operations. CCC Project No.: 05-0241-F1; Type of Application: U.S.A.C.E. permit application #23726 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Richy Ethridge; Location: The project is located on Aransas Bay at 2290 North Fulton Beach Road, Rockport, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Rockport, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 693900; Northing: 3110250. Project Description: The applicant proposes to construct 143.6 linear feet of bulkhead below the annual high tide elevation (AHT) and backfill the area behind the bulkhead. The project would be attached to an existing bulkhead and would be approximately 35 feet waterward from the existing shoreline. Approximately 330 cubic yards of material would be placed below the AHT, which would cover approximately 4,304 square feet of jurisdictional area. The purpose of the project is erosion control and land reclamation to facilitate commercial and residential development. Water depth at the site is approximately -1.5 feet mean high tide (MHT). Patchy seagrasses and oyster clumps are present in the vicinity, but not in the immediate project area. As mitigation for proposed project impacts, the applicant proposes to plant 0.15 acre of unvegetated shallow water with shoalgrass. The planting area would be behind a 110-foot-long by 14-foot-wide by 3-foot-high riprap breakwater structure that would be constructed 70 feet waterward (southeast) of the proposed bulkhead. Water depth in the proposed planting site is -1.5 feet MHT. CCC Project No.: 05-0251-F1; Type of Application: U.S.A.C.E. permit application #23496 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Neumin Production Company; Location: The project is located in Lavaca Bay, in State Tract 28, Well No. 1, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Lavaca East, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 740905; Northing: 3167341. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities for the proposed State Tract 28 Well No. 1. The applicant proposes to drill for petroleum resources and install a 2.5-inch O.D. pipelines approximately 3,097 feet in length. The pipelines will be jetted or plowed a minimum of 3 feet below the bay bottom. Approximately 688 cubic yards of sand, silt, and clay will be displaced during pipeline construction. The trench is expected to fill in naturally. CCC Project No.: 05-0252-F1; Type of Application: U.S.A.C.E. permit application #23742 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Neumin Production Company; Location: The project is located in Lavaca Bay, in State Tract 28, Well No. 2, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Lavaca East, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 740905; Northing: 3167341. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities for the proposed State Tract 28 Well No. 2. The applicant proposes to drill for petroleum resources and install two 2.5-inch O.D. pipelines approximately 1,122 feet in length. The pipelines will be jetted or plowed a minimum of 3 feet below the bay bottom. Approximately 498 cubic yards of sand, silt, and clay will be displaced during pipeline construction. The trench is expected to fill in naturally. CCC Project No.: 05-0253-F1; Type of Application: U.S.A.C.E. permit application #23743 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200501787
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: May 3, 2005

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Notice of Funds Availability - Texas Coastal Management Program Grants Program

The Coastal Coordination Council (Council) files this Notice of Funds Availability to announce the availability of §306/§306A federal grant funds under the Texas Coastal Management Program (CMP). The purpose of the CMP is to improve the management of the state's coastal resources and to ensure the long-term ecological and economic productivity of the coast.

A federal award to the state of approximately $2 million in §306/§306A funding is expected in October 2006. The Council, which oversees the implementation of the CMP, passes through 90% of the available §306/§306A funds to eligible entities in the coastal zone to support projects that implement and/or advance the CMP goals and policies.

Eligible Applicants

The following entities are eligible to receive grants under the CMP.

1. Incorporated cities in the coastal zone.

2. County governments in the coastal zone.

3. Texas state agencies.

4. Texas public universities (including colleges and institutions of higher education).

5. Subdivisions of the state with jurisdiction in the coastal zone (e.g., navigation districts, port authorities, river authorities, and Soil and Water Conservation Districts with jurisdiction in the coastal zone).

6. Councils of governments and other regional governmental entities in the coastal zone.

7. The Galveston Bay Estuary Program.

8. The Coastal Bend Bays and Estuaries Program

9. Nonprofit organizations located in Texas that are nominated by an eligible entity in categories 1-8 above. A nomination may take the form of a resolution or letter from a responsible official of an entity in categories 1-8. The nominating entity is not expected to financially or administratively contribute to the management and implementation of the proposed project.

Funding Categories

The Council will accept applications for projects that address any of the following funding categories. The categories are not listed in order of preference.

1. Coastal Natural Hazards Response

2. Critical Areas Enhancement

3. Shoreline Access

4. Water Quality Improvement

5. Waterfront Revitalization and Ecotourism Development

6. Permit Streamlining/Assistance and Governmental Coordination

7. Information and Data Availability

8. Public Education and Outreach

Grant workshops will be held in five coastal cities to help potential applicants through the Guidance and Application Package. Grant workshops are opportunities for potential applicants to learn about the changes made to the grant program and to discuss specific project ideas with staff. Applicants are not required to attend a workshop, but attendance is strongly encouraged.

May 3, 2005, 10:30 a.m., Port Lavaca, City Hall, 202 N. Virginia.

May 11, 2005, 1:00 p.m., Corpus Christi, Texas A&M University - Natural Resources Center, 6300 Ocean Drive, Room 1003.

May 12, 2005, 9:30 a.m., Port Isabel, Port Isabel Housing Authority - Community Center, 100 Hockaday.

May 18, 2005, 10:30 a.m., Port Arthur, City Hall, 444 Fourth Street, 5th Floor.

May 19, 2005, 9:30 a.m., Galveston, Holbrook Annex Building, Hearing Room, 601 Tremont (corner of 23rd and Church).

Current subrecipients of CMP grant funding and their financial staff are also encouraged to attend the grant workshops. Grant workshops will be expanded this year to include project management training to educate subrecipients of the administrative requirements once a contract is executed. Project management training will cover the progress report, invoice, local match, budget amendment, timesheet, and equipment forms.

To obtain a copy of the Guidance and Application Package, please contact Melissa Porter at (512) 475-1393, (800) 998-4GLO or at melissa.porter@glo.state.tx.us. The requirements to receive federal grant funds are outlined in the guidance. Written requests for the Guidance and Application Package should be addressed to: Coastal Coordination Council, CMP Grants Program, c/o Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873. The Guidance and Application Package is also available on the GLO's website at: http://www.glo.state.tx.us/coastal/grants/index.html.

The deadline for receiving draft grant applications is Wednesday, June 22, 2005 by 5:00 p.m. Submission of a draft grant application is optional but is strongly recommended for first-time and/or inexperienced applicants. Written comments will only be provided to applicants who submit draft grant applications by June 22, 2005 by 5:00 p.m. The deadline for receiving final grant applications is Wednesday, October 12, 2005 by 5:00 p.m. Draft grant applications and final grant applications must be mailed (regular, express, or certified) or hand-delivered to: Coastal Coordination Council, CMP Grants Program, c/o Texas General Land Office, Stephen F. Austin Building, Room 617, 1700 North Congress Avenue, Austin, Texas 78701-1495. Facsimiles, electronic mail transmissions, and applications postmarked on or after the due date will not be accepted.

TRD-200501786
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: May 3, 2005

♦ ♦ ♦

Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 2156, §2156.121, Chapter 403, Subchapter B, §403.023, Texas Government Code; and 34 TAC §§17.1 - 17.3, the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP #172f) from qualified financial institutions and companies to provide Automated Credit Card Services to the Comptroller. The successful respondent, if any, will provide automated credit card services to the Comptroller on an as needed basis as described in the RFP.

Contact: Parties interested in submitting a proposal should contact Thomas H. Hill, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 East 17th Street, RM G-24, Austin, Texas 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on May 20, 2005, between 2:00 p.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the RFP available electronically on the Texas Marketplace after Friday, May 20, 2005, 2:00 p.m. (CZT).

Questions and Non-mandatory Letters of Intent: All written inquiries, questions, and Non-mandatory Letters of Intent to propose must be received at 111 East 17th Street, Rm G-24, Austin, Texas 78774 not later than 2:00 p.m. (CZT) on Friday, June 3, 2005. Prospective respondents are encouraged to fax Non-mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to Thomas H. Hill, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered. On or about Friday, June 8, 2005, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice on the issuance of this RFP.

Closing Date: Proposals must be delivered to the Office of the Assistant General Counsel, Contracts, at the location specified above (ROOM G-24) no later than 2:00 p.m. (CZT), on Friday, June 17, 2005. Proposals received in ROOM G-24 after this time and date will not be considered regardless of the reason for the late delivery and receipt. Respondents are encouraged to verify and are solely responsible for verifying timely receipt of proposals in that office (ROOM G-24).

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller shall make the final decision on any contract award or awards resulting from this RFP.

The Comptroller reserves the right, in its sole discretion, to accept or reject any or all proposals submitted. The Comptroller is not obligated to award or execute any contracts on the basis of this notice or the

distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows:

Issuance of RFP--May 20, 2005, 2:00 p.m. CZT;

Non-mandatory Letter of Intent to propose and Questions Due--June 3, 2005, 2:00 p.m. CZT;

Official Responses to Questions posted--June 8, 2005, or as soon thereafter as practical;

Proposals Due--June 17, 2005, 2:00 p.m. CZT;

Contract Execution--August 1, 2005, or as soon thereafter as practical; and

Commencement of Project Activities--August 1, 2005 for any necessary transition in preparation for services to begin September 1, 2005.

TRD-200501802
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: May 4, 2005

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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 Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 05/09/05 - 05/15/05 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 05/09/05 - 05/15/05 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-200501778
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 3, 2005

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Texas Education Agency

Request for eGrant Applications Concerning Correspondence Coursework for Migrant Secondary Students, 2005-2006

Eligible Applicants. The Texas Education Agency (TEA) is requesting eGrant applications under Standard Application System (SAS) #MSCCAA06 from colleges and universities in Texas with credit-granting high school distance learning/correspondence coursework that meets Texas graduation plan requirements. Courses approved by the TEA must already be in place. Eligible applicants must demonstrate a full understanding of the needs of migrant secondary students in Texas and must demonstrate the capacity and ability to implement, operate, and manage the project on a statewide and nationwide basis.

Description. The purpose of the Correspondence Coursework Program for Migrant Secondary Students is to provide alternative ways for migrant secondary students to earn credits toward high school graduation. The applicant selected for funding will work on an intrastate and interstate basis (with migrant projects in Texas and up to 48 different states that receive Texas migrant students) to assign correspondence coursework that meets individual students' graduation plan requirements, to operate a toll-free 800 telephone number to provide bilingual direct instructional support to students, to implement strategies resulting in a correspondence course completion rate of at least 75 percent, to offer a variety of grading options for the coursework, to issue credit, to inform the appropriate Texas or out-of-state school district/migrant education project of the credit granted, to record information on the state's migrant student database, to provide preparation materials for the exit level Texas Assessment of Knowledge and Skills, to implement promotional activities resulting in at least 1,100 migrant student enrollments, to maintain communication with participating migrant students and educators inside and outside Texas, and to provide a recognition activity for participating students who complete coursework.

Dates of Project. The Correspondence Coursework Program for Migrant Secondary Students will be implemented during the 2005-2006 school year. Applicants should plan for a starting date of no earlier than September 1, 2005, and an ending date of no later than August 31, 2006.

Project Amount. Funding will be provided for one statewide project. The project will receive a maximum of $350,000 for the 2005-2006 school year. This project is funded 100 percent from Migrant Education Program federal funds.

Selection Criteria. Applications will be scored based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the SAS. 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 SAS to be considered for funding. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the SAS and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this SAS. This SAS does not commit TEA to pay any costs before an application is approved. The issuance of this SAS does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Obtaining Access to TEA's eGrants. The Correspondence Coursework Program for Migrant Secondary Students grant application is available only through TEA's eGrants and may not be obtained or submitted by any other means. The eGrant application will be available in eGrants on or about May 13, 2005. To apply for access to eGrants, go to http://www.tea.state.tx.us/grant. Under the "eGrants Toolbox," select "External Users: Apply for eGrants Logon." Complete the form as instructed, obtain the required signatures, and send it to the TEA contact listed on the form.

Further Information. For clarifying information about the eGrant SAS, contact Donnell Bilsky, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269.

Deadline for Receipt of eGrant Applications. Applications must be received by the Texas Education Agency by 5:00 p.m. (Central Time), June 30, 2005, to be considered for funding.

TRD-200501792

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: May 4, 2005

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Request for eGrant Applications Concerning the Summer Work Study Program for Migrant Secondary Students, 2005-2006

Eligible Applicants. The Texas Education Agency (TEA) is requesting eGrant applications under Standard Application System (SAS) #MSWSAA06 from colleges and universities in Texas. Eligible applicants must demonstrate a full understanding of the needs of migrant secondary students in Texas and must demonstrate the capacity and ability to implement, operate, and manage the project on a statewide basis.

Description. The purpose of the Summer Work Study Program for Migrant Secondary Students is to provide, at the minimum, 100 eligible migrant students with a six-week college or university work study experience by providing them dormitory housing on campus; by paying them a minimum wage stipend, paid by a partnership entity, for meaningful work experience in an office setting; and by providing participating students alternative ways to earn credits toward high school graduation in a college or university setting.

Dates of Project. The Summer Work Study Program for Migrant Secondary Students will be implemented during the 2005-2006 school year. Applicants should plan for a starting date of no earlier than September 1, 2005, and an ending date of no later than August 31, 2006.

Project Amount. Funding will be provided for one statewide project. The project will receive a maximum of $100,000 for the 2005-2006 school year. This project is funded 100 percent from Migrant Education Program federal funds.

Selection Criteria. Applications will be scored based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the SAS. 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 SAS to be considered for funding. Applicants must partner with an entity that has the capacity to provide funding to pay students a minimum wage for participating in a meaningful work experience in an office setting. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the SAS and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this SAS. This SAS does not commit TEA to pay any costs before an application is approved. The issuance of this SAS does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Obtaining Access to TEA's eGrants. The Summer Work Study Program for Migrant Secondary Students grant application is available only through TEA's eGrants and may not be obtained or submitted by any other means. The eGrant application will be available in eGrants on or about May 13, 2005. To apply for access to eGrants, go to http://www.tea.state.tx.us/grant. Under the "eGrants Toolbox," select "External Users: Apply for eGrants Logon." Complete the form as instructed, obtain the required signatures, and send it to the TEA contact listed on the form.

Further Information. For clarifying information about the eGrant SAS, contact Donnell Bilsky, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269.

Deadline for Receipt of eGrant Applications. Applications must be received by the Texas Education Agency by 5:00 p.m. (Central Time), June 30, 2005, to be considered for funding.

TRD-200501791
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: May 4, 2005

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Request for eGrant Applications Concerning the Texas Migrant Interstate Program, 2005-2006

Eligible Applicants. The Texas Education Agency (TEA) is requesting eGrant applications under Standard Application System (SAS) #TMIPAA06 from public school districts, including open-enrollment charter schools; education service centers; and colleges and universities in Texas. Eligible applicants must demonstrate a full understanding of the needs of migrant secondary students in Texas and must demonstrate the capacity and ability to implement, operate, and manage the project on a statewide and nationwide basis.

Description. The purpose of the Texas Migrant Interstate Program (TMIP) is to provide direct services and technical assistance related to intrastate and interstate coordination to Texas migrant students and their families and migrant education program staff within and outside Texas. To assist in meeting the needs of this population, which is most at risk of not meeting the state's academic content and achievement standards, the TMIP will coordinate with states that receive this target population by offering certified bilingual counselors to work with migrant students, home-based district personnel, migrant parents, and receiving state migrant education program personnel on issues such as appropriate student placement, credit accrual, and state achievement testing.

Dates of Project. The TMIP will be implemented during the 2005-2006 school year. Applicants should plan for a starting date of no earlier than September 1, 2005, and an ending date of no later than August 31, 2006.

Project Amount. Funding will be provided for one statewide project. The project will receive a maximum of $500,000 for the 2005-2006 school year. This project is funded 100 percent from Migrant Education Program federal funds.

Selection Criteria. Applications will be scored based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the SAS. 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 SAS to be considered for funding. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the SAS and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this SAS. This SAS does not commit TEA to pay any costs before an application is approved. The issuance of this SAS does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Obtaining Access to TEA's eGrants. The TMIP grant application is available only through TEA's eGrants and may not be obtained or submitted by any other means. The eGrant application will be available in eGrants on or about May 13, 2005. To apply for access to eGrants, go to http://www.tea.state.tx.us/grant. Under the "eGrants Toolbox," select "External Users: Apply for eGrants Logon." Complete the form as instructed, obtain the required signatures, and send it to the TEA contact listed on the form.

Further Information. For clarifying information about the eGrant SAS, contact Donnell Bilsky, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269.

Deadline for Receipt of eGrant Applications. Applications must be received by the Texas Education Agency by 5:00 p.m. (Central Time), June 30, 2005, to be considered for funding.

TRD-200501800
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: May 4, 2005

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Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding El Hamad Enterprises, Inc. dba Habeeb Food Store, Docket No. 2002-0947-PST-E on April 19, 2005 assessing $4,400 in administrative penalties with $880 deferred.

Information concerning any aspect of this order may be obtained by contacting Barbara Watson, Staff Attorney at (512) 239-2044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Joe Gutierrez dba Jose Gutierrez Trucking, Docket No. 2002-1401-MSW-E on April 19, 2005 assessing $3,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Suntex Fuller Corporation dba Fuller Utilities Corporation, Docket No. 2002-1057-MWD-E on April 19, 2005 assessing $26,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deborah Bynum, Staff Attorney at (512) 239-1976, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bellaire Food Store, Inc. dba Shop N Go No. 2, Docket No. 2003-0763-PST-E on April 19, 2005 assessing $1,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sarah Utley, Staff Attorney at (512) 239-0575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Domingo Garza dba Mexico Motors, Docket No. 2003-1238-WQ-E on April 19, 2005 assessing $9450 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United Petroleum Transports, Inc., Docket No. 2003-0552-PST-E on April 19, 2005 assessing $7,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Nash Petty, Staff Attorney at (512) 239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mohammad Mohiuddin dba Palestine Mini Mart, Docket No. 2003-0868-PST-E on April 19, 2005 assessing $3,270 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brazos Valley Solid Waste Management Agency, Docket No. 2003-1586-AIR-E on April 19, 2005 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at (512) 239-1670, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sok Sun Yang dba Stop By Mart, Docket No. 2003-0336-PST-E on April 19, 2005 assessing $5,600 in administrative penalties with $1,120 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael 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 Crystal Clear Water Supply Corporation, Docket No. 2003-0620-PWS-E on April 19, 2005 assessing $1,060 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Satina, Inc. dba Donna's Food Market, Docket No. 2003-1117-PST-E on April 19, 2005 assessing $18,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lindsay Andrus, Staff Attorney at (512) 239-4761, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Texas God Bless, Inc. dba Lucky Stop Grocery, Docket No. 2003-0394-PST-E on April 19, 2005 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sarah Utley, Staff Attorney at (512) 239-0575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Lee and Kathy Byrd, Docket No. 2003-1479-MSW-E on April 19, 2005 assessing $5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sarah Jane Utley, Staff Attorney at (512) 239-0575, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Crawdad's, Inc. dba Crawdad's 4 Kountze, Docket No. 2003-1141-PST-E on April 19, 2005 assessing $3,750 in administrative penalties with $750 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 Matagorda County Water Control and Improvement District No. 5, Docket No. 2003-0061-MWD-E on April 19, 2005 assessing $5,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel 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 Texas Department of Criminal Justice, Docket No. 2003-0066-MWD-E on April 19, 2005 assessing $58,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Mac Vilas, Enforcement Coordinator at (512) 239-2557, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nasir Mughal, Docket No. 2003-1332-PST-E on April 19, 2005 assessing $4,280 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lindsay Andrus, Staff Attorney at (512) 239-4761, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Ansh III, L.P. dba Circle Q Food Store #1, Docket No. 2003-1001-PST-E on April 19, 2005 assessing $1,090 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Motiva Enterprises, LLC, Docket No. 2003-1186-AIR-E on April 19, 2005 assessing $656,397 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laura Clark, Enforcement Coordinator at (409) 899-8760, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Gerald Mayfield, Docket No. 2003-1534-OSS-E on April 19, 2005 assessing $275 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Watson, Staff Attorney at (512) 239-2044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Anna, Docket No. 2003-0173-MWD-E on April 19, 2005 assessing $7,200 in administrative penalties.

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 Alvin Massington, Docket No. 2003-0491-MSW-E on April 19, 2005 assessing $5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Memphis, Docket No. 2003-1203-MWD-E on April 19, 2005 assessing $7,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding INAARA Group, Inc. dba City Star Texaco, Docket No. 2004-0147-PST-E on April 19, 2005 assessing $3,120 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Watson, Staff Attorney at (512) 239-2044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Aransas Pass, Docket No. 2004-0335-MWD-E on April 19, 2005 assessing $9,300 in administrative penalties.

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 Westfield Mobile Home Community, Ltd. dba Westfield Mobile Home Park, Docket No. 2004-0363-MWD-E on April 19, 2005 assessing $4,025 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Angelina County, Docket No. 2004-0365-AIR-E on April 19, 2005 assessing $510 in administrative penalties with $102 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Waste Management of Texas, Inc., Docket No. 2004-0384-MLM-E on April 19, 2005 assessing $3,475 in administrative penalties with $695 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari Bing, Enforcement Coordinator at (512) 239-1445, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Al-Ilam Enterprises, Inc. dba Happy Chap Market 1, Docket No. 2004-0416-PST-E on April 19, 2005 assessing $15,950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sarah Utley, Staff Attorney at (512) 239-0575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Magellan Terminals Holdings L.P., Docket No. 2004-0487-AIR-E on April 19, 2005 assessing $20,400 in administrative penalties.

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 Oasis Car Wash, Inc. dba Magic Car Wash & Lube Center, Docket No. 2004-0636-PST-E on April 19, 2005 assessing $5,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at (512) 239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hanover Compression Limited Partnership, Docket No. 2004-0646-AIR-E on April 19, 2005 assessing $46,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kensley Greuter, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Varco, L.P., Docket No. 2004-0700-AIR-E on April 19, 2005 assessing $15,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at (903) 535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Northside ISD, Docket No. 2004-0734-EAQ-E on April 19, 2005 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Leila Pezeshki, Enforcement Coordinator at (210) 403-4080, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lomax, Inc. dba Lomax Oil Co., Docket No. 2004-0763-PST-E on April 19, 2005 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Edward A. Fenoglio dba Oak Shores Water System, Docket No. 2004-0766-PWS-E on April 19, 2005 assessing $1,102 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Van Soest, Enforcement Coordinator at (512) 239-0468, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Pipe Line Company, Docket No. 2004-0767-AIR-E on April 19, 2005 assessing $9,900 in administrative penalties with $1,980 deferred.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gregorio Gaytan, Docket No. 2004-0779-OSS-E on April 19, 2005 assessing $225 in administrative penalties with $45 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 Red River Authority of Texas dba Arrowhead Lake Lots Water System, Docket No. 2004-0863-PWS-E on April 19, 2005 assessing $510 in administrative penalties with $102 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 City of Blanco, Docket No. 2004-1010-PWS-E on April 19, 2005 assessing $250 in administrative penalties with $50 deferred.

Information concerning any aspect of this order may be obtained by contacting Mauricio Olaya, Enforcement Coordinator at (915) 834-4967, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enbridge Pipelines East Texas L.P., Docket No. 2004-1109-AIR-E on April 19, 2005 assessing $6,450 in administrative penalties with $1,290 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M. R. Calhoun Enterprises, Inc. dba Country Stop, Docket No. 2004-1185-PST-E on April 19, 2005 assessing $800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cari Bing, Enforcement Coordinator at (512) 239-1445, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Salem Khalil dba Seven Seas Grocery, Docket No. 2004-1189-PST-E on April 19, 2005 assessing $2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Chris Friesenhahn, 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 SJKR, Inc. dba Steve's Texaco, Docket No. 2004-1206-PST-E on April 19, 2005 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-5111, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200501793

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 4, 2005

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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. 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 **June 13, 2005**. 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 a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or 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. 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 June 13, 2005**. 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, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: David Watson dba Gew Chevron; DOCKET NUMBER: 2004-1429-PST-E; TCEQ ID NUMBERS: 49266 and RN102458387; LOCATION: 400 Miller, Anahuac, Chambers County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 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 underground storage tanks (USTs); and 30 TAC §§334.22(a), 334.128(a), 12.1, and TWC, §5.702, by failing to pay outstanding fees; PENALTY: $3,150; STAFF ATTORNEY: Ann Skowronski, Litigation Division, MC 175, (512) 239-2497; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Gene Gilley; DOCKET NUMBER: 2004-1273-MSW-E; TCEQ ID NUMBER: RN103948105; LOCATION: 1253 Farm-to-Market Road 3266, Palestine, Anderson County, Texas; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §330.5(c), by failing to properly dispose of approximately 550 scrap tires at an authorized facility; PENALTY: $2,100; STAFF ATTORNEY: Ann Skowronski, Litigation Division, MC 175, (512) 239-2497; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(3) COMPANY: John Grohman; DOCKET NUMBER: 2004-0564-MSW-E; TCEQ ID NUMBER: RN102920493; LOCATION: adjacent to County Road 334, 1/4 mile south of State Highway 153, Runnels County, Texas; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §330.5(a), by causing, suffering, allowing, or permitting the collection, storage, or disposal of municipal solid waste on non-permitted property; PENALTY: $7,700; STAFF ATTORNEY: Ann Skowronski, Litigation Division, MC 175, (512) 239-2497; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: Mehmood Lakhani dba C-Store; DOCKET NUMBER: 2002-0751-PST-E; TCEQ ID NUMBERS: 0021877 and RN102360716; LOCATION: 110 North Story Road, Irving, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(7)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II records on site at the station and available for review; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to conduct an annual pressure decay test on the Stage II vapor recovery system; 30 TAC §115.242(3)(A), (B), and (4) and THSC, §382.085(b), by failing to ensure that no gasoline leaks, as detected by sampling, sight, sound, or smell, existed anywhere in the dispensing equipment and failing to maintain the Stage II vapor recovery system in proper operating condition; 30 TAC §334.7(d)(3), by failing to provide amended registration for any change or additional information regarding the USTs; 30 TAC §334.8(c)(4)(B) and TWC, §26.346(a), by failing to ensure that the TCEQ UST and self-certification form was submitted to the commission in a timely manner; 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to install a method of corrosion protection for the UST system; 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 the petroleum USTs; 30 TAC §334.50(b)(1)(A) and (b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the product piping associated with the UST system and failing to ensure that all tanks were monitored for releases at a frequency of at least once per month; 30 TAC §334.10(b)(1)(B), by failing to provide petroleum storage tank delivery records upon request by the TCEQ; and 30 TAC §334.22(d) and TWC, §26.358(d), by failing to pay outstanding UST fees; PENALTY: $17,340; STAFF ATTORNEY: Lindsay Andrus, Litigation Division, MC 175, (512) 239-4761; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Oldmoc, Inc. dba Time Saver Grocery; DOCKET NUMBER: 2004-0536-PST-E; TCEQ ID NUMBERS: 40316 and RN101790608; LOCATION: 13712 Walters Road, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §§334.74(2)(A), 334.77(b), 334.78, 334.80(a)(3) and (4), and TWC, §26.121(a), by failing to prevent an unauthorized discharge of hydrocarbons into, or adjacent to, waters of the state, and failing to conduct release investigation and confirmation steps, the initial abatement steps, site assessment, and corrective action activities; and 30 TAC §334.72(1) and §334.76(1), by failing to report a release to the agency within 24 hours of discovery; PENALTY: $13,500; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Osborn Stone Company, Inc. dba A & A Stone Company; DOCKET NUMBER: 2004-1134-WQ-E; TCEQ ID NUMBER: RN104317904; LOCATION: 6101 Thomas Court, Tolar, Hood County, Texas; TYPE OF FACILITY: mining and quarrying; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity into water in the state; PENALTY: $39,000; STAFF ATTORNEY: Ann Skowronski, Litigation Division, MC 175, (512) 239-2497; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Silas Frank Clark dba Clark's Backhoe Service; DOCKET NUMBER: 2003-0612-OSI-E; TCEQ ID NUMBER: RN102792587; LOCATION: 201 Live Oak Street, Melvin, McCulloch County, Texas; TYPE OF FACILITY: on-site sewage facility (OSSF) system; RULES VIOLATED: 30 TAC §30.231(b), §285.50(b), and THSC, §366.071(a), by failing to hold a current installer license prior to constructing any part of the OSSF at the site; 30 TAC §285.3(b)(1) and THSC, §366.051(c), by failing to obtain authorization to construct from the permitting authority prior to constructing the OSSF at the site; 30 TAC §30.5(b), §285.61(1) and (3), and THSC, §366.071(a), by failing to hold a current installer license when representing to the public and to a TCEQ investigator that such license was held and failing to hold a current installer license when representing that services requiring an OSSF license could be performed; and 30 TAC §285.61(6) and THSC, §366.004, by failing to construct an OSSF to meet the minimum required criteria; PENALTY: $1,375; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(8) COMPANY: Tassie Bailey, III aka Timothy Bailey dba Bailey Garbage Service; DOCKET NUMBER: 2004-1432-MLM-E; TCEQ ID NUMBERS: MQ0628R and RN100881986; LOCATION: 22165 Bailey Grove Road, Montgomery, Montgomery County, Texas; TYPE OF FACILITY: garbage collection and disposal service; RULES VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by conducting outdoor burning of garbage; and 30 TAC §330.5(c), by disposing of municipal solid waste without authorization; PENALTY: $1,050; STAFF ATTORNEY: Ann Skowronski, Litigation Division, MC 175, (512) 239-2497; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Tsuo-Min Chi dba A-Sunnys; DOCKET NUMBER: 2004-1224-PST-E; TCEQ ID NUMBERS: 43969 and RN102281268; LOCATION: 6240 Synott Road, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 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; PENALTY: $2,100; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Virginia Setia dba Time Out Food Store; DOCKET NUMBER: 2004-0316-PST-E; TCEQ ID NUMBERS: 45464 and RN102852704; LOCATION: 12800 1/2 Woodforest Boulevard, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to provide proper overfill prevention for the UST system; 30 TAC §334.49(c)(2)(C) and (4)(C) and TWC, §26.3475(d), by failing to regularly inspect the cathodic protection system at least every 60 days; 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; 30 TAC §334.48(c), §334.50(d)(1)(B)(ii), and TWC, §26.3475(c)(1), by failing to conduct daily inventory control and monthly reconciliation of inventory control records; 30 TAC §334.50(b)(2)(A)(i) and TWC, §26.3475(a), by failing to equip pressurized piping on the UST system with a proper leak detection system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to perform and document monthly monitoring of the USTs for releases; PENALTY: $34,650; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200501783
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 3, 2005

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Notice of Opportunity to Comment on Settlement Agreements 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 **June 13, 2005**. 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 the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within 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. 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 June 13, 2005**. 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 should be submitted to the commission in **writing**.

(1) COMPANY: Buckley Oil Company; DOCKET NUMBER: 2004-0012-MLM-E; TCEQ ID NUMBERS: 33423 and RN100536481; LOCATION: 1809 and 1803 Rock Island Street, Dallas, Dallas County, Texas; TYPE OF FACILITY: chemical storage and distribution; RULES VIOLATED: 30 TAC §335.4 and TWC, §26.121(c), by failing to prevent spills which contaminated the soil along the west property fence line and shallow groundwater; 30

TAC §335.62 and §335.503, by failing to conduct hazardous waste determinations for five waste streams generated at the facility; 30 TAC §335.6(b), by failing to update its notice of registration within 90 days of becoming aware of additional information; and 30 TAC §305.42(a) and TWC, §26.121(a), by failing to have authorization to discharge contaminated stormwater into waters in the state; PENALTY: $23,490; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: C.L. Hall dba Southfork Dairy and Douglas Hall; DOCKET NUMBER: 2003-0523-AGR-E; TCEQ ID NUMBER: RN101519841; LOCATION: County Road 4410 at the intersection of Farm-to-Market Road (FM) 514, near Emory, Rains County, Texas; TYPE OF FACILITY: milk production operation; RULES VIOLATED: 30 TAC §321.31(a) and TWC, §26.121(a)(1), by failing to prevent the discharge of waste or wastewater from the animal feeding operations into or adjacent to waters in the state; 30 TAC §321.39(f)(18), by failing to maintain the liner of the lagoons to inhibit infiltration of wastewater; 30 TAC §321.39(f)(11), by failing to maintain the proper freeboard; 30 TAC §321.39(f)(10)(D), by failing to stabilize the embankment walls of the lagoon to prevent erosion or deterioration; 30 TAC §321.40(11), by failing to properly dispose of dead animals; 30 TAC §321.39(f)(1)(C), by failing to list a description of potential pollutants, which included a list of any specific spills of these materials at the facility; 30 TAC §321.41(c), by failing to document incidents such as spills, other discharges, or nuisance conditions, along with other information describing the pollution potential and quality of the incident in the pollution prevention plan records, and failing to maintain the records on site for at least three years; 30 TAC §321.31(a), §321.39(10)(A), and TWC, §26.121(a)(1), by failing to prohibit the discharge or drainage of irrigated wastewater where it would result in the discharge of pollutants into, or adjacent to, waters in the state; 30 TAC §321.39(f)(19)(D), by failing to manage irrigation practices so as to minimize or reduce ponding and puddling of wastewater on-site and pollution of the waters in the state; and 30 TAC §321.42(a), by failing to notify the executive director, in writing, within 14 days after a discharge to waters in the state; PENALTY: $10,140; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(3) COMPANY: Charles Engle dba Fabens Oil Company dba Freeway Exxon; DOCKET NUMBER: 2004-1553-PST-E; TCEQ ID NUMBERS: 22318 and RN100819259; LOCATION: 7450 Gateway Boulevard East, El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the underground storage tank (UST) system regardless of the chosen method of release detection; 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii), and TWC, §26.3475(c)(1), by failing to reconcile inventory control records; 30 TAC §334.50(b)(1)(A), (d)(4)(A)(ii), and TWC, §26.3475(c)(1), by failing to put the automatic tank gauge into test mode once per month; 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III) and TWC, §26.3475(c)(1), by failing to have the line leak detectors tested 12 months after the previous annual test; and 30 TAC §334.10(b) and TWC, §26.3475(c)(1), by failing to maintain records to demonstrate compliance with corrosion protection testing requirements; PENALTY: $4,920; STAFF ATTORNEY: Courtney St. Julian, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(4) COMPANY: Gulf Reduction Corporation; DOCKET NUMBER: 2004-0421-IHW-E; TCEQ ID NUMBER: RN102547064; LOCATION: 310 North Greenwood, Harris County, Texas; TYPE OF FACILITY: manufacturer of various zinc products; RULES VIOLATED: 30 TAC §335.62, by failing to perform waste determinations and waste classifications on waste generated at the facility; 30 TAC §335.2, §335.43(a), and 40 Code of Federal Regulations (CFR) §270.1(C) and §270.10(g), by failing to obtain a permit before storing and processing hazardous waste on site; 40 CFR §261.4(a)(20)(ii) and (a)(21)(i)(A), by failing to meet the zinc fertilizer exclusion notification, management, and reporting requirements; 30 TAC §335.431(c) and 40 CFR §268.7(a), by failing to meet land disposal requirements for material received, processed, and shipped for use as a zinc supplement in fertilizer; and 30 TAC §335.6(c), by failing to comply with notice of registration requirements for appropriate generator status, waste streams, waste management units, and recycling activities for, but not limited to, crushed wet skims, used filter bags, and cartridge filters, spent solvent from parts washer, Sweco/Tramp screen trash, EF3rd run material, no value labeled drums, non-hazardous waste labeled drums moved to the wet skim processing area, floor sweepings, and plant trash; PENALTY: $8,000; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Jackie W. Davis, Individually, and Jackie W. Davis, Executor, Estate of Ola Faye Davis, Deceased; DOCKET NUMBER: 2004-1291-MSW-E; TCEQ ID NUMBERS: 455040150 and RN104256136; LOCATION: United States (US) Highway 377 and south of US Highway 377, Denton, Denton County, Texas; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §330.5(c) and §328.23(b), by failing to prevent the unauthorized disposal of waste and failing to prevent the disposal of used oil filters at the site; 30 TAC §335.62 and 40 CFR §262.11(c), by failing to perform a hazardous waste determination on solid waste generated; and 30 TAC §324.6, 40 CFR §279.22(d)(3), and Texas Health and Safety Code (THSC), §371.041, by failing to clean up used oil upon detection of a release to the environment; PENALTY: $13,625; STAFF ATTORNEY: Barbara J. Watson, Litigation Division, MC 175, (512) 239-2044; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Jose Fernandez; DOCKET NUMBER: 2003-0106-MLM-E; TCEQ ID NUMBER: RN102004348; LOCATION: on an unnamed road, approximately 0.5 miles south of Rancho Toluca Road, approximately 0.5 miles east of the intersection of Rancho Toluca Road and FM 1015, Progreso, Hidalgo County, Texas; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §330.5(a), by failing to prevent the disposal of municipal solid waste at an unauthorized disposal site; and 30 TAC §111.201 and THSC, §382.085(b), by failing to prevent any outdoor burning within the State of Texas, except as provided by this subchapter, or by order, or permits of the commission; PENALTY: $2,100; STAFF ATTORNEY: Ashley Kever, Litigation Division, MC 175, (512) 239-2987; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: Judy Davis dba Judy's Kountry Kitchen; DOCKET NUMBER: 2004-1480-PST-E; TCEQ ID NUMBERS: 62890 and RN102260767; LOCATION: Highway 175 and FM 315, Poynor, Henderson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 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 §334.21,

by failing to pay outstanding UST fees; PENALTY: $3,150; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(8) COMPANY: La Moderna, Inc.; DOCKET NUMBER: 2003-1355-PST-E; TCEQ ID NUMBERS: 31695, EE1147F, and RN100820703; LOCATION: 14600 Montana Avenue, El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(d)(9) and (d)(1)(B)(ii), by failing to conduct proper release detection and effective inventory control procedures; 30 TAC §334.49(c)(2)(C) and TWC, §26.3475(d), by failing to inspect the rectifier and other components at least once every 60 days; 30 TAC §334.10(b)(2)(B)(vii), by failing to maintain all records and make the records available during the inspection; and 30 TAC §114.100(a) and THSC, §382.085(b), by selling gasoline for use as a motor fuel in El Paso County with an oxygen content lower than 2.7% by weight; PENALTY: $17,100; STAFF ATTORNEY: Barbara L. Klein, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(9) COMPANY: Pilot Industries of Texas, Inc.; DOCKET NUMBER: 2004-1646-AIR-E; TCEQ ID NUMBERS: HG0569B, 2427, and RN100214618; LOCATION: 11623 North Houston Rosslyn Road, Houston, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(2), 115.352(4), 116.115(c), 40 CFR §61.112(a), §61.242-6(a), THSC, §382.085(b), and TCEQ Permit Number 2427, Special Conditions Numbers 2 and 7E, by failing to equip open-ended valves containing a volatile hazardous air pollutant (VHAP) with a cap, plug, blind, or second valve; 30 TAC §101.20(2), §116.115(b) and (c), 40 CFR §61.112(a), §61.246(e)(4)(iii), THSC, §382.085(b), and TCEQ Air Permit Number 2427, Special Condition Numbers 2 and 7K, by failing to maintain records of fugitive monitoring instrument readings for all components; and 30 TAC §101.201(1) and (2), §116.115(c), 40 CFR §§60.485(a), 61.112(a), 61.245(b)(1), THSC, §382.085(b), and TCEQ Air Permit Number 2427, Special Condition Numbers 2 and 7F, by failing to use the calibration gas to calibrate the leak detection instrument used to monitor components in VHAP and volatile organic compound service as specified by permit; PENALTY: $3,330; STAFF ATTORNEY: Mary Clair Lyons, Litigation Division, MC 175, (512) 239-6996; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: RFK Enterprises, Inc. dba Food Spot #5; DOCKET NUMBER: 2002-1121-PST-E; TCEQ ID NUMBER: 00445519 and RN101809184; LOCATION: 234 South Main, Vidor, Orange County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(5) and (7) and THSC, §382.085(b), by failing to maintain the results of testing conducted at the station to maintain all vapor recovery records; 30 TAC §115.245(3), and THSC, §382.085(b), by failing to successfully perform five-year testing to verify proper operation of the Stage II system; and 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the vapor recovery system free from any defects that would substantially impair the system in reducing refueling vapors; PENALTY: $7,260; STAFF ATTORNEY: Lindsay Andrus, Litigation Division, MC 175, (512) 239-4761; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: Tri-Star Aviation, Inc.; DOCKET NUMBER: 2004-0590-PST-E; TCEQ ID NUMBERS: 57063 and RN101832699; LOCATION: 10615 West Main Street, La Porte, Harris County, Texas; TYPE OF FACILITY: airport with retail sales of aviation gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every month; and 30 TAC §334.10(b), by failing to develop and maintain records for the UST system; PENALTY: $2,340; STAFF ATTORNEY: Barbara J. Watson, Litigation Division, MC 175, (512) 239-2044; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: YJK Inc. dba Granger Food Mart; DOCKET NUMBER: 2003-0257-PST-E; TCEQ ID NUMBERS: 0068960 and RN101375889; LOCATION: 309 South Commerce Street, Granger, Williamson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c), by failing to reconcile the inventory control records on a monthly basis; 30 TAC §334.50(a)(1)(A) and TWC, §26.2475(c), by failing to provide a method of release detection; and 30 TAC §37.815(a) and (b), by failing to demonstrate financial responsibility 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; PENALTY: $4,800; STAFF ATTORNEY: Ann Skowronski, Litigation Division, MC 175, (512) 239-2497; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

TRD-200501784
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 3, 2005

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 39

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony concerning proposed amendments to 30 TAC Chapter 39, Public Notice, Subchapter H, Applicability and General Provisions, §§39.405, 39.418, and 39.419; Subchapter I, Public Notice of Solid Waste Applications, §39.503; Subchapter K, Public Notice of Air Quality Applications, §39.603 and §39.604; and Subchapter L, Public Notice of Injection Well and Other Specific Authorizations, §39.651.

The proposed amendments would extend alternative language notice requirements in the air quality program to waste and water quality authorizations, which publish Notices of Receipt of Application and Intent to Obtain a Permit (NORI) and Notices of Application and Preliminary Decision (NAPD) under Chapter 39. Specifically, when the applicant is required to publish a NORI or NAPD, publication would also be required in the applicable alternative language if either the elementary or middle school nearest to the facility provides a bilingual education program under the applicable provision of the Texas Education Code and certain criteria are met.

A public hearing on this proposal will be held in Austin on June 10, 2005, at 10:00 a.m. at the Texas Commission on Environmental Quality in Building F, Room 2210, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Durón, Office of Legal Services at (512) 239-6087. Requests should be made as far in advance as possible.

Comments may be submitted to Patricia Durón, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711- 3087, or by fax to (512) 239-4808. All comments should reference Rule Project Number 2005-014-039-LS, and must be received by 5:00 p.m., June 13, 2005. For further information, please contact Les Trobman, Environmental Law Division at (512) 239-6056 or Kerrie Qualtrough, Environmental Law Division at (512) 239-3990.

TRD-200501758
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 29, 2005

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Notice of Water Quality Applications

The following notices were issued during the period of April 27, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, 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 THIS NOTICE.

CITY OF ALICE has applied for a renewal of TPDES Permit No. 10536-002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,600,000 gallons per day. The facility is located approximately 4,800 feet southeast of the intersection of Farm-to-Market Road 665 and Farm-to-Market Road 1931 on the south bank of Lattas Creek in Jim Wells County, Texas.

CITY OF AUSTIN DBA AUSTIN ENERGY which operates the Decker Creek Power Plant, a steam electric generating station, has applied for a renewal of TPDES Permit No. WQ0001887000, which authorizes the discharge of once through cooling water and previously monitored effluents (low volume wastewater, metal cleaning wastes, and storm water) at a daily average flow not to exceed 725,000,000 gallons per day via Outfall 001, and storm water on an intermittent and flow variable basis via Outfall 002. The facility is located 8003 Decker Lane, on the west shore of Walter E. Long Lake, approximately four miles east of the intersection of U.S. Highway 290 and U.S. Highway 183 in the City of Austin, Travis County, Texas.

CITY OF MERCEDES for a renewal of TPDES Permit No. 10347-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,300,000 gallons per day. The facility is located on both sides of and adjacent to Mile 1/2 East Road immediately south of its intersection with North 8 Mile Road in Hidalgo County, Texas.

CITY OF WESLACO has applied for a renewal of TPDES Permit No. 10619-001, which authorizes the discharge of treated filter back wash water at a daily average flow not to exceed 250,000 gallons per day. The facility is located at the southeast intersection of Farm-to-Market Road 88 and Mile 9 North Road in Hidalgo County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE.

CITY OF HOUSTON has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to authorize an additional interim phase at an annual average flow not to exceed 18,000,000 gallons per day with an average discharge during any two-hour period (2-Hr peak) not to exceed 56,944 gallons per minute. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 21,000,000 gallons per day. The facility is located approximately 0.25 mile west of the confluence of Cole Creek and Whiteoak Bayou and approximately 1.5 miles northeast of the intersection of U.S. Highway 290 and Antoine Drive in the City of Houston in Harris County, Texas.

TRD-200501794
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 4, 2005

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Golden Crescent Workforce Development Board

Public Notice

The Texas Workforce Solutions of the Golden Crescent announces the availability of their Program Year 2005/Fiscal Year 2006 Integrated Plan Modification for public comment beginning May 13 - June 13, 2005. The plan can be viewed at the TWS at one of the following locations:

* http://www.gcworkforce.org

* 120 S. Main #501, Victoria, TX

* 1800 S. Highway 35 #H, Pt. Lavaca, TX

* 1137 N. Esplanade, Cuero, TX

* 329 W. Franklin, Goliad, TX

* 427 St. George #101, Gonzales, TX

* 903 S. Wells, Edna, TX

* 727 S. Promenade, Hallettsville, TX

Programs provided by the TWS are Career Center services for the general public, including at a minimum Wagner-Peyser Employment Services; Workforce Investment Act services for adults, dislocated workers, and youth; Temporary Assistance for Needy Families Choices Program; Food Stamp Employment & Training; Project Reintegration of Offenders; TAA/NAFTA/TAA; Child Care Services; Veterans Employment & Training; and Communities In Schools programs for an operation period of October 1, 2005 through September 30, 2006. Eligible program beneficiaries who reside in Calhoun, DeWitt, Goliad, Gonzales, Jackson, Lavaca, and Victoria Counties may be provided appropriate employment and educational services through these programs.

All persons wishing to comment on the Plan may do so at one of the addresses above or by fax to (361) 573-0225 no later than June 13, 2005. Corrections and changes to this notice and/or the Plan may be found on our website at http://www.gcworkforce.org.

The TWS is an equal opportunity organization.

Auxiliary aides or services are available upon request to those individuals with disabilities.

TRD-200501788

Sandy Heiermann
Director of Planning and Contracts
Golden Crescent Workforce Development Board
Filed: May 4, 2005

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Texas Health and Human Services Commission

Notice of Hearing on Proposed Nursing Facility Payment Rates for State Veterans Homes

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 31, 2005, to receive public comment on proposed payment rates for the state-owned veterans nursing facilities. These nursing facilities are in the nursing facility program operated by the Texas Department of Aging and Disability Services. These payment rates are proposed to be effective September 1, 2005. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires public hearings on proposed payment rates. The public hearing will be held on May 31, 2005, at 9:00 a.m., in the Permian Basin Room of Building H, Braker Center, at 11209 Metric Blvd., Austin, Texas 78758-4021. Written comments regarding the proposed payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Maria Ebenhoeh, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101. Express mail can be sent, or written comments can be hand delivered, to Ms. Ebenhoeh, HHSC Rate Analysis, MC H-400, Braker Center Building H, 11209 Metric Blvd., Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Ebenhoeh at (512) 491-1998. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Ms. Ebenhoeh, HHSC Rate Analysis, MC H-400, 1100 49th Street, Austin, Texas 78756-3101.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Ms. Ebenhoeh, HHSC Rate Analysis, MC H-400, 1100 49th Street, Austin, Texas 78756-3101, by May 26, 2005, so that appropriate arrangements can be made.

Proposal. As the single state agency for the state Medicaid program, HHSC proposes the following per day payment rates for the state-owned veterans nursing facilities effective September 1, 2005: Big Spring, $133.00; Bonham, $133.00; Floresville, $133.00; and Temple, $133.00. The proposed rates for each home are based upon the state veterans home semi-private basic daily rate in effect on the first day of the rate period in accordance with 1 TAC §355.111(d). These rates will be reconciled retrospectively based on actual costs in accordance with 1 TAC §355.311(j).

Methodology and justification. The proposed rates were determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.511(d).

TRD-200501779
Lee Dickinson
Assistant General Counsel
Texas Health and Human Services Commission
Filed: May 3, 2005

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Public Notice

The Health and Human Services Commission, State Medicaid Office, has received approval from the Centers for Medicare and Medicaid Services to amend the Title XIX Medical Assistance Plan by Transmittal Number 04-030, Amendment Number 694.

This amendment clarifies that an annuity purchased by a person is a countable resource for Medicaid eligibility purposes and lists the criteria that allows an irrevocable annuity to be exempt as a resource. The effective date is October 1, 2004.

Should you require additional information, please contact Lesa Ledbetter, Policy Analyst with the Medicaid/CHIP Division, at (512) 491-1199 or lesa.ledbetter@hhsc.state.tx.us.

TRD-200501767
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: May 2, 2005

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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
Fort Worth	Osteopathic Surgery Center of Fort Worth DBA Physicians Surgical Ctr of Fort Worth	L05863	Fort Worth	00	04/28/05
Midlothian	Holcim (Texas) LP	L05888	Midlothian	00	04/22/05
Throughout Tx	NDE Solutions LLC	L05879	Bryan	00	04/18/05
Throughout Tx	Abacus Environment Inc	L05882	Dallas	00	04/22/05
Throughout Tx	Alliance Engineering & Testing Services Inc	L05889	Fort Worth	00	04/20/05

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	Baptist St Anthony's Health System	L01259	Amarillo	77	04/14/05
Amarillo	Amarillo Diagnostic Clinic	L04085	Amarillo	20	04/26/05
Arlington	Metroplex Hematology Oncology Associates DBA Arlington Cancer Center	L03211	Arlington	72	04/27/05
Austin	Simonia Scumpia MD PA DBA Austin Thyroid and Endocrinology	L05579	Austin	01	04/18/05
Austin	Austin Heart PA	L05580	Austin	08	04/26/05
Austin	Austin Heart PA	L04623	Austin	26	04/27/05
Austin	Columbia/St Davids Healthcare System LP DBA St Davids Medical Center	L00740	Austin	88	04/26/05
Corpus Christi	The Corpus Christi Medical Center Bay Area	L04723	Corpus Christi	38	04/14/05
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	83	04/26/05
Dallas	North Texas Heart Center PA	L04608	Dallas	27	04/26/05
Dallas	Baylor Unversity Medical Center	L01290	Dallas	71	04/25/05
Denton	TTHR Limited Partnership DBA Presbyterian Hospital of Denton	L04003	Denton	37	04/28/05
Fort Worth	Urological Surgery Center of Fort Worth	L05754	Fort Worth	01	04/18/05
Fort Worth	Fort Worth Medical Plaza Inc DBA Columbia Plaza Med Ctr of Ft Worth	L02171	Fort Worth	47	04/28/05
Houston	Complete Cardiac Care	L05218	Houston	04	04/15/05
Houston	Park Plaza Hospital	L02071	Houston	49	04/18/05
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Memorial City	L01168	Houston	83	04/20/05
Houston	The Methodist Hospital	L00457	Houston	132	04/26/05
La Grange	Austin Heart La Grange	L05516	La Grange	07	04/26/05
Lubbock	ISORX Texas LTD	L05284	Lubbock	14	04/14/05
Lubbock	University Medical Center	L04719	Lubbock	78	04/26/05
McKinney	Columbia Medical Center Subsidiary LP DBA North Central Medical Center	L02415	McKinney	31	04/28/05
Mount Pleasant	Dx Imaging LTD DBA Open Imaging of Mount Pleasant	L05445	Mount Pleasant	06	04/25/05
North Richland Hills	Cor Specialty Associates of North Texas LP	L05399	North Richland Hills	05	04/15/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Round Rock	Austin Heart PA DBA Austin Heart	L05456	Round Rock	10	04/26/05
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	203	04/15/05
San Antonio	VHS San Antonio Partners LP DBA Baptist Health System	L00455	San Antonio	143	04/28/05
Texarkana	Wadley Regional Medical Center	L02486	Texarkana	40	04/20/05
The Woodlands	e + PET Imaging VIII LP DBA PET Imaging of The Woodlands	L05747	The Woodlands	07	04/18/05
Throughout Tx	PCI Services	L04596	Corpus Christi	07	04/19/05
Throughout Tx	Henley-Johnston & Associates Inc.	L00286	Dallas	30	04/15/05
Throughout Tx	Reed Engineering Group Inc	L04343	Dallas	12	04/27/05
Throughout Tx	Computalog Wireline Services Inc	L04286	Fort Worth	55	04/26/05
Throughout Tx	Superior Production Logging Inc. DBA SPL Wireline Services	L01983	Granbury	39	04/21/05
Throughout Tx	Material Inspection Technology	L05672	Houston	13	04/14/05
Throughout Tx	Aster Corporation	L04741	Houston	22	04/18/05
Throughout Tx	Fugro Consultants LP	L00058	Houston	47	04/21/05
Throughout Tx	Irisndt Inc.	L04769	Houston	17	04/22/05
Throughout Tx	Perf-O-Log Inc.	L05478	Iowa Colony	11	04/21/05
Throughout Tx	Longview Inspection Inc	L01774	La Porte	213	04/27/05
Throughout Tx	Southern Services Inc DBA Southern Technical Servicers DBA Bix Testing Laboratories	L05270	Lake Jackson	39	04/27/05
Throughout Tx	Anatec Inc	L04865	Nederland	61	04/20/05
Throughout Tx	Desert Industrial X-Ray LP	L04590	Odessa	39	04/22/05
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	51	04/14/05
Throughout Tx	Ludlum Measurements Inc	L01963	Sweetwater	69	04/27/05
Throughout Tx	CB&I Contructors Inc	L01902	The Woodlands	65	04/19/05
Trophy Club	Trophy Club Medical Center LP DBA Trophy Club Medical Center	L05827	Trophy Club	02	04/13/05
Tyler	Delek Refining LTD	L02289	Tyler	13	04/13/05
Tyler	The University of Texas Health Ctr at Tyler	L01796	Tyler	57	04/27/05
Waco	Waco Cardiology Associates	L05158	Waco	10	04/27/05

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	Cardinal Health	L03398	Amarillo	32	04/25/05
Andrews	Andrews County Hospital District DBA Permian Regional Medical Center	L03158	Andrews	19	04/25/05
Athens	East Texas Medical Center	L02470	Athens	38	04/26/05
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	100	04/19/05
Brownwood	Heart of TX Internal Medicine Associates PA	L05006	Brownwood	10	04/15/05
Brownwood	Brownwood Hospital LP DBA Brownwood Regional Medical Center	L02322	Brownwood	50	04/20/05
Corpus Christi	Radiology Associates LLP	L04169	Corpus Christi	43	04/25/05
Corpus Christi	Corpus Christi Eye Institute	L00506	Corpus Christi	16	04/19/05

CONTINUED RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Dallas	Tenet Health System Hospitals Dallas Inc DBA RHD Memorial Medical Center	L02314	Dallas	48	04/20/05
Dallas	The University of Texas Southwestern Medical Center at Dallas	L00384	Dallas	87	04/20/05
Fort Worth	Jaime H. Castro, M.D.	L03751	Fort Worth	06	04/19/05
Fort Worth	Raytel Nuclear Imaging LP	L.4659	Fort Worth	09	04/26/05
Fort Worth	Fort Worth Medical Plaza Inc DBA Columbia Plaza Medical Ctr of Ft Worth	L02171	Fort Worth	46	04/20/05
Fort Worth	Texas Christian University	L01096	Fort Worth	38	04/20/05
Galveston	Galveston Laboratories	L02970	Galveston	05	04/25/05
Harlingen	Texas Oncology PA DBA South Texas Cancer Center Harlingen	L00154	Harlingen	30	04/19/05
Houston	Red Oak Cardiovascular Center PA	L04159	Houston	11	04/25/05
Houston	University of Houston	L01886	Houston	50	04/20/05
Houston	Valco Instruments Company Inc.	L01572	Houston	21	04/20/05
Houston	Barker Hughes Oilfield Operations Inc DBA Barker Atlas	L05104	Houston	08	04/28/05
Lake Jackson	Brazosport Memorial Hospital	L03027	Lake Jackson	23	04/28/05
Pasadena	AES Deepwater Inc	L03746	Pasadena	13	04/25/05
Port Lavaca	Memorial Medical Center in Calhoun County	L04685	Port Lavaca	04	04/18/05
San Angelo	San Angelo Hospital LP DBA San Angelo Community Medical Center	L02487	San Angelo	37	04/20/05
San Antonio	Heart Insititute of South Texas	L04377	San Antonio	22	04/25/05
Stafford	Ramco Laboratories	L02172	Stafford	16	04/20/05
Temple	Kings Daughters Hospital	L00666	Temple	46	04/19/05
Throughout Tx	L A Fuller & Sons Construction Inc	L04170	Amarillo	06	04/25/05
Throughout Tx	City of Amarillo Department of Engineering	L02320	Amarillo	17	04/20/05
Throughout Tx	GME Consulting Services Inc.	L05128	Dallas	04	04/21/05
Throughout Tx	Danny Sander Contruction Inc	L04041	El Paso	08	04/25/05
Throughout Tx	Cobblestone Engineering Inc.	L04789	Harlingen	03	04/14/05
Throughout Tx	General Inspection Services Inc	L02319	Hempstead	36	04/20/05
Throughout Tx	HTS Inc Conultants	L02757	Houston	14	04/25/05
Throughout Tx	United Surveys Inc	L01570	Rosenburg	19	04/20/05
Throughout Tx	TSI Laboratories	L04767	Victoria	06	04/25/05
Waco	Hillcrest Baptist Medical Center	L00845	Waco	77	04/20/05

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
San Antonio	San Antonio Independent School District	L01918	San Antonio	11	04/18/05
Throughout Tx	Cutler Repaving Inc	L05631	Lawrence, KS	01	04/26/05

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, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200501798
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: May 4, 2005

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Notice of Agreed Order with Gardea Dental Equipment and Service

On May 2, 2005, the Radiation Program Officer, Department of State Health Services (department), approved the settlement agreement between the department and Gardea Dental Equipment and Service (company), (unregistered) of El Paso. A total administrative penalty in the amount of $3,000 was assessed the company for violations of 25 Texas Administrative Code, Chapter 289. Of the total administrative penalty, $1,000 will be probated and will be forgiven if the company complies with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200501797
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: May 4, 2005

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Notice of Amendment to the Texas Schedules of Controlled Substances Adding Certain Anabolic Steroids to Schedule III

United States Senate Bill 2195, entitled the "Anabolic Steroid Control Act of 2004" was enacted on October 22, 2004. It went into effect 90 days after enactment, which was January 20, 2005. The bill redefined "anabolic steroid" and included a new list of steroids under the new definition. All anabolic steroids, unless specifically exempted by regulation, are Schedule III Controlled Substances.

Pursuant to §481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Chapter 481, Health and Safety Code, at least thirty-one days have expired since notice of the above referenced action was published. Eduardo J. Sanchez, M.D., M.P.H., in his capacity as Commissioner of the Department of State Health Services, on April 15, 2005, amended the Texas Schedules of Controlled Substances and hereby orders to be effective 21 days after the date of publication of this notice in the *Texas Register* that the Substances androstanediol including 3β,17β-dihydroxy-5α-androstane and 3α,17β-dihydroxy-5α-androstane; androstanedione; androstenediol including 1-androstenediol (3β,17β-dihydroxy-5α-androst-1-ene), 1-androstenediol (3α,17β-dihydroxy-5α-androst-1-ene), 4-androstenediol, and 5-androstenediol; androstenedione including 1-androstenedione, 4-androstenedione, and 5-androstenedione ; bolasterone; calusterone; delta-1-dihydrotestosterone; furazabol; 13β-ethyl-17α-hydroxygon-4-en-3-one; 4-hydroxytestosterone; 4-hydroxy-19-nortestosterone; mestanolone; 17α-methyl-3β, 17β-dihydroxy-5α-androstane; 17α-methyl-3α,17β-dihydroxy-5α-androstane; 17α-methyl-3β,17β-dihydroxyandrost-4-ene; 17α-methyl-4-hydroxynandrolone; methyldienolone; methyltrienolone; 17α-methyl-delta-1-dihydrotestosterone; norandrostenediol including 19-nor-4-androstenediol (3β, 17β-dihydroxyestr-4ene), 19-nor-4-androstenediol (3α, 17β-dihydroxyestr-4-ene), 19-nor-5-androstenediol (3β, 17β-dihydroxyestr-5-ene), and 19-nor-5-androstenediol (3α, 17β-dihydroxyestr-5-ene); norandrostenedione including 19-nor-4-androstenedione, and 19-nor-5-androstenedione; norbolethone; norclostebol; normethandrolone; stenbolone; and tetrahydrogestrinone including their salts, esters, or ethers be added to Schedule III of the Texas Controlled Substances Act. Schedule III of said Act is hereby amended to read as follows:

SCHEDULE III

Schedule III consists of:

Schedule III depressants

***

Nalorphine

Schedule III narcotics

***

Schedule III stimulants

***

Schedule III anabolic steroids and hormones*

anabolic steroids, including any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone), and include the following:

(1) androstanediol

(1-1) 3β,17β-dihydroxy-5α-androstane; and

(1-2) 3α,17β -dihydroxy-5α-androstane;

(2) androstanedione (5α-androstan-3,17-dione);

(3) androstenediol--

(3-1) 1-androstenediol (3β,17β-dihydroxy-5α-androst-1-ene);

(3-2) 1-androstenediol (3α,17β-dihydroxy-5α-androst-1-ene);

(3-3) 4-androstenediol (3β,17β-dihydroxy-androst-4-ene); and,

(3-4) 5-androstenediol (3β,17β-dihydroxy-androst-5-ene);

(4) androstenedione--

(4-1) 1-androstenedione ([5α]-androst-1-en-3,17-dione);

(4-2) 4-androstenedione (androst-4-en-3,17-dione); and

(4-3) 5-androstenedione (androst-5-en-3,17-dione);

(5) bolasterone (7α,17α-dimethyl-17β-hydroxyandrost-4-en-3-one);

(6) boldenone (17β-hydroxyandrost-1,4,-diene-3-one);

(7) calusterone (7β,17α-dimethyl-17β-hydroxyandrost-4-en-3-one);

(8) clostebol (4-chloro-17β-hydroxyandrost-4-en-3-one);

(9) dehydrochloromethyltestosterone (4-chloro-17β-hydroxy-17α-methyl-androst-1,4-dien-3- one);

(10) delta-1-dihydrotestosterone (a.k.a. "1-testosterone") (17β-hydroxy-5α-androst-1-en-3-one);

(11) 4-dihydrotestosterone (17β-hydroxy-androstan-3-one);

(12) drostanolone (17β-hydroxy-2α-methyl-5α-androstan-3-one);

(13) ethylestrenol (17α-ethyl-17β-hydroxyestr-4-ene);

(14) fluoxymesterone (9-fluoro-17α-methyl-11β,17β-dihydroxyandrost-4-en-3-one);

(15) formebolone (2-formyl-17α-methyl-11α,17β-dihydroxyandrost-1,4-dien-3-one);

(16) furazabol (17α-methyl-17β-hydroxyandrostano[2,3-c]-furazan);

(17) 13β-ethyl-17α-hydroxygon-4-en-3-one;

(18) 4-hydroxytestosterone (4,17β-dihydroxy-androst-4-en-3-one);

(19) 4-hydroxy-19-nortestosterone (4,17β-dihydroxy-estr-4-en-3-one);

(20) mestanolone (17α-methyl-17β-hydroxy-5α-androstan-3-one);

(21) mesterolone (1α-methyl-17β-hydroxy-[5α]-androstan-3-one);

(22) methandienone (17α-methyl-17β-hydroxyandrost-1,4-dien-3-one);

(23) methandriol (17α-methyl-3β,17β-dihydroxyandrost-5-ene);

(24) methenolone (1-methyl-17β-hydroxy-5α-androst-1-en-3-one);

(25) 17α-methyl-3β, 17β-dihydroxy-5α-androstane;

(26) 17α-methyl-3α,17β-dihydroxy-5α-androstane;

(27) 17α-methyl-3β,17β-dihydroxyandrost-4-ene.

(28) 17α-methyl-4-hydroxynandrolone (17α-methyl-4-hydroxy-17β-hydroxyestr-4-en-3-one);

(29) methyldienolone (17α-methyl-17β-hydroxyestra-4,9(10)-dien-3-one);

(30) methyltrienolone (17α-methyl-17β-hydroxyestra-4,9-11-trien-3-one);

(31) methyltestosterone (17α-methyl-17β-hydroxyandrost-4-en-3-one);

(32) mibolerone (7α,17α-dimethyl-17β-hydroxyestr-4-en-3-one);

(33) 17α-methyl-delta-1-dihydrotestosterone (17β-hydroxy-17α-methyl-5α-androst-1-en-3-one) (a.k.a. "17-α-methyl-1-testosterone");

(34) nandrolone (17β-hydroxyestr-4-en-3-one);

(35) norandrostenediol--

(35-1) 19-nor-4-androstenediol (3β, 17β-dihydroxyestr-4-ene);

(35-2) 19-nor-4-androstenediol (3α, 17β-dihydroxyestr-4-ene);

(35-3) 19-nor-5-androstenediol (3β, 17β-dihydroxyestr-5-ene); and

(35-4) 19-nor-5-androstenediol (3α, 17β-dihydroxyestr-5-ene);

(36) norandrostenedione--

(36-1) 19-nor-4-androstenedione (estr-4-en-3,17-dione); and

(36-2) 19-nor-5-androstenedione (estr-5-en-3,17-dione);

(37) norbolethone (13β,17α-diethyl-17β-hydroxygon-4-en-3-one);

(38) norclostebol (4-chloro-17β-hydroxyestr-4-en-3-one);

(39) norethandrolone (17α-ethyl-17β-hydroxyestr-4-en-3-one);

(40) normethandrolone (17α-methyl-17β-hydroxyestr-4-en-3-one);

(41) oxandrolone (17α-methyl-17β-hydroxy-2-oxa-[5a]-androstan-3-one);

(42) oxymesterone (17α-methyl-4,17β-dihydroxyandrost-4-en-3-one);

(43) oxymetholone (17α-methyl-2-hydroxymethylene-17β-hydroxy-[5α]-androstan-3-one);

(44) stanozolol (17α-methyl-17α-hydroxy-[5α]-androst-2-eno[3,2-c]-pyrazole);

(45) stenbolone (17β-hydroxy-2-methyl-[5α]-androst-1-en-3-one);

(46) testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);

(47) testosterone (17β-hydroxyandrost-4-en-3-one);

(48) tetrahydrogestrinone (13β,17α-diethyl-17β-hydroxy-gon-4,9,11-trien-3-one);

(49) trenbolone (17β-hydroxyestr-4,9,11-trien-3-one); and

(50) any salt, ester, or ether of a drug or substance described in this paragraph.

Schedule III hallucinogenic substances

***

Changes to the schedules are designated by an asterisk (*).

TRD-200501796
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: May 4, 2005

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application to change the name of EMPLOYERS NATIONAL INSURANCE COMPANY to PALLADIUM INSURANCE COMPANY, a foreign Fire and/or Casualty company. The home office is in Decatur, Georgia.

Application to change the name of BALBOA LLOYDS INSURANCE COMPANY to NEWPORT E&S INSURANCE COMPANY, a foreign Fire and/or Casualty company. The home office is in Irvine, California.

Application to change the name of OMAHA PROPERTY AND CASUALTY INSURANCE COMPANY to BEAZLEY INSURANCE COMPANY, a foreign Fire and/or Casualty company. The home office is in Omaha, Nebraska.

Application for incorporation to the State of Texas by VALLEY BAPTIST INSURANCE COMPANY, a domestic Life, Accident and/or Health company. The home office is in Harlingen, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701, within 20 days after this notice is published in the *Texas Register*.

TRD-200501790

Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: May 4, 2005

♦ ♦ ♦

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 for admission to Texas of CRITERION CLAIM SOLUTIONS, INC., a foreign third party administrator. The home office is OMAHA, NEBRASKA.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200501795
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: May 4, 2005

♦ ♦ ♦

Legislative Budget Board

Notice of Request for Proposals

The Legislative Budget Board (LBB) announces the issuance of a Request for Proposals (RFP # HB7.2005.SPR.0011) from qualified, independent firms to provide consulting services to the LBB. The successful respondent will assist the LBB in conducting a management and performance review of La Marque Independent School District (LMISD). The LBB reserves the right, in its sole discretion, to award one or more contracts for this review. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about June 30, 2005, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact Bill Parr, Assistant Director, Legislative Budget Board, 1501 N. Congress, Fifth Floor, Austin, Texas 78701, telephone number: (512) 463-1200, to obtain a copy of the RFP. The LBB will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick up at the above-referenced address on May 3, 2005, between 10:00 a.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The LBB also made the complete RFP available electronically on the Texas Marketplace at: http://esbd.tbpc.state.tx.us and on the LBB website at http://www.lbb.state.tx.us after 10:00 a.m. CZT, on May 3, 2005.

Questions: All questions regarding the RFP must be sent via facsimile to Bill Parr at (512) 475-2902, not later than 2:00 p.m. CZT, on May 25, 2005. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace and the LBB website no later than May 26, 2005, or as soon thereafter as practical.

Mandatory Letters of Intent: All potential respondents must submit non-binding Mandatory Letters of Intent to Propose, which must be received in the issuing office no later than 2:00 p.m. CZT, on May 25, 2005. Only the proposals of those respondents who submit a timely Letter of Intent will be considered.

Closing Date: Proposals must be received in the issuing office at the address specified above no later than 2:00 p.m. CZT, on June 13, 2005. Proposals received after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The LBB will make the final decision regarding the award of a contract or contracts. The LBB reserves the right to award one or more contracts under this RFP.

The LBB reserves the right to accept or reject any or all proposals submitted. The LBB is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. The LBB shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows:

Issuance of RFP - May 3, 2005, after 10:00 a.m. CZT;

Questions Due - May 25, 2005, 2:00 p.m. CZT;

Letters of Intent Due - May 25, 2005, 2:00 p.m. CZT;

Official Responses to Questions Posted - May 26, 2005, or as soon thereafter as practical;

Proposals Due - June 13, 2005, 2:00 p.m. CZT;

Contract Execution - June 30, 2005, or as soon thereafter as practical;

Commencement of Project Activities - June 30, 2005, or as soon thereafter as practical.

TRD-200501782
Bill Parr
Assistant Director
Legislative Budget Board
Filed: May 3, 2005

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 567 "Junior Break the Bank"

1.0 Name and Style of Game.

A. The name of Instant Game No. 567 is "JUNIOR BREAK THE BANK". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 567 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 567.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, STACK OF BILLS SYMBOL $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $100, $200 and $2,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink

in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 567 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVN
18	ETN
19	NTN
20	TWY
STACK OF BILLS SYMBOL	WIN$
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$100	ONE HUND
$200	TWO HUND
$2,000	TWO THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 567 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $40.00 or $200.

I. High-Tier Prize - A prize of $2,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (567), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001and end with 250 within each pack. The format will be: 567-0000001-001.

L. Pack - A pack of "JUNIOR BREAK THE BANK" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page, tickets 003 and 004 on the next page, etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in an A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "JUNIOR BREAK THE BANK" Instant Game No. 567 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "JUNIOR BREAK THE BANK" Instant Game is determined once the latex on the ticket is scratched off to expose 9 (nine) play symbols. If the player matches any of YOUR NUMBERS play symbols to the LUCKY NUMBER play symbol, the player will win the prize indicated. If the player reveals a STACK OF BILLS play symbol, the player will win the prize indicated automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 9 (nine) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 9 (nine) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 9 (nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.;

17. Each of the 9 (nine) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning Your Numbers play symbols on a ticket.

C. No duplicate non-winning prize symbols on a ticket.

D. Non-winning prize symbols will never be the same as the winning prize symbol(s).

E. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

F. The auto win symbol will never appear more than once on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "JUNIOR BREAK THE BANK" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not in some cases, required to pay a $40.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "JUNIOR BREAK THE BANK" Instant Game prize of $2,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "JUNIOR BREAK THE BANK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "JUNIOR BREAK THE BANK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "JUNIOR BREAK THE BANK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or

within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,120,000 tickets in the Instant Game No. 567. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 567 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,693,440	8.93
$2	967,680	15.63
$4	181,440	83.33
$5	181,440	83.33
$10	120,960	125.00
$20	60,480	250.00
$40	11,025	1,371.43
$200	2,835	5,333.33
$2,000	189	80,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.70. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 567 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 567, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501763
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 2, 2005

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Instant Game Number 598 "Lucky 7's Bingo"

1.0 Name and Style of Game.

A. The name of Instant Game No. 598 is "LUCKY 7's BINGO". The play style is "bingo with prize legend".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 598 shall be $7.00 per ticket.

1.2 Definitions in Instant Game No. 598.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30,

N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, and FREE.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 598 - 1.2D

PLAY SYMBOL	CAPTION
B01	
B02	
B03	
B04	
B05	
B06	
B07	
B08	
B09	
B10	
B11	
B12	
B13	
B14	
B15	
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I17	
I18	
I19	
I20	
I21	
I22	
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N41	
N42	
N43	
N44	
N45	
G46	

G47	
G48	
G49	
G50	
G51	
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E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 598 - 1.2E

CODE	PRIZE
SVN	$7.00
TEN	$10.00
SVT	$17.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $7.00, $10.00, $17.00 or $20.00.

H. Mid-Tier Prize - A prize of $30.00, $50.00, $77.00, $100, or $500.

I. High-Tier Prize - A prize of $777, $7,777, $20,000 or $77,777.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (598), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 75 within each pack. The format will be: 598-0000001-001.

L. Pack - A pack of "LUCKY 7's BINGO" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 075 will be revealed on the back of the pack. Every other book will reverse i.e., the back of ticket 001 will be shown on the front of the pack and the front of ticket 075 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LUCKY 7's BINGO" Instant Game No. 598 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "LUCKY 7's BINGO" Instant Game is determined once the latex on the ticket is scratched off to expose 190 (one hundred ninety) play symbols. The player must scratch off the CALLER'S CARD area to reveal 40 (forty) Bingo Numbers. The player must mark all the BINGO NUMBERS on Cards 1 through 6 that match the Bingo Numbers on the Caller's Card. Each card has a corresponding prize legend. Players win by matching those same numbers on the six Player's Cards. If the player finds a diagonal, vertical or horizontal straight line, the four corners of the grid, an X pattern or "7" they win a prize according to the legend of the respective playing grid. Examples of play: If a player matches all bingo numbers plus the Free Space in a complete horizontal, vertical, or diagonal line pattern in any one card the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers in all four (4) corners pattern in any one card the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers plus Free Space to make a complete "X" pattern in any one card the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers plus Free Space to make a complete "7" pattern in any one card the player wins prize according to the legend of the respective playing card.. The player can win up to six times on any ticket but only once on each "card".

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 190 (one hundred ninety) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 190 (one hundred ninety) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 190 (one hundred ninety) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 190 (one hundred ninety) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A ticket will win as indicated by the prize structure.

B. A ticket can win up to six times.

C. There will never be more than one win on a single Player's Card.

D. No duplicate numbers will appear on the Caller's Card.

E. No duplicate numbers will appear on each individual Player's Card.

F. Each Caller's Card Numbers will have a minimum of seven (7) and a maximum of nine (9) numbers from each range per letter.

H. The number range used for each letter will be as follows: B: 01-15; I: 16-30; N: 31-45; G: 46-60; O: 61-75.

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY 7's BINGO" Instant Game prize of $7.00, $10.00, $17.00, $20.00, $30.00, $50.00, $77.00, $100, $200 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $50.00, $77.00, $100, $200 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY 7's BINGO" Instant Game prize of $777, $7,777, $20,000 or $77,777, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY 7's BINGO" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "LUCKY 7's BINGO" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "LUCKY 7's BINGO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 598. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 598 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$7	820,000	7.32
$10	420,000	14.29
$17	300,000	20.00
$20	80,000	75.00
$30	50,000	120.00
$50	88,750	67.61
$77	40,000	150.00
$100	9,000	666.67
$200	4,000	1,500.00
$500	700	8,571.43
$777	240	25,000.00
$7,777	22	272,727.27
$20,000	5	1,200,000.00
$77,777	5	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.31. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 598 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 598, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501764
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 2, 2005

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Nortex Regional Planning Commission

Request for Proposals

Computer Telephony Integrated Telephone Systems with Optional Digital Logging Recorders to Service Eight Public Safety Answering Position Sites

Request for Proposal #NRPC911-52305

NOTICE IS HEREBY GIVEN that the Nortex Regional Planning Commission (Nortex RPC) will accept proposals until May 25, 2005 at 12:00 p.m. for 911 PSAP COMPUTER TELEPHONY INTEGRATED (CTI) TELEPHONE SYSTEMS and DIGITAL LOGGING RECORDERS.

The objective is to replace the entire telephone system at eight PSAP sites, with new systems that increase the effectiveness of 911 PSAP system users and the public safety service level to the citizens. The Nortex RPC desires to acquire systems with a proven technical and functional design and preference will be given to Bidders that have currently installed systems that closely approximate or satisfy Nortex RPC's requirements in the major functional areas.

To obtain a copy of the complete Request for Proposal, contact Tommy Keesee by telephoning (940) 322-5281 or by faxing (940) 322-6743. This Request for Proposal is available in hard copy, as an e-mail attachment or CD.

TRD-200501745
Dennis Wilde
Executive Director
Nortex Regional Planning Commission
Filed: April 28, 2005

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Permian Basin Workforce Development Board

Request for Proposal for Child Care Services

The Permian Basin Workforce Development Board announces the release of a Request for Proposal (RFP) for child care services effective May 16, 2005. All interested private not-for-profit, private for-profit, or public agencies/organizations are invited to submit a proposal. The purpose of the RFP is to purchase services to manage subsidized child

care for low-income families. The services include eligibility determination, provider management, and funds management.

Services will be delivered in the 17 counties of the Permian Basin: Andrews, Borden, Crane, Dawson, Ector, Gaines, Glasscock, Howard, Loving, Martin, Midland, Pecos, Reeves, Terrell, Upton, Ward, and Winkler.

A RFP packet may be obtained beginning May 16, 2005 by contacting Gail Dickenson at the Permian Basin Workforce Board, PO Box 61947, Midland, TX 79711 or by calling (432) 563-5239. The deadline for submitting a proposal is June 24, 2005 at 5:00 p.m. Central Daylight Savings Time. A mandatory bidder's conference will be held May 25, 2005.

TRD-200501799
Gail Dickenson
Deputy Director
Permian Basin Workforce Development Board
Filed: May 4, 2005

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Public Utility Commission of Texas

Notice of Application for Approval of Depreciation Rate Change

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 25, 2005, for approval of a depreciation rate to 14.3% for a new class of property, Circuit Equipment Broadband, pursuant to Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998 & Supplement 2005) (PURA) §52.252 and §53.056. A summary of the application follows.

Docket Title and Number: Application of Hill Country Telephone Cooperative, Incorporated for Approval of Depreciation Rate Pursuant to P.U.C. Substantive Rule §26.206, Docket Number 31037.

The Application: Hill Country Telephone Cooperative, Incorporated filed with the Public Utility Commission of Texas an application for approval of a depreciation rate of 14.3% for its new class of property, Circuit Equipment Broadband, effective April 25, 2005.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 31037.

TRD-200501743
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 27, 2005

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Notice of Petition 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 of a petition on April 26, 2005, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of Xspedius Management Company Switched Services, LLC's request for assignment of one full NXX in each of the following rate centers: Bammel, Barker, Houston Suburban, and Spring.

Docket Title and Number: Application of Xspedius Management Company Switched Services, LLC for Waiver of NeuStar, Incorporated Denial of NXX Code Request. Docket Number 31045.

The Application: Xspedius Management Company Switched Services, LLC submitted an application to the Pooling Administrator (PA) for numbering resources in the Bammel, Barker, Houston Suburban, and Spring rate centers. The PA denied the request based on the grounds that Xspedius Management Company Switched Services, LLC had not met the month-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 May 18, 2005. 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 31045.

TRD-200501747
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 2005

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Public Notice of Workshop on Amendments to PUC Rules Concerning Utilities' Eligible Purchased Power Expenses

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding amendments to the PUC rules concerning utilities' eligible purchased power expenses, on Thursday, May 26, 2005, at 9:30 a.m. 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 29630, *Amendments to PUC Rules Concerning Utilities' Eligible Purchased Power Expenses* has been established for this proceeding. At the workshop, the commission staff invites presentations on the following topics.

1. Demonstrate by example how a utility would use the annual capacity planning reserve margin requirements specified by the utility's reliability council to determine its capacity needs and how it would function under several operating scenarios.

2. Discuss the advantages and disadvantages of using a Purchased Power Cost Recovery Factor to recover all purchased power costs.

Presenters are requested to file a notice by Monday, May 23, 2005, indicating which topic they will be addressing at the workshop. Each presentation will be limited to 10 minutes. Parties not wishing to make a presentation but wishing to comment may file their comments by Monday, May 23, 2005.

In addition to receiving the comments on the two topics, commission staff will lead a discussion on the merits of applying the following methodologies that could possibly be used to identify and quantify imputed capacity in purchased power contracts.

Identification of contracts with imputed capacity:

Contract duration is 90 days or more.

Contract executed 30 days before the first delivery of power.

Contract is physically firm.

Cost per MWh in the contract is greater than the average cost of the power from the utility's most expensive generating unit for the previous 12 months from date of execution.

Contract indicates purchase is for the peak hours (6X16 or 5X16).

Quantification of imputed capacity:

Imputed capacity costs will be calculated using the average explicit capacity costs ($/MWh) for the utility's purchased power contracts executed during the same time period for a similar future delivery period. If no explicit capacity contracts are available from the utility, then other appropriate indices or benchmarks that reflect market conditions for the utility will be used to calculate imputed capacity costs.

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 within 10 days of the date of publication of this notice. All responses should reference Project Number 29630.

By Wednesday, May 25, 2005, the commission shall make available in Central Records under Project Number 29630 an agenda for the format of the workshop.

Questions concerning the workshop or this notice should be referred to Brian Almon, Director, Transmission Oversight and Development, Electric Division, 512-937-7355. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200501780
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 2005

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Texas Residential Construction Commission

Notice of Applications for Registration as Approved Third-Party

WARRANTY COMPANY

The commission adopted rules regarding the approval and registration of third-party warranty companies at 10 TAC §§303.250-303.266. The new rules were adopted pursuant to new Chapter 430, Property Code (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01), which provides that a builder may elect to provide a warranty through a third-party warranty company approved by the commission. The commission rules for approval and registration of third-party warranty companies can be found on the commission's website at www.trcc.state.tx.us

Title 10, Texas Administrative Code, §303.255 requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become registered under this subchapter. The commission will accept public comment on each application for twenty-one (21) days after the date of publication of the notice. Information provided in response to this notice will be utilized in evaluating the applicants for approval. Approved third-party warranty companies will be listed on the commission's website.

Pursuant to 10 TAC §303.255 the commission hereby notices the applications of:

1. American eWarranty, LLC, doing business as "American eBuilder," 6360 Flank Dr., Suite 700, Harrisburg PA, 17112. American eWarranty is insured by Aegis Security Insurance Co. The applicant has identified Thomas Bothell, 501 Parker St, McKinney TX 75069, as its registered agent.

2. National Home Insurance Company, 2675 South Abilene St., Aurora, CO 80014. The applicant has identified John F. Svoboda, 1417 West Arkansas Lane, Arlington, Texas 76013 as its registered agent.

3. Home Owners Management Enterprises, Inc. doing business as "HOME/RWC of Texas" and "HOME of Texas," 12651 Briar Forest, Suite 212, Houston, TX 77077. Home Owners Management Enterprises, Inc. is insured by Warranty Underwriters Insurance Company. The applicant has identified Susan S. Duncan nee Susan Gail Scheffer, 12651 Briar Forest, Suite 212, Houston, TX 77077 as its registered agent.

4. Residential Warranty Company, 5300 Derry Street, Harrisburg, PA 17111-3598. Residential Warranty Company is insured by Western pacific Mutual Insurance Company. The applicant has identified Susan S. Duncan nee Susan Gail Scheffer, 12651 Briar Forest, Suite 212, Houston, TX 77077 as its registered agent.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, The Texas Residential Construction Commission, P.O. Box 13144, Austin, TX 78711-3144. Comments regarding this application will be accepted for twenty-one days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200501803
Susan Durso
General Counsel
Texas Residential Construction Commission
Filed: May 4, 2005

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Texas Department of Transportation

Public Notice - Concerning the Transition of Transportation Services for Clients of Eligible Programs

The Texas Department of Transportation (the department) will hold a statewide video teleconference to receive comments concerning the transition of transportation services for clients of eligible programs from the Department of Health and the Health and Human Services Commission to the Texas Department of Transportation.

A statewide video teleconference will be held on Monday, May 23, 2005, beginning at 1:30 p.m. (CDT) in the following cities and locations:

Abilene - 4250 N. Clack, Abilene, Texas

Amarillo - 5715 Canyon Drive, Bldg H, Training Conference S. Room, Amarillo, Texas

Atlanta - 701 E. Main Street, Atlanta, Texas

Austin - 200 E. Riverside Dr., Room D, Austin, Texas

Beaumont - 8350 Eastex Freeway, Beaumont, Texas

Brownwood - 2495 Highway 183 North, Brownwood, Texas

Bryan - 1300 North Texas Ave., Bryan, Texas

Childress - 7599 U.S. Highway 287, Childress, Texas

Corpus Christi - 1701 South Padre Island Dr., Corpus Christi, Texas

El Paso - 1430 Joe Battle Blvd., East Area Office, El Paso, Texas

Fort Worth - 2501 S.W. Loop 820, Computer Training Room, Fort Worth, Texas

Houston - 7721 Washington Ave., Houston District Office, VTC Conference Bldg.,

Houston, Texas

Laredo - 1817 Bob Bullock Loop, VTC Meeting Room, Laredo, Texas

Lubbock - 135 Slaton Rd., Training Center, Lubbock, Texas

Lufkin - 1805 N. Timberland, Lufkin, Texas

Paris - 1365 N. Main St., Training Center, Paris, Texas

Pharr - 600 West Expressway 83, Pharr, Texas

San Antonio - 4615 N.W. Loop 410, San Antonio, Texas

Tyler - 2709 W. Front St., Training Center, Tyler, Texas

Waco - 100 South Loop Dr., District Training Facility, Waco, Texas

Wichita Falls - 1601 Southwest Parkway, Wichita Falls, Texas

Yoakum - 403 Huck, Training Room, Yoakum, Texas

Citizens of Texas are encouraged to join TxDOT at the listening session held in their area to express comments on this topic.

Questions concerning the meeting or this notice should be referred to Ginnie Mayle, Public Transportation Division, (512) 416-2867.

SUBMITTAL OF WRITTEN COMMENTS

Written comments may be submitted to Sheryl Woolsey, Transportation Services Director, Public Transportation Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments is 5:00 p.m. on June 6, 2005.

TRD-200501804
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: May 4, 2005

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University of Houston

Consultant Contract Award Notice

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, The University of Houston furnishes this notice of consultant contract award. The consultant will provide services in the form of HR performance management system. The Request for Proposals was published in the January 28, 2005, issue of the *Texas Register* (30 TexReg 437).

The contract was awarded to Robin Denninger, 1126 Ridgley Dr., Houston, Texas 77055, for a total amount of $35,000.

The beginning date of the contract is upon full execution and the ending date is August 31, 2005.

For further information, please call (713) 743-7297.

TRD-200501785
Brian S. Nelson
Executive Director and Associate General Counsel
University of Houston
Filed: May 3, 2005

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Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, Section 6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

City of Krum, 102 West McCart Street, Krum, Texas 76249, received March 1, 2005, application for financial assistance in the amount of $1,530,000 from the Texas Water Development Funds.

Victoria County Water Control and Improvement District No. 1, P.O. Box 667, Bloomington, Texas 77951, received February 2, 2005, application for financial assistance in the amount of $500,000 from the Texas Water Development Funds.

Dallas County, 411 Elm Street, Dallas, Texas 75202, received April 7, 2005, application for financial assistance in the amount of $400,000 from the Water Loan Assistance Fund.

TRD-200501789
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: May 4, 2005

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Texas Workers' Compensation Commission

Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites all qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the Procedures and Standards for the Medical Advisory Committee. The Medical Review Division is currently accepting applications for the following Medical Advisory Committee vacancies:

Primary

* Dentist

* Employer

* General Public 1

Alternate

* Public Health Care Facility Representative

* Dentist

* Pharmacist

* Employer

* General Public 1

* Insurance Carrier

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend all meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at *http://www.twcc.state.tx.us* and then clicking on Calendar of Commission Meetings, Medical Advisory Committee. Applications may also be obtained by calling Jane McChesney, MAC Coordinator, at 512-804-4855 or R. L. Shipe, Director, Medical Review, at 512-804-4802.

The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

LEGAL AUTHORITY. The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE. The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

Terms of Appointment: Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

RESPONSIBILITY OF MAC MEMBERS Primary Members. Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members. Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The chairman of the MAC is designated by the Commissioners. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman. Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division.

Prior to a MAC meeting confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate:

a. Preparation of a suitable agenda.

b. Planning MAC activities.

c. Establishing meeting dates and calling meetings.

d. Establishing subcommittees.

e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF. The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

SUBCOMMITTEES. The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS. When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT. No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER. Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200501777
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: May 3, 2005

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 29 (2004) is cited as follows: 29 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 "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 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 subscription information, see the back cover or call the Texas Register at (800) 226-7199.

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 (using Arabic numerals) and Parts (using Roman 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 (1-800-356-6548), and West Publishing Company (1-800-328-9352).

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 Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 16, April 9, July 9, and October 8, 2004). 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).

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