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Open Meetings

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

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

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: Subadmin@sos.state.tx.us

For items not available here, contact the agency directly. Items not found here:
- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

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

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

Additional information about state government may be found here:
http://www.state.tx.us/

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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.
Opinions

Opinion No. GA-0352
Mr. John D. White
Chairman, Board of Regents
The Texas A&M University System
Post Office Box C-1
College Station, Texas 77844-9021
Re: Whether the Interlocal Cooperation Act, Government Code chapter 791, permits a state agency governing body to delegate authority to approve an interlocal contract (RQ-0321-GA)

SUMMARY

Section 791.011(d)(1) of the Government Code provides in its first clause that an interlocal contract must "be authorized by the governing body of each party to the contract." TEX. GOV'T CODE ANN. §791.011(d)(1) (Vernon 2004) (emphasis added). This provision requires that the governing body authorize an interlocal contract according to the same statutes and procedures applicable to its contracting authority generally. To determine whether an entity’s governing body may delegate authority to approve an interlocal contract, one must examine the statutes governing the particular entity’s contracting authority. The Texas A&M University Board of Regents is authorized by statute to adopt rules delegating authority to approve an interlocal contract.

The remaining language of section 791.011(d)(1), in authorizing the governing body of a municipally owned electric utility to establish procedures for entering into interlocal contracts that do not exceed $100,000 without requiring the approval of the governing body, see id., necessarily permits delegation of such authority. And, by clear implication, this language indicates that a municipally owned electric utility’s governing body must approve and may not delegate approval of interlocal contracts that exceed $100,000.

Opinion No. GA-0353
The Honorable A. J. (Jack) Hartel
Liberty County Attorney
Post Office Box 9127
Liberty, Texas 77575-9127
Re: Allocation of county funds to a hospital district that does not comprise the entire county (RQ-0322-GA)

SUMMARY

The Texas Health and Safety Code requires a county in which a hospital district is created to transfer to that district the county’s operating funds budgeted to provide medical care for the district’s indigent residents. Where the hospital district does not comprise the entire county, neither chapter 286 nor chapter 61 of the Health and Safety Code provide a specific method to apportion the operating funds between the county and the hospital district. The county commissioners court is the county’s governing body and is vested with discretion over a county’s fiscal policy. Absent a statutory mandate on the apportionment of the operating funds, the commissioners court may use its discretion, subject to judicial review, to choose the calculation by which to divide the funds, provided the resulting transfer comports with the statutory duty to provide care for the indigent residents of the district.

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at 512/463-2110.
The Texas Optometry Board adopts on an emergency basis amendments to rule §273.4 concerning fees. The amendments raise the license renewal fees by $7.00 in order to provide funding for the appropriations made by the 79th Legislature, Regular Session. The amendments also set fees for a new category of license created by House Bill 2680, 79th Legislature, Regular Session. The agency’s license renewal for Fiscal Year 2006 begins November 1, 2005, and the agency’s limited funds do not permit an extra meeting that would allow timely adoption of a rule to set the license renewal fee in accordance with legislative appropriations and House Bill 2680. An amendment to Rule 273.4 was proposed with a fee increase in the June 17, 2005, issue of the Texas Register (30 TexReg 3511), but that amount will not fund the additional increases to the agency’s appropriation, and that proposed amendment is being withdrawn. A proposed amendment with the $7.00 fee increase is being published in this issue of the Texas Register as a proposed rule. No comments were received after the June 17, 2005, publication.

House Bill 2680, requires the agency to create a retired license with reduced renewal fees. The amendments set the reduced fee for this license.

The amendments are adopted on an emergency basis pursuant to §2001.034 of the Government Code, which authorizes the agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days' notice. The amendment is also adopted under the Texas Optometry Act, Texas Occupations Code, §351.151, and §351.152, and House Bill 2680, 79th Legislature, Regular Session. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession, §351.152 as granting the Board the authority to establish by rule reasonable and necessary fees to cover the costs of administering the act. House Bill 2680 requires the agency to create a retired license at a reduced fee.
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 9. STATE AIRCRAFT POOLING BOARD

CHAPTER 181. GENERAL PROVISIONS

1 TAC §§181.1 - 181.9, 181.11 - 181.13, 181.15

(Editors note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the State Aircraft Pooling Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Transportation (department) proposes the repeal of Title 1, Chapter 181, §§181.1 - 181.9, §§181.11 - 181.13, and §181.15, concerning general provisions.

EXPLANATION OF PROPOSED REPEALS

House Bill 2702, 79th Legislature, Regular Session, 2005, abolished the State Aircraft Pooling Board (board) and transferred all powers, duties, obligations, rights, contracts, bonds, appropriations, records, and real or personal property of the board to the Texas Department of Transportation. House Bill 2702 also provided that a rule of the board continues in effect as a rule of the department until superseded by an act of the department.

Sections 181.1 through 181.9 prescribe rules concerning the governing body of the board. Due to the abolishment of the board, these sections are no longer needed.

Section 181.11, concerning charges for public records, is no longer necessary. The department has rules governing the charges for public records that will apply to records relating to the functions of the board that were transferred to the department.

Section 181.12, concerning certain fuel and maintenance contracts, does not reflect current practices, and governs issues that should be addressed contractually and not through rulemaking.

Section 181.13, concerning Historically Underutilized Business Contracts and Services, is no longer necessary. The subject is addressed by current department rules governing historically utilized businesses.

Section 181.15, concerning priority scheduling, provides that statewide elected officials, upon giving 12-hour advance notice to the scheduling office, shall be given priority in the scheduling of aircraft. Government Code, §2205.038(d), requires the department to give a statewide elected official priority in the scheduling of aircraft. It further provides that the department by rule may require a 12-hour notice by the official to obtain priority. The department does not believe that it is necessary to require 12-hour advance notice, and therefore, §181.15 is not necessary.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the repeals as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeals. There are no anticipated economic costs for persons required to comply with the repeals as proposed.

David Fulton, Director, Aviation Division, Texas Department of Transportation, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals.

PUBLIC BENEFIT

Mr. Fulton has also determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing or administering the repeals will be the elimination of unnecessary administrative rules. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeal of Title 1, Chapter 181 may be submitted to David Fulton, Director, Aviation Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 10, 2005.

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE: Government Code, Chapter 2205.

§181.1. Board Meetings - Regular.
§181.2. Board Meetings - Called.
§181.3. Quorum.
§181.4. Agenda.
§181.5. Parliamentary Authority.
§181.6. Minutes.
§181.7. Access to Information.
§181.11. Charges for Public Records.
§183.1. Purpose.

The Texas Department of Transportation (department) proposes the repeal of Title 1, Chapter 183, §§183.1 - 183.4, concerning rulemaking procedure.

EXPLANATION OF PROPOSED REPEALS

House Bill 2702, 79th Legislature, Regular Session, 2005, abolished the State Aircraft Pooling Board (board) and transferred all powers, duties, obligations, rights, contracts, bonds, appropriations, records, and real or personal property of the board to the Texas Department of Transportation. House Bill 2702 also provided that a rule of the board continues in effect as a rule of the department until superseded by an act of the department.

The department proposes the repeal of Title 1, Chapter 183, §§183.1 - 183.4, which governs the rulemaking process, including the processing of petitions for rulemaking, for the board. Due to the abolishment of the board, these rules are no longer necessary.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the repeals as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeals. There are no anticipated economic costs for persons required to comply with the repeals as proposed.

David Fulton, Director, Aviation Division, Texas Department of Transportation has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals.

PUBLIC BENEFIT

Mr. Fulton has also determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing or administering the repeals will be the elimination of unnecessary administrative rules. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeal of Title 1, Chapter 183 may be submitted to David Fulton, Director, Aviation Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 10, 2005.

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE: Government Code, Chapter 2205.

§183.1. Purpose.

§183.2. Adoption, Amendment, or Repeal of Rules.

§183.3. Petition for Adoption of Rules.

§183.4. Petition Decision by 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 August 29, 2005.

TRD-200503760
Richard D. Monroe
General Counsel
State Aircraft Pooling Board
Earliest possible date of adoption: October 9, 2005
For further information, please call: (512) 463-8630

CHAPTER 313. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS (SIRP)

10 TAC §313.27

The Texas Residential Construction Commission ("commission") proposes new §313.27, relating to correspondence between builders and homeowners after the state-sponsored inspection and dispute resolution process (SIRP) has concluded. The proposed new section sets forth the requirement that builders provide the commission with post-SIRP information relating to settlement or other dispute resolution activities. The new section provides for the commission to create a form, which builders who participate in an SIRP are required to file with the commission to keep the commission abreast of resolution activities after the SIRP final nonappealable report has been issued. Failure to comply with the new proposed section may result in denial of registration renewal under Property Code Chapter 416.

The new section is proposed to provide a mechanism for the commission to keep abreast of the number of SIRPs that result in repairs or settlements of post-construction defect disputes.

The new section is proposed under Property Code §408.001, which provides generally authority for the commission to adopt
rules necessary for the implementation of Title 16 and Property Code, ch. 416, which requires the commission to consider an applicant’s honesty, integrity and trustworthiness when determining the applicant’s eligibility for registration as a builder or remodeler.

Susan K. Durso, General Counsel, has determined that for each year of the first five-year period the proposed new section is in effect there will be no fiscal implications for local governments as a result of enforcing or administering the proposed sections.

Ms. Durso has also determined that for each year of the first five-year period the proposed new section is in effect there will be no significant effect on individuals or large, small and micro-businesses as a result of the adoption of the proposed rule. There may be a minimal effect on registered builders and remodelers who are required to file post-SIRP information with the commission as a result of the new section.

Ms. Durso has also determined that for each year of the first five-year period the proposed new section is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

Interested persons may submit written comments (12 copies) on the proposed rule to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed sections in the Texas Register. Comments received after that date will not be considered. Comments should be organized in a manner consistent with the organization of the proposed rule. Comments may be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include “Post SIRP Correspondence Rule” in the subject line. Comments submitted electronically to another electronic address or that do not include “Post SIRP Correspondence Rule” in the subject line may not be considered.

The new sections are proposed to implement Property Code §408.001 and chapter 416. No other statutes, articles, or codes are affected by the proposal.

§313.27. Post-SIRP Correspondence.  
(a) A builder shall file with the commission, on a commission-approved form, information relating to any activities, including settlements, repair efforts, arbitration or litigation, which have followed from a final nonappealable report issued under this chapter.

(b) A builder will file the completed form within forty-five (45) days of receipt of the final nonappealable report resulting from a SIRP involving the builder.

(c) The form will include a request for at least the following information:

   (1) the name of the builder/remodeler;
   (2) the name and address of the homeowner and property involved in the subject SIRP;
   (3) the SIRP number assigned by the commission;
   (4) whether any repairs or other types of compensation were offered by the builder/remodeler to the homeowner for any construction defects affirmed by the final nonappealable report issued by the commission;
   (5) if repairs were offered by the builder/remodeler:
         (A) were affirmed alleged defects, if any, excluded from the offer of repair?
         (B) did the homeowner accept any or all of the repairs offered?
   (6) if repairs were offered and accepted, did that result in the satisfaction of all issues between the parties as a result of the residential construction project?
   (7) if repairs were made, did the builder/remodeler engage the services of the Third-party Inspector assigned to the SIRP to inspect the repairs?
   (8) if repairs were not offered or an offer for repair was not accepted, have either of the parties pursued any further legal proceedings related to the dispute between the parties?
         (A) if either party has pursued further legal proceedings, are the parties involved in a mediation, an arbitration or a civil law suit?
         (B) if the parties are involved in an arbitration proceeding, is the arbitration required as a provision of the contract between the parties?
   (d) If the parties have not resolved their dispute at the time that the builder/remodeler file follow-up information pursuant to subsection (b) of this section, a builder/remodeler who is involved in mediation, arbitration or litigation following receipt of the final nonappealable SIRP report from the commission, is required to supplement the information previously filed pursuant to subsection (b) when the legal proceedings are final.
   (e) Failure to comply with this section or failure to complete the form honestly may result in the denial of a builder/remodeler registration renewal application under the terms of Chapter 303.

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

Filed with the Office of the Secretary of State on August 25, 2005.

TRD-200503685
Susan Durso
General Counsel
Texas Residential Construction Commission
Earliest possible date of adoption: October 9, 2005
For further information, please call: (512) 463-9638

** TITLE 16. ECONOMIC REGULATION **

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE PROVIDERS
The Public Utility Commission of Texas (commission) proposes an amendment to §25.472(b)(3), relating to Privacy of Customer Information. The proposed amendment deletes the following language from the rule: "For industrial and commercial customers, the TDU (Transmission and Distribution Utility) or REP (Retail Electric Provider) shall not release any information of a prior occupant of the premise, if a prior occupant has designated the information as competitively sensitive."

This rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA), Texas Utilities Code §2001.022.

The commission proposes this amendment due to the cost and the significant practical barriers that the Electric Reliability Council of Texas, Incorporated (ERCOT) and other market entities would face in implementing the changes to transactions and back-office systems that would be necessary to give effect to the provision proposed for deletion.

The current REP, TDU, and ERCOT systems and transaction sets can neither relay the competitively sensitive designation nor block the automated disclosure of historical usage data that is requested through a transaction; therefore, market participants currently have very limited abilities to prevent disclosure of historical usage information, even if an industrial or commercial customer designates its historical usage data as competitively sensitive. To honor a non-disclosure request, ERCOT, REPs and TDUs would have to revise transactions and back-office systems. This work is estimated to cost up to $500,000 for ERCOT alone, and the new function would require additional market testing for both ERCOT and REPs. Those industrial and commercial customers seeking to ensure non-disclosure of historical usage data have the option of contracting with the future property owner or lessee to restrict disclosure, at no cost to the larger retail market.

Lauren Damen, Senior Retail Market Analyst, Electric Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Damen has determined that, for each year of the first five years the proposed section is in effect, the amendment will benefit the public because market participants will avoid incurring costs to revise transactions and back-office systems. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The commission staff will conduct a public hearing on this rulemaking, if requested, pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission’s offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Wednesday, October 26, 2005 at 9:00 a.m. The request for a public hearing must be received within 30 days after publication.

Initial comments on the proposed amendment shall be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments shall be submitted within 45 days after publication. Comments shall be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 30769.

When commenting on specific subsections of the proposed rule, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

This amendment is proposed under PURA §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. The commission also proposes this amendment pursuant to PURA §39.101, which grants the commission authority to establish protections for retail customers.


§25.472. Privacy of Customer Information.

(a) (No change.)

(b) Individual customer and premise information.

(1) (No change.)

(2) (No change.)

(3) Upon receiving authorization from a customer or applicant, a REP shall request from the TDU the monthly usage of the customer’s or applicant’s premise for the previous 12 months. The TDU, upon receipt of a written request or other proof of authorization, shall provide the requested information to the requesting REP or to the customer or applicant no later than three business days after the request or proof of authorization is submitted. [For industrial and commercial customers, the TDU or REP shall not release any information of a prior occupant of the premise, if a prior occupant has designated the information as competitively sensitive.]

(4) (No change.)

(5) (No change.)

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

Filed with the Office of the Secretary of State on August 23, 2005.

TRD-200503629

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas

Earliest possible date of adoption: October 9, 2005

For further information, please call: (512) 936-7223

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PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING
SUBCHAPTER B. LICENSE AND PERMIT SURCHARGES

16 TAC §33.21

The Alcoholic Beverage Commission proposes an amendment to §33.21, relating to performance bonds to be posted by certain licensees and permittees.

Senate Bill 1850, adopted by the Seventy-ninth Legislature, added §11.61(b-1) to the Alcoholic Beverage Code. Under that provision, holders of a Wine and Beer Retailer’s Permit or a Retail Dealer’s On-Premise License, located in a county of more than 1.4 million population, must post performance bonds with the commission in amounts determined by the commission. This rule is proposed to fulfill that statutory requirement.

Lou Bright, General Counsel, has determined that for the first five-year period the proposed amended rule is in effect there will be no fiscal impact on units of state or local government. There will, however, be a fiscal impact on small businesses. An undetermined number of licensees/permittees affected by this rule qualify as a “micro-business” or “small business” under Government Code §2006.001. The costs imposed by this rule are the costs of posting and forfeiting bonds in the amounts, and under the terms, of this rule and §11.61(b-1) of the Alcoholic Beverage Code. The cost is assessed per each license/permit, and so will be assessed the same for large businesses and small.

Mr. Bright has determined that the public will benefit by this rule because it will serve to establish a significant disincentive for violations of the Alcoholic Beverage Code by the licensees/permittees affected by the rule.

Comments may be addressed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127.

This rule is proposed under the authority of §§5.31 and 11.61(b-1) of the Alcoholic Beverage Code.

Cross Reference to Statute: Sections 11.61(b-1) and 61.71 of the Alcoholic Beverage Code are affected by this amended rule.

§33.21. Amount of Bond Required.

(a) No permit shall be issued to any person until all bonds required by the Alcoholic Beverage Code or by rule of the commission as a prerequisite to issuance of such permit have been filed with and accepted by the administrator. Bonds shall be in the following amounts: Figure: 16 TAC §33.21(a)

(b) Performance Bonds

(1) This section relates to §§11.61(b-1) and 61.71(i) of the Alcoholic Beverage Code.

(2) The first bond filed by a licensee or permittee with the commission as prescribed under §§11.61(b-1) and 61.71(j) of the Alcoholic Beverage Code shall be in the amount of $2,000. In the event the first bond is forfeited to the commission, a licensee or permittee must file a second bond with the commission as prescribed under those provisions in the amount of $4,000 before a license or permit may be reinstated. In the event the second bond is forfeited to the commission, a licensee or permittee must file a third bond issued under those provisions in the amount of $6,000 before a license or permit may be reinstated.

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

Filed with the Office of the Secretary of State on August 25, 2005.
TRD-200503687
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: October 9, 2005
For further information, please call: (512) 206-3204

CHAPTER 37. LEGAL
SUBCHAPTER A. RULES OF PRACTICE

16 TAC §37.4

The Alcoholic Beverage Commission proposes new §37.4, relating to the meaning of the word “notice” as it appears in §§11.61(i), 11.63, and 61.71(k) of the Alcoholic Beverage Code. The new rule proposes to define the word “notice,” as used in the referenced statutes, to mean the notice of hearing described in Government Code §2001.051 and §2001.052.

Lou Bright, General Counsel, has determined that for the first five years the new rule is in effect there will be no fiscal implications for units of state or local government. Similarly, there is no anticipated fiscal impact on small businesses. There are no anticipated costs to persons who are required to comply with the new rule as proposed.

Mr. Bright has also determined that for each year of the first five years the new rule is in effect the public will benefit from the new rule in that the operation of the referenced statutes will be made more certain, thereby, avoiding unnecessary litigation.

Comments on the proposal may be submitted to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127.

The new rule is proposed under the authority of §5.31 of the Alcoholic Beverage Code, which authorizes the commission to prescribe and publish such rules as are necessary to carry out the provisions of the code.

Cross Reference: Sections 11.61(i), 11.63, and 61.71(k) of the Alcoholic Beverage Code are affected by the new rule.

§37.4. Notice of Hearing.

(a) This rule relates to §§11.61(i), 11.63, and 61.71(k) of the Alcoholic Beverage Code.

(b) The word “notice” as used in §§11.61(i), 11.63, and 61.71(k) of the Alcoholic Beverage Code shall mean the notice of hearing issued pursuant to Government Code §2001.051 and §2001.052.

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

Filed with the Office of the Secretary of State on August 24, 2005.
TRD-200503680

PROPOSED RULES September 9, 2005 30 TexReg 5465
SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

16 TAC §41.56

The Alcoholic Beverage Commission proposes new §41.56, relating to monthly reports to be made by Direct Shipper permittees.

This new rule is proposed in response to Senate Bill 877, enacted by the 79th Legislature, creating a new permit authorizing out-of-state wineries to ship their product directly to Texas consumers. The new rule would establish activity reporting requirements for holders of this permit.

Lou Bright, General Counsel, has determined that for the first five-year period the new rule is in effect there will be no fiscal impact on units of state or local government. Some of the permittees subject to this rule qualify as small businesses and will suffer some fiscal impact as a result of being compelled to generate a report. The cost of such activity will be determined by the individual operations of each permittee.

Mr. Bright has also determined that each year of the first five years the new rule is in effect the public will benefit from the new rule because it will allow the commission to accurately monitor alcoholic beverages shipped into the state so as to protect against diversion of those beverages into unlawful channels.

Comments on the proposal may be submitted to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78771-3127.

The new rule is proposed under the authority of §5.31 of the Alcoholic Beverage Code, which authorizes the commission to prescribe and publish such rules as are necessary to carry out the provisions of the code.

Cross Reference: Chapter 54 of the Alcoholic Beverage Code is affected by the new rule.

§41.56 Out-of-State Winery Direct Shipper’s Permits

(a) This rule relates to Chapter 54 of the Alcoholic Beverage Code.

(b) Each holder of an out-of-state winery direct shipper’s permit shall make a monthly report (Direct Shipper’s Report) to the commission on forms prescribed by the administrator.

(c) The report shall be made and filed by the permittee with the commission at its offices in Austin, Texas, on or before the 15th day of the month following the calendar month for which the report is made and shall show:

(1) the month for which the report is made, the permit number and the name and address of the winery;

(2) invoice date, invoice number, customer name, city, total wine gallons per invoice, carrier making delivery, and freight bill number for each sale and delivery;

(d) Holders of out-of-state winery direct shipper’s permits must pay the excise tax on the total gallons of wine shipped into the state, not later than the 15th day of the month following the month the wine was shipped into the state. Remittance of the tax due on wine, less 2.0% of the amount due when submitted within the required time, shall accompany the monthly report herebefore provided and shall be made by check. United States money order, or other acceptable methods of payment payable to the State Comptroller of Texas.
The amendment affects Texas Education Code, §§29.908, 61.076, 130.001(b)(3) - (4), 130.008, and 130.090.

§4.152. Authority.

Texas Education Code, §§29.908, 61.076, 130.001(b)(3) - (4), 130.008, and 130.090 provide the Board with the authority to regulate courses and programs offered by public institutions of higher education in cooperation with secondary schools.

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

Filed with the Office of the Secretary of State on August 22, 2005.

TRD-200503579
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 27, 2005
For further information, please call: (512) 427-6114

CHAPTER 13. FINANCIAL PLANNING

SUBCHAPTER A. DEFINITIONS

19 TAC §13.1

The Texas Higher Education Coordinating Board proposes amendments to §13.1, concerning Tuition Rebates for Certain Undergraduates. The proposed amendments implement the changes required by Senate Bill 34, 79th Texas Legislature, Regular Session, amending Texas Education Code §54.0065, and provide other revisions to clarify existing text within the chapter. Specifically, these amendments update definitions, limit eligibility for tuition rebates for students of Texas public institutions of higher education who receive baccalaureate degrees within the same period as equivalent to specific provisions for loan forgiveness under the Texas B-On-Time program in addition to current requirements, provide hardship provisions for otherwise eligible students, update references to other sections of Board rule, and clarify other text within the chapter.

Dr. Glenda Barron, Associate Commissioner for Participation and Success, has determined that for each year of the first five years the amendments are in effect there will not be any fiscal implications to state or local government as a result of enforcing or administering the rule.

Dr. Barron has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the improved high school graduation and college going rates for those students attending ECHS. There is no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lynette Heckmann, P.O. Box 12788, Austin, Texas 78711, (512) 427-6120, Lynette.Heckmann@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The amendments are proposed under the Texas Education Code, §54.0065, which states that the Coordinating Board is authorized to adopt rules to administer this section.
The amendments affect the Texas Education Code, §54.0065.

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

(1) - (14) (No change.)

(15) Independent institution of higher education--A private or independent college or university that is:

(A) organized under the Texas Non-Profit Corporation Act;

(B) exempt from taxation under Article V, §2, of the Texas Constitution and §501(c)(3) of the Internal Revenue Code; and

(C) accredited by the Commission on Colleges Southern Association of Colleges and Schools.

(16) [45a] Institution of Higher Education or Institution--any public technical institute, public junior college, public senior college or university, medical or dental unit or other agency of higher education as defined in Texas Education Code, §61.003 [in this section].

(17) [44g] Institutional Expenditures--All costs of activities separately organized and operated in connection with instructional departments primarily for the purpose of giving professional training to students as a necessary part of the educational work of the related departments.

(18) [47g] Institutional Funds--Fees, gifts, grants, contracts, and patient revenue, not appropriated by the legislature.

(19) [43§] Local Funds--Tuition, certain fees, and other educational general revenue appropriated by the legislature.

(20) [43§] National Association of College and University Business Officers (NACUBO)--Provides guidance in business operations of higher education institutions.

(21) [42§] Non-Degree-Credit Developmental Courses--Courses intended for remedial or compensatory education that bear only institutional credit and are not counted toward the total for a degree or certificate program.

(22) [424] Permanent University Fund (PUF)--A fund established in Article 7, §11, of the Texas Constitution to fund capital improvements and capital equipment at certain institutions of higher education.

(23) [423] Public Junior College, Public Technical Institute, [ae] Public State College, or Public Two-Year College--Any public junior college, public community college, public technical college, or public state college as defined in Texas Education Code, §61.003. [Any college or institute so classified in the Texas Education Code, §61.003, or created after July 1, 1987.]

(24) [423] Semester Credit Hour--A unit of measure of instruction consisting of 60 minutes, of which 50 minutes must be direct instruction, over a 15-week period in a semester system or a 10-week period in a quarter system.

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

Filed with the Office of the Secretary of State on August 22, 2005.

Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 27, 2005
For further information, please call: (512) 427-6114

SUBCHAPTER B. FORMULA FUNDING

19 TAC §13.25

(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 Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §13.25 concerning formula funding exceptions. Specifically, §13.25 is being proposed for repeal in order to incorporate these provisions in proposed new §§13.100 - 13.109, published simultaneously in this issue of the Texas Register.

Dr. Deborah Greene, Acting Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Greene has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of this repeal will be that all Board rules regarding repeated or excessive hours will be in one subchapter. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed repeal may be submitted to Deborah L. Greene, Acting Assistant Commissioner, Planning and Accountability, P.O. Box 12788, Austin, TX 78711; deborah.greene@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The repeal is proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules and Texas Education Code, §51.3062(l), which limits the number of developmental education semester credit hours for which formula funding may be received.

The repeal affects the Texas Education Code, §51.3062(l).

§13.25. Formula Funding Exceptions

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

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

TRD-200503764
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 27, 2005
For further information, please call: (512) 427-6114
SUBCHAPTER E. TUITION REBATES FOR CERTAIN UNDERGRADUATES

19 TAC §§13.82, 13.83, 13.85, 13.86

The Texas Higher Education Coordinating Board proposes amendments to §§13.82, 13.83, 13.85, and 13.86, concerning Tuition Rebates for Certain Undergraduates. The proposed amendments implement the changes required by Senate Bill 34, 79th Texas Legislature, Regular Session, amending Texas Education Code §54.0065, and provide other revisions to clarify existing text within the chapter. Specifically, these amendments update definitions, limit eligibility for tuition rebates for students of Texas public institutions of higher education who receive baccalaureate degrees within the same period as equivalent to specific provisions for loan forgiveness under the Texas B-On-Time program in addition to current requirements, provide hardship provisions for otherwise eligible students, update references to other sections of Board rule, and clarify other text within the chapter.

Dr. Glenda Barron, Associate Commissioner for Participation and Success, has determined that for each year of the first five years the amendments are in effect there will not be any fiscal implications to state or local government as a result of enacting or administering the rules.

Dr. Barron has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be that otherwise eligible students may qualify for tuition rebates if certain hardship conditions are met. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lynette Heckmann, P.O. Box 12788, Austin, Texas 78711, (512) 427-6120, Lynette.Heckmann@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The amendments are proposed under the Texas Education Code, §54.0065, which states that the Coordinating Board is authorized to adopt rules to administer this section.

The amendments affect the Texas Education Code, §54.0065.

§13.82. Eligible Students.

To be eligible for a rebate [rebates] under this program, a student [students] must [meet all of the following conditions]:

(1) [They must] have enrolled for the first time in an institution of higher education in the fall 1997 semester or later;
(2) request [They must be requesting] a rebate for course work related to a first baccalaureate degree received from a general academic teaching institution [Texas public university];
(3) [They must] have been a resident of Texas as set forth under Chapter 21, Subchapter B of this title (relating to Determining Residence Status) and have been entitled to pay resident tuition at all times while pursuing the degree[; and]
(4) graduate within four calendar years for a four-year degree or within five calendar years for a five-year degree if the degree is in architecture, engineering, or any other program determined by the Board to require more than four years to complete; and
(5) [44] [They must] have attempted no more than three hours in excess of the minimum number of semester credit hours required to complete the degree under the catalog under which the student [they were] graduated. Hours attempted include transfer credits, course credit earned exclusively by examination, (except that, for the purposes of this program, only the number of semester credit hours earned exclusively by examination in excess of nine semester credit hours is treated as hours attempted), courses dropped after the official census date, for-credit developmental courses, optional internship and cooperative education courses, and repeated courses. Courses dropped for reasons that are determined by the institution to be totally beyond the control of the student shall not be counted. For students concurrently earning a baccalaureate degree and a Texas teaching certificate, required teacher education courses shall not be counted to the extent that they are over and above the free electives allowed in the baccalaureate degree program.


In the event of a hardship or for other good cause, an otherwise eligible student may be determined eligible for a tuition rebate under this program by the degree-granting institution if the student is not awarded a baccalaureate degree under this section due to hardship conditions. Such conditions include but are not limited to:

(1) a showing of a severe illness or other debilitating condition that may affect the student’s academic performance;
(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student’s provision of care may affect his or her academic performance; or
(3) performance of active duty military service.

[(a) All Texas public baccalaureate-granting general academic universities are required to offer rebates to eligible students.]
[(b) All Texas public institutions of higher education are required to notify students of the existence of the tuition rebate program and provide course enrollment opportunities. (See §13.85 of this title, relating to Responsibilities of Institutions.)]


[Affected institutions have the following responsibilities associated with this program:]

(a) [43] Institutions [All Texas public institutions] of higher education[, including two-year community and technical colleges,] shall include information regarding this program in the institution’s catalog.

(b) [42] If requested by potentially eligible students, [public institutions of higher education shall [are required to] provide these students opportunities to enroll during each fall and spring semester in the equivalent of at least 12 semester credit hours that apply toward their degrees. Institutions are not required to provide students with the opportunity to enroll in specific courses or specific sections. Public two-year colleges [Community and Technical Colleges] will comply to the extent that courses for the current semester are being offered that apply to the student’s baccalaureate [university] degree program. The requirement may be met by allowing substitutions for required courses or by allowing concurrent enrollment in courses from another institution, so long as the courses are taught on the students’ home campus and the students incur no financial penalty.

(c) [44] General academic teaching institutions shall [Texas public universities are required to] provide students with appropriate forms and instructions for requesting tuition reimbursement at the time that students apply for baccalaureate degrees.
(d) [44] Institutions shall [are required to] provide tuition rebates to students who apply [for them] within 60 days after graduation or provide the student with a statement explaining the reason the student is ineligible for the rebate.

(e) [55] Institutions shall [are required to] provide a dispute resolution process to resolve disputes related to local administration of the program.

(f) [66] Disputes related to lower division credit transfer shall [should] be resolved in accordance with Coordinating Board rules, §4.27 (Chapter 5, §5.302) of this title (relating to Resolution of Transfer Disputes for Lower-Division Courses [Transfer of Lower Division Course Credit]).

(g) Institutions shall establish policies and procedures for allowing otherwise eligible students to qualify for tuition rebates under this program under appropriate hardship conditions as outlined in §13.83 of this title (relating to Hardship Provisions).

(h) [77] Institutions may adopt policies and procedures for administering the program. For example, institutions may require students to declare their intent to qualify for a tuition rebate early in their careers or register prior to the beginning of the semester.

§13.86. Responsibilities of Students.

(a) Students desiring to qualify for tuition rebates are responsible for complying with all [university] rules and regulations related to administration of the program.

(b) (No change.)

(c) A student who has transferred from another public or independent institution of higher education is responsible for providing to the institution awarding the degree official transcripts from all institutions attended by the student.

(d) (No change.)

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

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

SUBCHAPTER F. FORMULA FUNDING AND TUITION CHARGED FOR EXCESS CREDIT HOURS OF UNDERGRADUATE STUDENTS

19 TAC §§13.100 - 13.106

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

The Texas Higher Education Coordinating Board proposes the repeal of §§13.100 - 13.106 concerning Formula Funding and Tuition Charged for Excess Credit Hours of Undergraduate Students. Specifically, these sections are being proposed for repeal and new §§13.100 - 13.110 are being proposed simultaneously in this issue of the Texas Register. The new sections restructure the sections being proposed for repeal and include new provisions regarding formula funding and tuition charged for excess and repeated hours required by amendments to Texas Education Code, §§61.0595 and 54.068.

Dr. Deborah Greene, Acting Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of these rules.

Dr. Greene has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of this repeal will be that all Board rules regarding repeated or excessive hours will be in one subchapter. There is no effect on small businesses. There are no anticipated economic costs that result from this repeal. There is no impact on local employment.

Comments on the proposed repeal may be submitted to Deborah L. Greene, Acting Assistant Commissioner, Planning and Accountability, P.O. Box 12788, Austin, TX 78711; deborah.greene@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The repeal is proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules, Texas Education Code, §61.0595, which excludes funding for certain repeated or excessive hours, and Texas Education Code, §54.068, which permits institutions to charge increased tuition for certain repeated or excessive hours.

The repeal affects the Texas Education Code, §§54.068 and 61.0595.

§13.100. Purpose.


§13.102. Definitions.

§13.103. Affected Students.

§13.104. Limitation on Formula Funding.

§13.105. Tuition Charged to Affected Students.


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

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SUBCHAPTER F. FORMULA FUNDING AND TUITION CHARGED FOR REPEATED AND EXCESS HOURS OF UNDERGRADUATE STUDENTS
§13.100  Purpose.

This subchapter provides financial incentives for institutions to facilitate the progress of students through their academic programs and incentives for students to complete their degree programs expeditiously. Rules contained in this subchapter clarify the enabling legislation, define responsibilities of institutions and the Board in implementing the statute, and ensure that students are adequately informed.

§13.101  Authority.

Texas Education Code, §§54.068, 51.3062(1), and 61.0595, provides for the Board to submit reports to the Board and to publish information about tuition rate is charged, institutions must adopt a policy which exempts a student from the payment of the increased tuition rate upon the showing of an economic hardship to the student. Finally, proposed new §13.109 requires the institutions to provide reports to the Board and to publish information about excessive and repeated hours in their catalogs. Institutions are also required to track the progress of students and notify those students who are approaching the limitations on formula funding set out in these sections.

Dr. Deborah Greene, Acting Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Greene has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering these sections will be the facilitation of the progress of students through their academic programs and provision of incentives for students to complete their degree programs expeditiously. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Deborah L. Greene, Acting Assistant Commissioner, Planning and Accountability, P.O. Box 12788, Austin, TX 78711; debrah.greene@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The new sections affect Texas Education Code, §§54.068, 51.3062(l), and 61.0595.

§13.100  Purpose.

This subchapter proposes new §13.100 - 13.109 concerning Formula Funding and Tuition Charged for Repeated and Excess Hours of Undergraduate Students. These new sections are being proposed to implement the changes made to Texas Education Code, §§54.068 and 61.0595, by Senate Bill 1172, 79th Texas Legislature, Regular Session and to incorporate current §§13.100 - 13.106 and §13.25 of Board rules into one subchapter regarding formula funding and tuition charged for repeated and excess hours. Specifically, proposed new §§13.100 and 13.101 provide the purpose and authority for these rules. Definitions for all the terms used in these sections are provided in proposed new §13.102. Institutions are not permitted to submit excess hours to the Board for formula funding under §13.103, unless those hours are exempted from this provision under §13.104. Likewise, institutions are not permitted to submit repeated hours for attempted courses to the Board for formula funding under §13.105, unless those hours are exempted under §13.106. Section 13.107 provides the limitations on the number of hours for remedial and developmental courses which may be submitted for formula funding. Proposed new §13.108 provides that institutions may charge a higher tuition rate to students who take excess hours or certain repeated courses, if a higher tuition rate is charged, institutions must adopt a policy which exempts a student from the payment of the increased tuition rate upon the showing of an economic hardship to the student.

§13.102  Definitions.

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

1. Degree Plan - academic program of courses and their related hours culminating in a degree or certificate, including minors, double majors, and completion of any other special program in which the student is also enrolled, such as a program with a study abroad component.

2. Dual Credit Hours -- hours for which a student received simultaneous academic credit for the course from both an institution and a high school under §4.81 - 4.85 of this title (relating to Dual Credit Partnerships Between Secondary Schools and Texas Public Colleges).

3. Excess Hours -- effective with students initially enrolling in the fall 1999 semester and subsequent terms, hours, including dual credit hours, attempted by a student that exceed more than 45 hours of the number of hours required for completion of the degree plan in which the student is enrolled. Effective with students initially enrolling in the fall 2006 semester and subsequent terms, hours, including dual credit hours, attempted by a student that exceed more than 30 hours of the number of hours required for completion of the degree program in which the student is enrolled.

4. Hours -- quarter credit hours or semester credit hours.

5. Remedial and Developmental Courses -- courses designed to correct academic deficiencies and bring students’ skills to an appropriate level for entry into college. The term includes English as a Second Language (ESL) courses in which a student is placed as a result of failing the reading or writing portion of a test required by §4.56 of this title (relating to Assessment Instruments).

6. Repeated Hours for Attempted Course -- hours for a course that is the same or substantially similar to a course that the student previously attempted for three or more times at the same institution. Previously attempted courses from which the student withdraws before the official census date shall not count as an attempted course.

7. Repeated Hours for Completed Course -- hours for a course in which a student enrolls for two or more times that is the same as or substantially similar to a course that the student previously completed and received a grade of A, B, C, D, F, or Pass/Fail at the same institution.
(8) Student -- for the purposes of this subchapter, a student who has not been awarded a bachelor’s degree or the equivalent. The term includes a nonresident student who is permitted to pay resident tuition.

(9) Workforce Education Courses -- courses offered by two-year institutions for the primary purpose of preparing students to enter the workforce rather than academic transfer. The term includes both technical courses and continuing education courses.

§13.103. Limitation on Formula Funding for Excess Hours.
(a) Institutions shall not submit excess hours to the Board for the purposes of formula funding, unless those hours are exempt under the provisions of §13.104 of this title (relating to Excessive Hour Exemptions).

(b) For the purposes of determining the number of hours required for a degree plan, institutions shall utilize the degree plan designated by the student as of the official census day of the term.

(1) If a student at a four-year institution is not enrolled in a degree program, institutions shall consider the student to be enrolled in a degree program requiring a minimum of 120 hours.

(2) If a student is enrolled on a temporary basis in a university or health-related institution and is also enrolled in a private or independent institution of higher education or an out-of-state institution of higher education, institutions shall consider the student to be enrolled in a degree program requiring a minimum of 120 hours.

(c) Institutions shall not consider any hours for which a student has enrolled as part of a master’s or professional degree program without first completing a bachelor’s degree in the calculation of the number of hours required for a bachelor’s degree or the equivalent until the student has completed a minimum of 120 hours required for the bachelor’s degree or equivalent.

§13.104. Exemptions for Excess Hours.
The following types of hours are exempt and are not subject to the limitation on formula funding set out in §13.103 of this title (relating to Limitation on Formula Funding for Excess Hours):

(1) hours earned by the student before receiving a bachelor’s degree that has been previously awarded to the student;

(2) hours earned through examination or similar method without registering for a course;

(3) hours from remedial and developmental courses, workforce education courses, or other courses that would not generate academic credit that could be applied to a degree at the institution if the course work is within the 27-hour limit at two-year colleges and the 18-hour limit at general academic institutions;

(4) hours earned by the student at a private institution or an out-of-state institution; and

(5) hours not eligible for formula funding.

§13.105. Limitation on Formula Funding for Repeated Hours for Attempted Courses.
Institutions shall not submit for formula funding any hours for a course that is the same or substantially similar to a course that the student previously attempted for three or more times at the same institution.

§13.106. Exemptions for Repeated Hours for Attempted Courses.
The following types of hours are exempt and are not subject to the limitation on formula funding set out in §13.105 of this title (relating to Limitation on Formula Funding for Repeated Hours for Attempted Course):

(1) hours for remedial and development courses, if the course work is within the 27-hour limit at two-year colleges and the 18-hour limit at general academic institutions;

(2) hours for special topics and seminar courses;

(3) hours for courses that involve different or more advanced content each time they are taken, including but not limited to, individual music lessons, Workforce Education Courses, Manual Special Topics courses (when the topic changes), theater practicum, music performance, ensembles, certain physical education and kinesiology courses, and studio art;

(4) hours for independent study courses; and

(5) hours for continuing education courses that must be repeated to retain professional certification.

§13.107. Limitation on Formula Funding for Remedial and Developmental Courses.
Institutions shall not submit for formula funding any hours for remedial and development courses for which a student has exceeded 18 hours of remedial and developmental courses in a general academic teaching institution, or 27 hours of remedial and developmental courses in a public community college, public technical college, or public state college.

§13.108. Tuition Rate for Students.
(a) An institution may charge a higher tuition rate, not to exceed the rate charged to nonresident undergraduate students, to a student whose hours can no longer be submitted for formula funding under §13.103 of this title (relating to Limitation on Formula Funding for Excess Hours), unless those hours are exempted under §13.104 of this title (relating to Exemptions for Excess Hours).

(b) Unless the hours are exempted under §13.106 of this title (relating to Limitation on Formula Funding for Repeated Hours for Attempted Course), an institution may charge a higher tuition rate, not to exceed the rate charged to nonresident undergraduate students, to a student who enrolls for the second time in a completed course, even though those hours may be submitted for formula funding, or to a student whose hours may no longer be submitted for formula funding under §13.105 of this title (relating to Limitation on Formula Funding for Repeated Hours for Attempted Course).

(c) If an institution charges a higher tuition rate under this section, it shall adopt a policy under which a student is exempted from the payment of that higher tuition rate, if the payment of the higher tuition rate would result in an economic hardship for the student.

(a) Institutions shall report to the Board all information required to comply with the provisions of this subchapter. Based upon this information, the Coordinating Board shall maintain a database containing information regarding the number of hours a student has accumulated.

(b) Each Institution shall publish information in the catalog about the limitations on hours set out in this subchapter and the tuition rate that will be charged to affected students. Until this material is included in its catalog, the institution shall inform each new undergraduate student enrolling at the institution in writing of the limitations on formula funding and the tuition rate that will be charged to affected students.

(c) Institutions shall track the progress of students and shall identify and assist those students who are approaching the limitations on formula funding.

(d) Community and technical colleges and the Lamar State Colleges shall inform each student of the individual’s progress toward
the limitations on formula funding and shall disclose the institution’s tuition policy for students who exceed the limitations when the student has accumulated 70 or more hours.

(e) Universities and health-related institutions shall inform each student of the individual’s progress toward the limitations on formula funding and shall disclose the institution’s tuition policy for students who exceed the limitations when the student has accumulated 120 or more hours toward the limit.

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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Jan Greenberg
General Counsel
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SUBCHAPTER H. REPORTING OF TUITION AND FEES

19 TAC §§13.140 - 13.143

The Texas Higher Education Coordinating Board proposes new §§13.140 - 13.143, concerning Reporting of Tuition and Fees Senate Bill 1528, 79th Texas Legislature, Regular Session, enacted 2005 Tex.Sess.Law Serv. 288 (Vernon), requiring the Board to compile data on the tuition and fees charged by institutions and to report that data to the Legislature. This same legislation created Texas Education Code, §54.0015, authorizing the Board to adopt definitions of tuition and fees as necessary to ensure consistency. Specifically, proposed new §§13.140 and §13.141 provide the purpose of and authority for these rules. Section 13.142 proposes twenty-three definitions for the different types of tuition and fees charged by institutions. The procedures for reporting the types and amounts of tuition and fees to the Board are set out in proposed new §13.143.

Dr. Deborah Greene has determined that for each year of the first five years these sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Greene has also determined that for each year of the first five years these sections are in effect, the public benefit anticipated as a result of administering the sections will be the consistent use of terms by students, parents, legislature, and other interested parties regarding higher education tuition and fees. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Deborah L. Greene, Acting Assistant Commissioner, Planning and Accountability, P.O. Box 12788, Austin, Texas 78711; deborah.greene@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.


§13.140. Purpose.
The purpose of this subchapter is to establish the reporting requirements for institutions to submit data on tuition and fees and to provide uniform definitions for the different types of tuition and fees.

§13.141. Authority.
2005 Tex.Sess.Law Serv, 288 (Vernon) requires the Board to compile data on the tuition and fees charged at each public two-year and four-year institution of higher education and report that data to the Texas Legislature. Texas Education Code, §54.053 authorizes the Board to adopt rules to implement Texas Education Code, Chapter 54, Subchapter B.

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

1. Auxiliary fee--a mandatory or discretionary fee that an institution charges to recover costs from a student for a service or activity that is self-supporting.

2. Board authorized tuition--a tuition charge authorized under Texas Education Code, §54.008, that a general academic teaching institution or a medical and dental unit may impose on any graduate resident or nonresident student in an amount which the governing board of the institution considers necessary for the effective operation of the institution.

3. Compulsory fee--a discretionary fee authorized under Texas Education Code §54.503 that an institution may elect to charge and that if charged must be charged to all students, other than students enrolled at the institution who are exempt from that fee. The term does not include an incidental fee.

4. Coordinating Board--the Texas Higher Education Coordinating Board.

5. Course-related fee--a voluntary discretionary fee required of all students enrolled in a given course.

6. Designated tuition--a tuition charge authorized under Texas Education Code, §54.0513, that a general academic teaching institution, a medical and dental unit, or a public technical institute may impose on any graduate or undergraduate, resident or nonresident student in an amount that the governing board of the institution considers necessary for the effective operation of the institution.

7. Discretionary fee--a fee that an institution is allowed, but not required by this chapter to charge all students.

8. Fee--any mandatory or discretionary fee.

9. Incidental fee--a voluntary discretionary fee that is charged for services not related to enrollment. Some are required of all students; others (such as library fines) are triggered by actions or inactions by individual students.

10. General academic teaching institution--General academic teaching institution means The University of Texas at Austin; The University of Texas at El Paso; The University of Texas of the Permian Basin; The University of Texas at Dallas; The University of Texas at San Antonio; Texas A&M University, Main University; The University of Texas at Arlington; Tarleton State University; Prairie View A&M University; Texas Maritime Academy (now Texas A&M University at Galveston); Texas Tech University; University of North Texas; Lamar University; Lamar State College--Orange; Lamar State College--Port Arthur; Texas A&M University--Kingsville;
Texas A&M University--Corpus Christi; Texas Woman’s University; Texas Southern University; Midwestern State University; University of Houston; University of Texas--Pan American; The University of Texas at Brownsville; Texas A&M University--Commerce; Sam Houston State University; Texas State University--San Marcos; West Texas A&M University; Stephen F. Austin State University; Sul Ross State University; Angelo State University; The University of Texas at Tyler; and any other college, university, or institution so classified as provided in this chapter or created and so classified, expressly or impliedly, by law.

(11) Institution or institution of higher education—any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in Texas Education Code, §61.003(8).

(12) Laboratory fee--a mandatory fee that is charged under Texas Education Code, §54.501 to all students to cover the cost of laboratory materials and supplies used by a student.

(13) Mandatory fee--a fee that an institution is required by this chapter to charge to all students who are not exempt from the fee.

(14) Matriculation fee--a discretionary fee that an institution may charge a student withdrawing from the institution before the first day of class, as authorized by Texas Education Code §54.006(a).

(15) Medical and dental unit--an institution included in the provisions of Texas Education Code, §61.003(5).

(16) Optional fee--a voluntary discretionary fee is charged for an activity, service, or item not directly related to education, such as a fee for sports or cultural events.

(17) Public junior or community college--any junior or community college certified by the board in accordance with Texas Education Code, §61.063.

(18) Public technical institute--an institution included in the provisions of Texas Education Code, §61.003(7).

(19) Required fee--a mandatory or discretionary fee that an institution charges to a student as a condition of enrollment at the institution or in a specific course.

(20) Registration fee--a statutory, designated, and/or board-authorized tuition.

(21) Statutory tuition--a tuition charge authorized under Texas Education Code §54.051, set by the Texas Legislature to be paid per semester credit hour for resident or nonresident students.

(22) Tuition--statutory, designated, and/or board-authorized tuition.

(23) Tuition fee--statutory, designated and/or board-authorized tuition.


(a) By December 1, 2005, each institution shall report to the Board the types and amounts of tuition and fees charged to students by semester, beginning with the 2003 fall semester and including the 2005 spring semester.

(b) Beginning December 1, 2006, each institution shall report the types and amounts of tuition and fees charged to students by semester during the previous academic year.

(c) In reporting the types and amounts of tuition and fees charged to students, all institutions shall classify the tuition and fees according to the definitions of those terms provided in §13.142 of this title (relating to Definitions).

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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Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

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

CHAPTER 17. CAMPUS PLANNING

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §17.3

The Texas Higher Education Coordinating Board proposes amendments to §17.3, concerning Campus Planning. Specifically, the proposed amendments to §17.3 provide new definitions to reflect the Board’s new committee structure and Coordinating Board organizational changes. The definitions are renumbered.

Dr. Deborah Greene, Acting Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rule.

Dr. Greene has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be more efficient Board operations related to Resource Planning activities. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Nancy Ellen Soteriou, Assistant Director, Office of Resource Planning, P.O. Box 12788, Austin, Texas 78711; nancy.soteriou@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The amendments are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules, and Texas Education Code, §61.058 and §61.0572.

The amendments affect the Texas Education Code, §61.058 and §61.0572.

§17.3. Definitions.

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

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

(5) Assistant Commissioner--The executive [administrative] officer having direct oversight of the campus facilities planning function at the Texas Higher Education Coordinating Board.

(6) Associate Commissioner--An executive officer having indirect oversight of the campus facilities planning function at the Texas Higher Education Coordinating Board.
(7) [461] Athletic Facilities—Facilities used for athletic programs, including intercollegiate athletics, intramural athletics, and athletically-oriented academic programs.

(8) [442] Auditorium or Assembly—A room, hall, or building designed and equipped for the assembly of large groups for such events as dramatic and musical productions, devotional activities, livestock judging, faculty/staff meetings, or commencement. Included are theaters, concert halls, arenas, chapels and livestock judging pavilions. Assembly facilities may also serve instructional purposes to a minor or incidental extent.

(9) [481] Auxiliary Enterprise Buildings or Space—Income-generating structures and space such as dormitories, cafeterias, student union buildings, stadiums, athletic facilities, housing or boarding facilities used by a fraternity, sorority, or private club, and alumni centers used solely for those purposes. Auxiliary space is not supported by State appropriations.

(10) [490] Board or Coordinating Board—The Texas Higher Education Coordinating Board and the agency.

(11) [440] Building—A structure with at least two walls for permanent or temporary shelter of persons, animals (excluding animal caging equipment), plants, materials, or equipment that is attached to a foundation, roofed, serviced by a utility (exclusive of lighting), is a source of maintenance and repair activities, and is under the control or jurisdiction of the institution’s governing board, regardless of its location.

(12) [444] Campus Deferred Maintenance Plan (MP2)—A detailed report of institutional programs to address deferred maintenance and critical deferred maintenance.

(13) [442] Campus Master Plan—A detailed long-range plan of institutional physical plant needs, including facilities construction and/or development, land acquisitions, and campus facilities infrastructure; the plan provides long-range and strategic analyses and facilities development guidelines.

(14) [443] Capital Renewal—Includes capital improvements and changes to a facility in response to evolving needs. The changes may occur because of new programs or to correct functional obsolescence. Capital renewal needs are not part of the deferred maintenance backlog.

(15) [444] Certification—Institutional attestation of reports or other submissions as being true or as represented.

(16) [445] Classroom—A room used for scheduled classes. These rooms may be called lecture rooms, lecture-demonstration rooms, seminar rooms, or general purpose classrooms. A classroom may contain multimedia or telecommunications equipment, such as those used for distance learning. A classroom may be furnished with special equipment (e.g., globes, maps, pianos) appropriate to a specific area of study. A classroom does not include conference rooms, meeting rooms, auditoriums, or class laboratories.

(17) [446] Class Laboratory—A room used primarily by regularly scheduled classes that require special-purpose equipment for student participation, experimentation, observation, or practice in a field of study. Class laboratories may be referred to as teaching laboratories, instructional shops, computer laboratories, drafting rooms, band rooms, choral rooms, group studios. Laboratories that serve as individual or independent study rooms are not included.

(18) [442] Clinical Facility—A facility often associated with a hospital or medical school that is devoted to the diagnosis and care of patients in the instruction of health professions and allied health professions; medical instruction may be conducted, and patients may be examined and discussed. Clinical facilities include, but are not limited to, patient examination rooms, testing rooms, and consultation rooms.

(19) [448] Committee or Committee on Strategic [Campus] Planning—The members of the Board appointed to consider facility-related issues. This includes the Committee on Strategic Campus Planning and its successors.

(20) [449] Commissioner—The chief executive officer of the Texas Higher Education Coordinating Board.

(21) [420] Critical Deferred Maintenance—The physical conditions of a building or facility that places its occupants at risk of harm or the facility at risk of not fulfilling its functions.

(22) [421] Deferred Maintenance—An existing or imminent building maintenance-related deficiency from prior years that needs to be corrected, or scheduled preventive maintenance tasks that were not performed because other tasks funded within the budget were perceived to have higher priority status. The accumulation of facility components in need of repair brought about by age, use, or damage for which remedies are postponed or considered backlogged. This may include those repairs postponed due to insufficient funding.

(23) [422] Diagnostic Support Laboratory—the central diagnostic service area for a health care facility. Included are pathology laboratories, pharmacy laboratories, autopsy rooms, isotope rooms, etc., providing such services as hematology, tissue chemistry, bacteriology, serology, blood banks, and basal metabolism. In veterinary facilities, this includes necropsy rooms.

(24) [423a] Education and General (E&G)—Space used for teaching, research, or the preservation of knowledge, including the proportional share used for those activities in any building or facility used jointly with auxiliary enterprise, or space that is permanently unassigned. E&G space is supported by state appropriations.

(25) [424a] Emergency—An unforeseen combination of circumstances that calls for immediate action and requires an urgent need for assistance or relief that, if not taken, would result in an unacceptable cost to the state; or, an urgent need for assistance or relief due to a natural disaster; or an unavoidable circumstance whereby the delay of the project approval would critically impair the institution’s function.

(26) [425a] Eminent Domain—A legal process wherein the institution takes private property for public use.

(27) [426a] Energy Systems—Infrastructure in a building that includes facility electric, gas, heating, ventilation, air-conditioning, and water systems.

(28) [427a] Energy Savings Performance Contract—A contract for energy or water conservation measures to reduce energy or water consumption or operating costs of institutional facilities in which the estimated savings in utility costs resulting from the conservation measures is guaranteed to offset the cost of the measures over a specified period.

(29) [428a] Facilities Audit—Comprehensive review of institutional facility development, planning activities, and reports.

(30) [429a] Facilities Inventory—A collection of building and room records that reflects institutional space and how it is being used. The records contain codes that are uniformly defined by the Board and the United States Department of Education and reported by the institutions on an ongoing basis to reflect a current facilities inventory. The facilities inventory includes a record of property owned by or under the control of the institution.
(31) [430] Facilities Development Plan (MP1)--A detailed formulation of institutional programs to address deferred maintenance, critical deferred maintenance, facilities construction, demolition, property acquisitions, or physical plant development.

(32) [444] Financing Directly Derived from Students--Funds resulting from the collection of fees or other charges to students, such as designated tuition, student activities fees, housing revenue, bookstore or student union revenue, etc. Bond proceeds for which one or more of these sources provides debt service shall also be considered financing directly derived from students.

(33) [422] Financing Indirectly Derived from Students--Funds generated from funds accumulated from students, primarily interest on funds accumulated directly from students.

(34) [433] Gift--A donation or bequest of money or another tangible item, a pledge of a contribution, or the acquisition of real property or facilities at no cost to the state or to the institution. It may also represent a method of finance for a project.

(35) [444] Gross Square Feet (GSF)--The sum of all square feet of floor areas within the outside faces of a building’s exterior walls. This includes the areas, finished and unfinished, on all floors of an enclosed structure, i.e., within the environmentally controlled envelope, for all stories or areas which have floor surfaces.

(36) [435] Housing Facility--A single- or multi-family residence used exclusively for housing or boarding students, faculty, or staff members.

(37) [436] Information Resource Project--Projects related to the purchase or lease-purchase of computer equipment, purchase of computer software, purchase or lease-purchase of telephones, telephone systems, and other telecommunications and video-teleconferencing equipment.

(38) [423] Intercollegiate Athletic Facility--Any facility used primarily to support intercollegiate athletics, including stadiums, arenas, multi-purpose centers, playing fields, locker rooms, coaches’ offices, and similar facilities.

(39) [436] Infrastructure--The underlying foundation or basic framework of a facility, including but not limited to, the utility distribution system of plumbing, heating/ventilation/air conditioning, electrical, sewage, drainage, architectural, safety and Code compliance, roads, ground, and landscaping.

(40) [430] Institution or institution of higher education--A Texas public institution of higher education as defined in Texas Education Code, §61.003(8), except a community/junior college.

(41) [440] Legislative Authority--Specific statutory authority.

(42) [441] Lease--A contract by which real estate, equipment, or facilities are conveyed for a specified term and for a specified rent. Includes the transfer of the right to possession and use of goods for a term in return for consideration. Unless the context clearly indicates otherwise, the term includes a sublease.

(43) [442] Lease-Purchase--A lease project that includes the acquisition of real property by sale, mortgage, security interest, pledge, gift, or any other voluntary transaction at some future time.

(44) [444] Net Assignable Square Feet (NASF)--The sum of all areas within the interior walls of rooms on all floors of a building assigned to, or available for assignment to, an occupant or use, excluding unassigned areas. NASF includes auxiliary space and E&G space.

(45) [444] New Construction--The creation of a new building or facility, the addition to an existing building or facility, or new infrastructure that does not currently exist on campus. New construction would add gross square footage to an institution’s existing space.

(46) [445] Non-student Sources--Funds generated from athletic department operations, gifts and grants, facility usage fees, related revenue, and appropriated funds.

(47) [446] NCAA Football Bowl Championship Series--A program of the NCAA under which certain NCAA Division I-A football universities share proceeds of college bowl games.

(48) [447] Parking Structure--A facility or garage used for housing or storing vehicles. Included are garages, boathouses, airport hangars, and similar buildings. Barns or similar field buildings that house farm implements and surface parking lots are not included.

(49) [448] Phased Project--A project that has more than one part, each one having fixed beginning and ending dates, specified cost estimates, and scope. Phased projects consider future phase needs in the project plan; each phase is able to stand alone as an individual project.

(50) [449] Private Funding--Gifts, grants, or other funds to be used for facilities development projects that are provided by persons or entities other than the university or institution requesting consideration of the project.

(51) [450] Project--The process that includes the construction, repair, renovation, addition, alteration of a campus, building, or facility, or its infrastructure, or the acquisition of real property.

(52) [454] Real Property--Land with or without improvements such as buildings.

(53) [452] Repair and Renovation (R&R)--Construction upgrades to an existing building, facility, or infrastructure that currently exists on campus; this includes the finish-out of shell space. R&R may add E&G NASF space.

(54) [453] Replacement Value--The value of an institution’s overall campus facilities, as determined annually by the Board. The method of calculation is based upon recently approved Board project costs, with adjustments based upon room types and the institution’s location within the state. Replacement values for public universities, the Lamar State Colleges, and the Texas State Technical Colleges are calculated only for E&G space. Replacement values for public health-related institutions are calculated for the NASF space. Replacement values are used to measure the validity of construction projects that are submitted to the Board for approval and are not recommended for insurance purposes.

(55) [454] Research Facility--A facility used primarily for experimentation, investigation, or training in research methods, professional research and observation, or a structured creative activity within a specific program. Included are laboratories used for experiments or testing in support of instructional, research, or public service activities.

(56) [455] Shell Space--An area within a building with an unfinished interior designed to be converted into usable space at a later date.

(57) [456] Space Need--The result of the comparison of an institution’s actual space to the predicted need as calculated by the Board’s Space Projection Model.

(58) [457] Standard--Basis, criteria, or benchmark used for evaluating the merits of a project request or an institutional comparison to a benchmark.
Technical Research Building--Space used for research, testing, and training in a mechanical or scientific field. Special equipment is required for staff and/or student experimentation or observation. Included are specialized laboratories for new technologies that have stringent environmental controls on air quality, temperature, vibration, and humidity. Facilities generally include space for specialized technologies, semiconductors, biotechnology, advanced materials, quantum computing and advanced manufacturing quantum computing technology, nanoscale measurement tools, integrated microchip-level technologies for measuring individual biological molecules, and experiments in nanoscale disciplines.

Tracking Report--Institutional reports indicating the status of approved projects.

Tuition Revenue Bonds Project--A project for which an institution has legislative authority to finance a construction or land acquisition project as provided for in Texas Education Code, §§55.01 - 55.25.

Unimproved Real Property--Real property on which there are no buildings or facilities.

University System--The association of one or more public senior colleges or universities, medical or dental units, or other agencies of higher education under the policy direction of a single governing 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.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

SUBCHAPTER B. BOARD APPROVAL

19 TAC §17.12

The Texas Higher Education Coordinating Board proposes amendments to §17.12, concerning Campus Planning. Specifically, the proposed amendments to §17.12 change Board rules to reflect the Board’s new committee structure and Coordinating Board organizational changes. The proposed amendments also change Board rules to reflect Commissioner approval authority regarding auxiliary enterprise projects with a total project cost of $15 million but less than $25 million and Assistant Commissioner or Associate Commissioner approval authority regarding auxiliary enterprise projects with a total project cost of less than $15 million.

Dr. Deborah Greene, Acting Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rule.

Dr. Greene has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be more efficient Board operations related to Resource Planning activities. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Nancy Ellen Soteriou, Assistant Director, Office of Resource Planning, P.O. Box 12788, Austin, Texas 78711; nancy.soteriou@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The amendments are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules, and Texas Education Code, §§61.058 and §61.0572.

The amendments affect the Texas Education Code, §61.058 and §61.0572.

§17.12. Delegation of Approval Authority.
(a) Commissioner. The Board authorizes the Commissioner, and the Deputy Commissioner when acting on behalf of the Commissioner, to review or approve the following types of projects upon certification of authority by the proposing institution’s governing board that the project meets all of the specified Board standards for that project type:

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

(6) Auxiliary enterprise projects being acquired, constructed, or renovated without the use of state general revenue funds and with a total project cost of $15 [§140] million but less than $25 million;

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

(11) Any project referred to the Commissioner by the Assistant Commissioner or Associate Commissioner,
(b) Assistant Commissioner or Associate Commissioner. The Board authorizes the Assistant Commissioner or the Associate Commissioner to approve the following types of projects, upon certification of authority by the proposing institution’s governing board that the project meets all of the specified Board standards for that project type:

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

(6) Auxiliary enterprise projects being acquired, constructed, or renovated without the use of state general revenue funds and with a total project cost less than $15 [§140] million;

(7) Projects previously reviewed or approved by the Assistant Commissioner or Associate Commissioner but requiring first or second reconsideration under the provisions of §17.14 of this title (relating to Re-approval of Projects), providing they continue to be eligible for Assistant Commissioner or Associate Commissioner approval;

(8) Projects previously reviewed or approved by the Board, Committee, Assistant Commissioner or Associate Commissioner that require reconsideration under the provisions of §17.14 of this title (relating to Re-approval of Projects) relating to any change in the funding source of an approved project with a total projected cost less than $25 million; and

(9) New construction, major repair and renovation, or property acquisition that affects only the University System, and not a member institution, and has a total projected cost less than $15 million.
(c) Committee on Strategic [Campus Planning. The Board authorizes the Committee to approve the following types of projects, upon certification of authority by the proposing institution’s governing board:
(10) Any project referred to the Committee by the Commissioner, the Associate Commissioner, or the Assistant Commissioner; and

(11) (No change.)

(d) (No change.)

(e) The Commissioner may refer projects to the Committee or the Board. The Committee may refer projects to the Board. The Assistant Commissioner or Associate Commissioner may refer projects to the Committee.

(f) Decisions of the Committee on Strategic Campus Planning are final. Decisions of the Commissioner may be appealed to the Board.

(g) Decisions of the Assistant Commissioner or Associate Commissioner may be appealed to the Committee.

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

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SUBCHAPTER C. RULES APPLYING TO ALL PROJECTS
19 TAC §17.21, §17.22

The Texas Higher Education Coordinating Board proposes amendments to §17.21 and §17.22, concerning Campus Planning Specifically, the proposed amendments to §17.21 and §17.22 change Board rules to reflect the Board’s new committee structure and Coordinating Board organizational changes.

Dr. Deborah Greene, Acting Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years these sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Greene has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering these sections will be more efficient Board operations related to Resource Planning activities. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Nancy Ellen Soteriou, Assistant Director, Office of Resource Planning, P.O. Box 12788, Austin, Texas 78711; nancy.soteriou@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The amendments are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules, and Texas Education Code, §61.058 and §61.0572.

The amendments affect the Texas Education Code, §61.058 and §61.0572.


(a) (No change.)

(b) Institutions shall submit the following materials for the consideration of projects by the Commissioner, Committee on Strategic Campus Planning, or Board:

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

(c) Project submission schedule:

(1) (No change.)

(2) Projects to be considered by the Committee on Strategic Campus Planning or the Board shall be submitted at least 70 days prior to the regularly scheduled Board meeting at which consideration is desired.

§17.22. Emergency Approval of Projects.

(a) An emergency project may be approved by the Commissioner or the Committee on Strategic Campus Planning between regularly scheduled meetings of the Board. If necessary to address the emergency, the Commissioner may approve emergency projects between regularly scheduled meetings of the Board in consultation with the Chair of the Committee on Strategic Campus Planning.

(b) If an emergency project is approved by the Commissioner, the project shall be reported to the next regularly scheduled Committee on Strategic Campus Planning meeting.

(c) (No change.)

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

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SUBCHAPTER D. RULES APPLYING TO NEW CONSTRUCTION AND ADDITION PROJECTS
19 TAC §17.30

The Texas Higher Education Coordinating Board proposes amendments to §17.30, concerning Campus Planning. Specifically, the proposed amendments to §17.30 change the Board’s project standards regarding efficiency for parking structures.

Dr. Deborah Greene, Acting Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rule.

Dr. Greene has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be more efficient Board
operations related to Resource Planning activities. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Nancy Ellen Soteriou, Assistant Director, Office of Resource Planning, P.O. Box 12788, Austin, Texas 78711; nancy.soteriou@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The amendments are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules, and Texas Education Code, §61.058 and §61.0572.

The amendments affect the Texas Education Code, §61.058 and §61.0572.

§17.30. Standards for New Construction and/or Addition Projects. To obtain Board approval for a new construction and/or addition project, an institution shall demonstrate that the project complies with the following project standards:

(1) (No change.)

(2) Project Standards. The institution shall demonstrate that a new construction or addition project complies with the following project standards:

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

(C) Efficiency--The ratio of NASF to GSF for the space in projects for classrooms and general purpose facilities shall be 0.60 or greater. Where the following specialized space is predominant in the project, the ratios of NASF to GSF shall be as follows:

(i) (No change.)

(v) Parking structure: and

(I) 400 [200] Square Feet per parking space for automobile facilities;

(II) 500 [325] Square Feet per parking space for boathouses; and

(III) 3,000 [1,000] Square Feet per parking space for airplanes.

(IV) (No change.)

(vi) (No change.)

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

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General Counsel

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SUBCHAPTER G. RULES APPLYING TO AUXILIARY ENTERPRISE PROJECTS

19 TAC §17.60

The Texas Higher Education Coordinating Board proposes amendments to §17.60, concerning Campus Planning. Specifically, the proposed amendments to §17.60 change the Board rules to reflect the Board’s new committee structure and Coordinating Board organizational changes.

Dr. Deborah Greene, Acting Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rule.

Dr. Greene has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be more efficient Board operations related to Resource Planning activities. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Nancy Ellen Soteriou, Assistant Director, Office of Resource Planning, P.O. Box 12788, Austin, Texas 78711; nancy.soteriou@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The amendments are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules, and Texas Education Code, §61.058 and §61.0572.

The amendments affect the Texas Education Code, §61.058 and §61.0572.

§17.60. Standards for Auxiliary Enterprise Projects.

To obtain Board approval for an auxiliary enterprise project, an institution shall demonstrate that the project complies with the following standards:

(1) (No change.)

(2) Project Standards. The following basic standards shall apply to all auxiliary enterprise projects considered by the Board, Committee on Strategic [Campus] Planning, or the Commissioner:

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

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

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General Counsel

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SUBCHAPTER H. RULES APPLYING TO INTERCOLLEGIATE ATHLETIC PROJECTS

19 TAC §17.70

The Texas Higher Education Coordinating Board proposes amendments to §17.70 of Board rules, concerning Campus Planning. Specifically, the proposed amendments to §17.70
change the Board rules to reflect the Board’s new committee structure and Coordinating Board organizational changes.

Dr. Deborah Greene, Acting Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the amendments are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the amended section.

Dr. Greene has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the amended section will be more efficient Board operations related to Resource Planning activities. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Nancy Ellen Soteriou, Assistant Director, Office of Resource Planning, P.O. Box 12788, Austin, Texas 78711; nancy.soteriou@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The amendments are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules, and Texas Education Code, §61.058 and §61.0572.

The amendments affect the Texas Education Code, §61.058 and §61.0572.

§17.70. Standards Applying to Intercollegiate Athletic Projects.

To obtain Board approval for an intercollegiate athletic project, an institution must demonstrate that the project complies with the following standards:

(1) (No change.)

(2) Project Standards. The following basic standards shall apply to all Intercollegiate Athletic Projects considered by the Board, Committee on Strategic (Campus) Planning, or the Commissioner:

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

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

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SUBCHAPTER J. RULES APPLYING TO TUITION REVENUE BOND PROJECTS
19 TAC §17.90

The Texas Higher Education Coordinating Board proposes amendments to §17.90, concerning Campus Planning. Specifically, the proposed amendments to §17.90 change the Board rules to reflect the Board’s new committee structure and Coordinating Board organizational changes.

Dr. Deborah Greene, Acting Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the amendments are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the amended section.

Dr. Greene has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the amended section will be more efficient Board operations related to Resource Planning activities. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Nancy Ellen Soteriou, Assistant Director, Office of Resource Planning, P.O. Box 12788, Austin, Texas 78711; nancy.soteriou@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The amendments are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules, and Texas Education Code, §61.058 and §61.0572.

The amendments affect the Texas Education Code, §61.058 and §61.0572.

§17.90. Standards for Tuition Revenue Bond Projects.

Unless specifically exempted by legislative authority, each Tuition Revenue Bond Project shall be submitted to the Board for an evaluation to determine if the project meets the following standards:

(1) (No change.)

(2) Project Standards. The following basic standards shall apply to all Tuition Revenue Bond projects considered by the Board, Committee on Strategic (Campus) Planning, or the Commissioner:

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

(3) - (6) (No change.)

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

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SUBCHAPTER L. FACILITIES AUDIT
19 TAC §17.110, §17.113

The Texas Higher Education Coordinating Board proposes amendments to §17.110 and §17.113, concerning Campus Planning. Specifically, the proposed amendments to §17.110 and §17.113 change the Board rules to reflect the Board’s new committee structure and Coordinating Board organizational changes.
Dr. Deborah Greene, Acting Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the amendments are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the amended sections.

Dr. Greene has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the amended sections will be more efficient Board operations related to Resource Planning activities. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Nancy Ellen Soteriou, Assistant Director, Office of Resource Planning, P.O. Box 12788, Austin, Texas 78711; nancy.soteriou@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The amendments are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules, and Texas Education Code, §61.058 and §61.0572.

The amendments affect the Texas Education Code, §61.058 and §61.0572.

§17.110. General Provisions.
(a) (No change.)
(b) The Board may contract with a recognized firm with substantial experience in auditing facilities to conduct the audit of the institution. The firm selected to conduct the audits shall report the results of those audits directly to the Board through its Committee on Strategic [Campus] Planning.
(c) (No change.)
(d) Institutions that conduct regularly scheduled self-audits may be exempted from the on-site review providing that:
(1) The institution presents to the Office of Resource [Campus] Planning a copy of the formal report of the audit and its documented processes that demonstrate the accuracy of the data; and
(2) (No change.)

§17.113. Institutional Audit Cycle.
(a) - (b) (No change.)
(c) Not later than March 15 of each year, beginning in 2005, the Office of Resource [Campus] Planning shall publish a schedule of audits for the succeeding fiscal year.
(d) (No change.)

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

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Jan Greenberg
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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER A. GENERAL PROVISIONS
19 TAC §21.3, §21.4

The Texas Higher Education Coordinating Board proposes amendments to §21.3 and §21.4, concerning Loan Repayment Deferral and Loan Forgiveness for Emergency Tuition and Fee Loans Made under Texas Education Code §56.051 and the Collection of Tuition. Senate Bill 1227, 79th Legislature, Regular Session, amended Texas Education Code §54.051 and §54.052, changing the state’s emergency tuition and fee loan program. The emergency loan program is funded through authorized set-asides from the Texas Public Educational Grant Program (Texas Education Code, §56.033). Specifically, §21.3 indicates the emergency loan funds may be used to pay for books as well as tuition and fees and that institutions may select loan recipients based on the student financial need. Senate Bill 1227, 79th Legislature, Regular Session, amended Texas Education Code §56.051 regarding the payment due date for tuition and fees. Specifically, the new language in §21.4 reflects the fact that the regular payment due date does not apply if the student has financial aid pending and the student has signed an agreement for the aid, when received, to first be applied to cover outstanding tuition and fee charges. Furthermore, the section indicates procedures institutions are to follow if the aid, when received, is insufficient to cover unpaid charges.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of administering the sections will be that the inclusion of books in the emergency loan program will help low-income students who struggle to come up with the financial resources needed at the beginning of a semester. Students should be more successful in their studies if they are able to count on these resources to help pay for books as well as tuition and fees. The introduction of need into the distribution of the emergency loan funds gives institutions another tool to use in targeting scarce resources to the students who would otherwise be unable to attend. The postponed due date for aid recipients complements these efforts by allowing students who have pending financial aid disbursements to attend classes in good standing while the aid funds are delivered. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The amendments are proposed under the Texas Education Code, §56.055, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §§56.051 - 56.055 and §54.0071.

The amendments affect the Texas Education Code, §§56.051 - 56.055 and §54.0071.


PROPOSED RULES  September 9, 2005  30 TexReg 5481
(a) An institution shall defer the repayment of emergency loans for tuition, fees and books [and fee loans], in accordance with guidelines adopted by the governing board of the institution. The deferred repayment, however, must begin on the earlier of the following dates: the first day of the ninth month after the last month in which the borrower was enrolled in a public institution of higher education, or the fifth anniversary of the date on which the loan was executed. An institution may extend the time for repayment of loans for students who enroll in graduate or professional degree programs for up to three years, but not longer than one year beyond the time when the student fails to be enrolled in the institution on at least a half-time basis.

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

§21.4. Collection of Tuition.

(a) Unless a student’s payment due date has been postponed due to pending disbursements of financial aid as described in subsection (b) of this section, the following conditions shall apply in the collection of tuition and/or tuition and fees at institutions of higher education and in the conducting of enrollment audits.

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

(b) Payment Options for Students with Delayed Financial Aid.

(1) If the student has not received his or her financial aid awards by the regular due date for payment of tuition or tuition and fees and the student agrees to assign to the institution a portion of the awards equal to the amount of tuition and fees to be met with financial aid payments, the governing board may postpone the due date for the portion of the tuition and/or tuition and fee payment that will be met through financial aid funds and the hours to be paid for with the financial aid may be counted for formula funding purposes.

(2) If, after the student’s due date is postponed, the student becomes ineligible to receive one or more of the pending financial aid awards or the award amount is less than the amount of tuition and fees due, the governing board is to grant the student a repayment period for the unpaid amount that:

(A) does not exceed 30 days;

(B) allows for multiple payments, if necessary, and

(C) entails a processing fee not to exceed 5 percent of the total amount to be collected.

(3) An institution may deny academic credits for hours completed in the semester or term if the student fails to pay the full tuition and fee amount by the end of the 30-day repayment period.

(4) A student paying tuition and fees by installments shall be granted the options of delayed payment outlined in subsection (b) of this section (relating to Payment Options for Students with Delayed Financial Aid) if he or she is awaiting the disbursement of financial aid.

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

Filed with the Office of the Secretary of State on August 22, 2005.

TRD-200503583
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2005
For further information, please call: (512) 427-6114

SUBCHAPTER B. DETERMINING RESIDENCE STATUS

19 TAC §21.23

The Texas Higher Education Coordinating Board proposes amendments to §21.23, concerning Determining Residence Status. Specifically, the amendment will clarify that Texas residents who are employees of the Department of Defense have the same claim to resident status as do members of the U.S. Armed Forces and Public Health Service. Such persons are often required to remain out of state for extended periods of time, although they do not forego their claim to residency. By statute, these persons are entitled to automatic admissions if they graduate in the top 10 percent of a Department of Defense high school and are eligible to receive loans through the B-On-Time Student Loan Program.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Hollis has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be that state residents required to be out of state by their employment by federal agencies will have an easier time qualifying to pay resident tuition when admitted to public institutions in Texas. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Hollis@theceb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The amendment is proposed under the Texas Education Code, §§54.053, which provides the Coordinating Board with the authority to issue rules, regulations and interpretations with respect to resident status.

The amendment affects Texas Education Code §§54.051 - 54.057.


(a) - (g) (No change.)

(h) Persons Temporarily Absent from the State. Residents who move out of state should be classified as nonresidents upon leaving the state, unless their move is temporary and residence has not been established elsewhere.

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

(3) Texas residents who are employed out-of-state by the U.S. Armed Forces, Public Health Service Department of Defense may retain residency although absent more than five years if they provide proof that they entered the U.S. Armed Forces, Public Health Service or Department of Defense as Texas residents.

(i) (No change.)

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

Filed with the Office of the Secretary of State on August 22, 2005.

TRD-200503584
The amendments are proposed under Texas Education Code, §52.01, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §52.01 and §§52.31 - 52.40.

The amendments affect Texas Education Code, §52.01 and §§52.31 - 52.40.

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

(1) Alternative Educator Certification Program--an approved educator preparation program, delivered by entities approved by the Texas Education Agency under the provisions of Texas Administrative Code, §228.10, specifically designed as an alternative to a traditional undergraduate certification program, for individuals already holding at least a baccalaureate degree.

(2) Auxiliary Fund--the Student Loan Auxiliary Fund authorized in the Texas Education Code, Chapter 52, §§52.81 - 52.90.

(3) Board--the Texas Higher Education Coordinating Board.

(4) CAL or CALP--College Access Loan Program.

(5) Career college--an educational institution that is not a public or private nonprofit educational institution and is approved by the U.S. Secretary of Education under the Higher Education Act of 1965, as amended, and the regulations found in 34 C.F.R., §660.5.

(6) Commissioner--the Commissioner of Education.

(7) Cosigner/Accommodation Party--one who signs a student loan promissory note and thereby assumes liability for the debt and all fees and expenses associated with the note, who is not a direct beneficiary of the proceeds of the loan.

(8) Cost of Attendance--expenses, including direct educational costs (tuition, fees, books, and supplies) as well as indirect educational costs (room and board, transportation, and personal expenses) incurred by a typical student receiving financial aid in attending a particular college.

(9) Default--the failure of a borrower and cosigner, if any, to make loan installment payments when due for a total of 180 days for CAL and HELP loans and 270 days for FFELP and HEAL loans.

(10) Deferment--any period during which a borrower, upon adequate showing of entitlement under the terms of the particular lending program, shall be eligible to suspend payments.


(12) Forbearance--discretionary permission from the Commissioner or his designees that allows a borrower to cease payments temporarily, or allows an extension of time for making payments, or temporarily reduces the payment amount from the amount that was previously scheduled.

(13) FSL--the Robert T. Stafford Federal Student Loan Program to be known as "Federal Stafford Loans," formerly known as Stafford Loans and Guaranteed Student Loans, which included Federal Insured Student Loans. FSLs are made under
provisions of the Federal Family Education Loan Program; but, for purposes of this subchapter, the acronym FSL will designate those rules specific to FSL.

(14) [441] FSLS--Federal Supplemental Loans for Students, formerly known as Supplemental Loans for Students and Auxiliary Loans for Students. The FSLS are made under provisions of the Federal Family Education Loan Program; but, for purposes of this subchapter, the acronym FSL will designate those rules specific to FSLS.

(15) [442] Fund--the Texas Opportunity Plan Fund as created by the Constitution of the State of Texas, Article III, 50b; the Student Loan Revenue Bond Fund authorized in the Texas Education Code, Chapter 56, Subchapter H; and/or the Student Loan Auxiliary Fund, authorized in the Texas Education Code, Chapter 52, Subchapter F.

(16) [443] HEAL or HEALP--Health Education Assistance Loan Program authorized by the Public Health Service Act, as amended, 42 U.S.C. §§292 - 292y.

(17) [444] HELP--Health Education Loan Program.

(18) [445] Hinson-Hazlewood College Student Loan Program, or Program--the commonly used name for the Board program which provides and administers FFELP, CAL, HEAL, and HELP student loans under the authority of Texas Education Code, §§52.31 - 52.40.

(19) [446] Hinson-Hazlewood College Student Loan Program Officer--a full-time administrative official of an institution who will act as the Board’s on-campus agent.

(20) Regional Education Service Center--a center established and operated by the Commissioner of Education under Texas Education Code, Chapter 8.

(21) [448] Resident of Texas--a resident of the State of Texas as determined in accordance with §§21.21 - 21.27 of this title (relating to Determining Residence Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas. [any person who meets the requirements to be allowed to pay Texas resident tuition rates at institutions of higher education, as specified in Texas Education Code, Chapter 54, and Board rules found in §§21.21 - 21.27 of this title (relating to Determination of Residence Status).]

(22) [449] Revenue Bond Fund--the Student Loan Revenue Bond Fund, authorized in the Texas Education Code, Chapter 56, Subchapter H.

§21.54. Eligibility of Institutions.

(a) The following institutions or entities located in Texas and approved by the U.S. Department of Education for the purpose of guaranteeing the Board against loss due to the death, disability, or default of borrower shall be eligible to participate in the Program:

(1) Institutions of Higher Education as defined in Texas Education Code, §61.003(8);

(2) Private or Independent Institutions of Higher Education as defined in Texas Education Code, §61.003(15);

(3) Career colleges that offer degree programs approved by the Board under §12.1 - 12.46 of this title (relating to Career Schools and Colleges); and

(4) Nonprofit private postsecondary educational institutions accredited by an agency recognized by the Board in §7.4(a) of this title (relating to Exemptions, Revocation of Exemptions, and Certificates of Authorization).

(b) Entities, including Regional Education Services Centers, approved by the State Board of Educator Certification under the provisions of §228.10 of the Texas Administrative Code (relating to Approval Process) to offer an alternative certification program shall be eligible to participate in the program without being approved by the U.S. Department of Education for the purpose of guaranteeing the Board against loss due to death, disability, or default of borrower.

(c) Each eligible institution shall designate a full-time administrative official of the institution who will act as the Board’s on-campus agent. This officer shall certify all institutional transactions and activities with respect to the fund, and shall be responsible for all records and reports reflecting the transactions with respect to the Fund. The Hinson-Hazlewood College Student Loan Program Officer may authorize other student financial aid officials at the institution to certify Hinson-Hazlewood College Student Loan Program applications.

(d) The Board shall provide a roster of its borrowers to each eligible institution prior to the end of each enrollment period. Within a reasonable period after the institution receives the roster, the Office of the Registrar shall identify all records of each student, and the institution shall supply information on each student borrower to the Board on a form prescribed by the Commissioner.

[4(a) Institutions of Higher Education as defined in Texas Education Code, §61.003(8), and Private or Independent Institutions of Higher Education as defined in Texas Education Code, §61.003(15), shall be eligible to participate in the Program.]

[4(b) Each eligible institution shall designate a full-time administrative official of the institution who will act as the Board’s on-campus agent. This officer shall certify all institutional transactions and activities with respect to the fund, and shall be responsible for all records and reports reflecting the transactions with respect to the Fund. The Hinson-Hazlewood College Student Loan Program Officer may authorize other student financial aid officials at the institution to certify Hinson-Hazlewood College Student Loan Program applications.]

[4(c) The Board shall provide a roster of its borrowers to each eligible institution prior to the end of each enrollment period. Within a reasonable period after the institution receives the roster, the Office of the Registrar shall identify all records of each student, and the institution shall supply information on each student borrower to the Board on a form prescribed by the Commissioner.]

§21.55. Eligibility of Students

(a) Subject to the requirement in subsection (b) of this section, the Commissioner may authorize, or cause to be authorized, Hinson-Hazlewood College Student Loans to students at any eligible institution which certifies that the student meets program qualifications, if the student:

(1) is a resident of Texas as defined in these regulations;

(2) has been accepted for regular, non-probationary enrollment at an eligible institution and is adjudged by the institution to have the ability to benefit from the instruction or training to be provided; or, in the case of a student already attending such institution, is in good standing and is making satisfactory progress toward his or her educational goals as determined by the institution;

(3) is enrolled in at least one half of the normal full-time course workload as determined by the institution;
(4) has provided the Board with a statement of the estimated cost of attendance at the institution for that student;

(5) has insufficient resources to finance his or her education;

(6) has provided information on two references who live at separate addresses, are gainfully employed, and are expected to know the student’s current address at all times throughout the life of the loan;

(7) has signed a promissory note acknowledging his or her obligations and responsibilities to the fund; [and, for CALL and HELP, if married, has secured the signature of his or her spouse;]

(8) for CALP loans, has received a favorable evaluation of his/her credit report or has obtained the notarized signature of a qualified cosigner/accommodation party;

(9) enrolled in a degree program approved by the Board under the provisions of §§12.1 - 12.46 of this title (relating to Career Schools and Colleges) and is otherwise eligible under the provisions of this section for a student enrolled in a career college; [for ESLP, if attending a career college, is unable to obtain an ESL through a commercial lender and the Proprietary Institution of Higher Education that the student attends:]

(A) is certified by the Texas Education Agency under provisions of the Texas Proprietary School Act (Texas Education Code, Chapter 82), licensed by the Texas Cosmetology Commission, licensed by the Texas State Board of Barber Examiners, or certified to grant or award degrees by the board under provisions of the Texas Education Code, Chapter 61, Subchapter G;

(B) is an institution which has its parent campus within the State of Texas;

(C) is not owned by the owner of another postsecondary institution outside of Texas whose default rate is 15 percent or greater;

(D) has been eligible for, and has participated in, the FELP during the most recent 18 consecutive months;

(E) does not employ recruiters of students on a commission basis;

(F) does not employ the owner(s) or anyone related to the owner(s) by blood or marriage as student financial aid administrators and]

(G) has a good credit rating as determined by the Board.

(10) for FSLP, has been issued or will be issued a student loan under any loan program administered by the Board.

(b) If the institution to which the student has been accepted for enrollment was not an eligible institution, as defined in §21.54 of this title (relating to Eligibility of Institutions) on May 1, 1985, the student shall provide evidence that the student is unable to obtain a guaranteed student loan from a commercial lender.

§21.56. Requirements of Cosigner/Accommodation Party.

(a) (No change.)

(b) A [For CALL and HELP, the spouse of any married student must sign the promissory note, and may be held jointly and severally liable with the borrower in case of a default, but a] spouse may not act as the cosigner/accommodation party for the student.

(c) (No change.)

§21.58. Amount of Loan [Limits].

(a) (No change.)

(b) Annual and Aggregate Loan Limit. The maximum annual and aggregate loan amounts [allowed] for any eligible student shall be determined from time to time by the Commissioner. In no case shall the maximum annual loan amount be greater than the annual cost of attendance for the student at the eligible institution.

§21.62. Repayment of Loans

(a) Period of loan repayment.

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

(3) CALL.

(A) The repayment period shall be calculated based upon the amount borrowed, but in no case shall exceed 20 years. [All loans extended under this program to any borrower shall be placed by the Board into an “account,” with the full amount of principal, interest, and any fees and costs that accrue over the life of the loan to be repaid in monthly payments, which shall be calculated to repay the account over a period of not less than 5 years and not more than 10 years from the beginning of the repayment period, unless the minimum monthly payment amount required by subsection (b) of this section, would repay the loan within a shorter period of time.]

(B) (No change.)

(C) [In every case, the principal amount and all charges on a particular note must be repaid over no longer period than that prescribed by Chapter 52 of the Texas Education Code, as it is amended from time to time.]

(D) The repayment period shall begin no earlier than six months after the date on which the student ceases to carry, at an eligible institution, at least one half the normal full-time course load as determined by the institution.

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

(b) - (h) (No change.)

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

Filed with the Office of the Secretary of State on August 24, 2005.
TRD-200503637
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 27, 2005
For further information, please call: (512) 427-6114

SUBCHAPTER E. TEXAS B-ON-TIME LOAN PROGRAM

19 TAC §21.129

The Texas Higher Education Coordinating Board proposes an amendment to §21.129, concerning loan forgiveness for Texas B-On-Time loans. House Bill 1172, 79th Legislature, Regular Session, amended Texas Education Code, §56.462, regarding loan forgiveness for the Texas B-On-Time loans. This amendment to Board rules is being proposed to reflect those changes. Specifically, the amendment provides that the following course hours shall be excluded in counting course hours for purposes of loan forgiveness requirements: transfer credit hours, credit

(b) Purpose. The purpose of the Texas College Work-Study Program is to provide eligible students with jobs, funded in part by the State of Texas, to enable those students to attend eligible institutions of higher education in Texas and, through a mentorship program, provide academic assistance to students on academic probation.


earned by examination, dual-credit course hours, and hours earned for developmental coursework that an institution required the student to take under Texas Education Code, §§51.306. or under the former provisions of Texas Education Code, §51.306.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Hollis has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of the amendment will be that hours for certain courses will not exclude a student from eligibility for a Texas B-On-Time loan. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The amendment is proposed under the Texas Education Code, §§56.453, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §§56.451 - 56.465.

The amendment affects Texas Education Code, §§56.451 - 56.465.

§21.129. Forgiveness of Loans.

A Texas B-On-Time loan shall be forgiven if the student is awarded an undergraduate degree or certificate from an eligible institution, and the student either:

(1) (No change.)

(2) graduated with a B average, or the equivalent of a cumulative grade point average of at least 3.0 on a four-point scale, with a total number of course credit hours, excluding transfer credit hours and hours earned exclusively by examination, dual credit course hours, and hours earned for developmental coursework that an institution required the student to take under Texas Education Code, §§51.306 (relating to Success Initiative), or under the former provisions of Texas Education Code, §51.306 (relating to Texas Academic Skills Program), that is not more than:

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

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

Filed with the Office of the Secretary of State on August 22, 2005.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

SUBCHAPTER M. TEXAS COLLEGE WORK-STUDY PROGRAM
19 TAC §§21.401 - 21.404
The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

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

(7) General academic teaching institution—The University of Texas at Austin; The University of Texas at El Paso; The University of Texas of the Permian Basin; The University of Texas at Dallas; The University of Texas at San Antonio; Texas A&M University, Main University; The University of Texas at Arlington; Tarleton State University; Prairie View A&M University; Texas Maritime Academy (now Texas A&M University at Galveston); Texas Tech University; University of North Texas; Lamar University; Lamar State College—Orange; Lamar State College—Port Arthur; Texas A&M University—Kingsville; Texas A&M University—Corpus Christi; Texas Woman’s University; Texas Southern University; Midwestern State University; University of Houston; University of Texas—Pan American; The University of Texas at Brownsville; Texas A&M University—Commerce; Sam Houston State University; Texas State University—San Marcos; West Texas A&M University; Stephen F. Austin State University; Sul Ross State University; Angelo State University; The University of Texas at Tyler; and any other college, university, or institution so classified as provided in this chapter or created and so classified, expressly or impliedly, by law.

(8) [§2] Half-time student—For undergraduates, a person who is enrolled or is expected to be enrolled for the equivalent of six or more semester credit hours. For graduate students, a person who is enrolled or is expected to be enrolled for the equivalent of 4.5 or more semester credit hours.

(9) Institution of Higher Education or Institution—any public technical institute, public junior college, public senior college or university, medical or dental unit or other agency of higher education as defined in Texas Education Code, §61.003(8).

(10) Junior—a person who has completed at least 60 semester credit hours of college work, including hours acquired while dual-enrolled or through examination.

(11) Mentor—an individual employed to help students raise their academic performance to meet institutional standards.

(12) Program—the Texas College Work-Study Program.

(13) [§8] Program Officer—The individual named by each participating institution’s chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including maintenance of all records and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.

(14) [§9] Resident of Texas—A resident of the State of Texas as determined in accordance with §§21.21 - 21.27 [Subchapter B] of this title [chapter] (relating to Determining Residence Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(15) Senior—a person who has completed at least 90 semester credit hours of college work, including hours acquired while dual-enrolled or through examination, but who has not yet acquired a bachelor’s degree.


(a) Eligibility.

(1) Any public, private, or independent institution of higher education as defined by Texas Education Code, §61.003, except a theological or religious seminary, is eligible to participate in the general work-study program. Only general academic teaching institutions may participate in the mentorship program.

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

(b) (No change.)

(c) Responsibilities.

(1) Probation Notice. If the institution is placed on public probation by its accrediting agency, it must immediately advise the Board and work-study award recipients of this condition and maintain evidence in each student’s file to demonstrate that the student was so informed.

(2) (No change.)

(3) Reporting.

(A) (No change.)

(B) Penalties for Late Reports and/or Refunds.

(i) An institution that postmarks or electronically submits a [progress] report a week or more after its due date will be ineligible to receive additional funding through the reallocation occurring at that time.

(ii) The Commissioner may penalize an institution by reducing its allocation of funds in the following year by up to 10 percent for each [progress] report that is postmarked or submitted electronically more than a week late. The penalty may also be invoked if the report is timely, but refunds owed to the Program by the institution are not made to the Board or the State Comptroller’s Office within one week after due.

(iii) The Commissioner may assess more severe penalties against an institution if any report or refund is received by the Board more than one month after its due date. [The maximum penalty for a single year is 30 percent of the school’s allocation. If penalties are invoked in two consecutive years the institution may be penalized an additional 20 percent.]

(iv) The maximum penalty for a single year is 30 percent of the school’s allocation. If penalties are invoked in two consecutive years, the institution may be penalized an additional 20 percent.

(C) (No change.)

(4) (No change.)

§21.404. Eligible Student Employees [Students].

(a) To be eligible for employment in the work-study program a person shall [must]:

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

(b) To be eligible for employment in the mentorship program, a person shall:

(1) meet all the requirements of subsection (a) of this section,

(2) be enrolled as a junior or senior, and

(3) meet his or her institution’s standards for employment as a tutor.

(c) [§10] A person is not eligible to participate in the work-study program if the person:
The Texas Higher Education Coordinating Board proposes the repeal of §§21.405 - 21.411, concerning the Texas College Work-Study Program. Specifically, these sections are being repealed and proposed new §§21.405 - 21.411 are being published simultaneously with this repeal.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal.

Ms. Hollis has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the repeal will be that the adjusted matching requirement for the general Work-Study Program will facilitate the transfer of students from federal to state work-study funds and make it easier for institutions to meet program matching requirements. Those institutions that cater to low-income students and that tend to have fewer funds available for use in matching state funds will be able to more fully participate in the state's general program. The Mentorship Program should have a positive impact on success by creating a new opportunity for the participants in the mentorship program and the success grant program.

The repeal affects the Texas Education Code, §§56.071 - 56.079.
difficulty meeting their academic standards. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The new sections are proposed under the Texas Education Code, §§56.077, which provides the Coordinating Board with the authority to adopt any rules necessary to enforce the requirements, conditions and limitations of Texas Education Code, §§56.071 - 56.079.

The new sections affect the Texas Education Code, §§56.071 - 56.079.

§21.405. Students Eligible for Mentoring.
To be eligible to receive mentoring through this Program, a person shall be on academic probation and be selected by his or her institution for participation.

(a) An eligible institution may enter into agreements with outside employers to participate in the general work-study program. To be eligible to participate, an employer must:

(1) provide part-time employment to an eligible student in nonpartisan and nonsectarian activities;

(2) provide, insofar as is practicable, employment to an eligible student that is related to the student's academic interests;

(3) use Texas college work-study program positions only to supplement and not to supplant positions normally filled by persons not eligible to participate in the work-study program; and

(4) unless eligible for a waiver of matching funds under subsection (c) of this section (relating to Eligible Employers), provide not less than 25 percent of an employed student's wages and 100 percent of other employee benefits for the employed student from sources other than federal college work-study program funds, if the employer is a nonprofit entity; or

(5) provide not less than 50 percent of an employed student's wages and 100 percent of other employee benefits for the employed student, if the employer is a profit-making entity.

(b) To be eligible to participate in the mentorship program, an employer shall:

(1) be a general academic teaching institution;

(2) provide part-time employment as a mentor to an eligible student, and

(3) provide not less than 10 percent of an employed student's wages and 100 percent of other employee benefits for the employed student from sources other than federal college work-study program funds.

(c) Institutions eligible to receive Title III funds from the U.S. Department of Education are exempted from the general work-study program requirement to provide 25 percent of an employed student's wages, if they provide the Board with a copy of a current Title III eligibility letter from the U.S. Department of Education. There is no corresponding exemption from the 10 percent matching requirement for the mentorship program.


(a) Funding. Funds awarded through this program may not exceed the amount appropriated by the Legislature for that purpose, plus matching funds provided by the students' employers.

(b) Award Amount. No award amount shall exceed a student's financial need.

(c) Uses.

(1) No general work-study funds earned through this program may be used for any purpose other than for meeting the cost of attending an approved institution.

(2) Mentorship program funds awarded to a person may not exceed his or her financial need.

(3) The Board may approve the use of a limited share of the funds to provide training to mentors. The balance of the funds awarded to a person are to be used to pay his or her salary for mentoring other students.

(d) Over awards. If, at a time after an award has been offered by the institution and accepted by the student, the student receives assistance that was not taken into account in the student’s estimate of financial need, so that the resulting sum of assistance exceeds the student’s financial need, the institution is not required to adjust the award under this program unless the sum of the excess resources is greater than $300.

§21.408. Allocation and Disbursement of Funds.

(a) Allocations. The Board shall allocate work-study funds to participating institutions in proportion to the financial need of the students at each school. At the beginning of each year or upon request by the institution, the year’s full allocation or funds needed for immediate disbursement to students will be provided to each participating institution for use in reimbursing students for their work.

(b) Reallocations. Institutions will have until a date specified by the Board via a policy memo addressed to the Program Officer at the institution to encumber all funds allocated to them. On that date, institutions lose claim to their unencumbered funds and the unencumbered funds are available to the Board for reallocation to other institutions. If necessary for ensuring the full use of funds, subsequent reallocations may be scheduled until all funds are awarded and disbursed.

(c) Unless given specific permission by the Board to use funds for summer awards, schools will be required to utilize their state work-study funds for employment during the nine-month academic year (fall and spring terms).

The Board is responsible for publishing and disseminating general information and program rules for the program described in this subchapter.

Not later than November 1 of each year, each institution participating in the mentorship program shall report to the board on the progress made by students being assisted through the program. The report shall include:

(1) the number of students employed as mentors,

(2) the number of students receiving mentoring, and

(3) the academic progress made by students receiving assistance through the program.

§21.411. Authority to Transfer Funds.
Institutions participating in a combination of the Toward EXcellence, Access and Success Grant, Tuition Equalization Grant, and Texas College Work-Study Programs, in accordance with instructions from the
The Texas Higher Education Coordinating Board proposes new §§21.727 - 21.735, concerning Determining Residence Status. These new sections are effective for enrollments at institutions of higher education for the Fall Semester, 2006. Senate Bill 158, 78th Legislature, Regular Session, enacted Texas Education Code, §§54.0501 - 54.075, establishing new parameters to determine if a person is a Texas resident for tuition purposes at institutions of higher education. These new sections implement those parameters, significantly simplifying the process for a majority of students attending those institutions.

Specifically, new §21.728 provides definitions for terms that are used in this subchapter and §21.729 provides that the new sections shall be applied beginning with enrollments for the Fall Semester 2006. Section 21.730 sets out a relatively simple method for classification as a Texas resident by showing residence in the state for 36 months leading to high school graduation, or the receipt of the graduation equivalency diploma, and continuous residency in the state for 12 months prior to the census date of the semester in which the student seeks to enroll. For a person who cannot qualify under this provision, this section provides that, in order to be classified as a Texas resident, the person must have established a domicile in Texas more than 12 months before the census date and have maintained a residence in Texas continuously for the 12 months preceding the census date. Section 21.730 also lists those persons, in addition to U.S. citizens, who, under federal law, are permitted to establish a domicile. To initially establish resident status, a person may only be asked certain "core" questions and, under §21.731, the institutions are required to determine residency based solely on answers to these "core residency questions" and supporting documents, if required. Section 21.732 provides that a person who was classified as a Texas resident for any part of the FY 2006 state fiscal year will not be affected by these new sections. Importantly, this section also provides that any person classified as a Texas resident under these rules maintains that status, even if the person transfers to another institution, unless the person have been out of school for as much as two regular semesters. A person is required, however, under §21.733, to provide additional or changed information which may affect his or her resident or nonresident tuition classification to the institution. If the failure to provide such information results in the payment of resident tuition by a person who is not entitled to do so, the person will be liable to the institution for the difference in tuition. The waiver programs under which nonresident persons pay Texas resident tuition have been revised in §21.735. Some changes were made to align the programs with the statutory provisions. For example, §21.735(5)(B), clarifies that a person who resides in any state may pay a lowered nonresident tuition at a general academic teaching institution located within 100 miles of the Texas border, if the institution meets certain criteria. The waiver program for ROTC Members is excluded from the list of waiver programs because there is no statutory authority for that waiver of nonresident tuition.

Ms. Hollis has also determined that for each year of the first five years the new sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the new sections.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The new sections affect Texas Education Code, §§54.0501 - 54.075.

§21.727. Authority and Purpose.

Texas Education Code, §54.075 requires the Board to adopt rules to carry out the purposes of Texas Education Code, Subchapter B, concerning the determination of resident status for tuition purposes.


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

(1) Census date--The date in an academic term for which an institution is required to certify a person’s enrollment in the institution to the Board for the purposes of determining formula funding for the institution.

(2) Coordinating Board or Board--The Texas Higher Education Coordinating Board.

(3) Core Residency Questions--The questions promulgated by the Board and attached as Chart II, to be completed by a person and used by an institution to determine if the person is a Texas resident.

(4) Dependent--A person who:

(A) is less than 18 years of age and has not been emancipated by marriage or court order; or
(B) is eligible to be claimed as a dependent of a parent of the person for purposes of determining the parent’s income tax liability under the Internal Revenue Code of 1986.

(5) Domicile—A person’s principal, permanent residence to which the person intends to return after any temporary absence.

(6) Eligible for Permanent Resident Status—A person who has applied to be a Permanent Resident of the United States and whose application has been approved by the USCIS.

(7) Eligible Nonimmigrant—A person who has been issued a type of nonimmigrant visa by the USCIS that permits the person to establish a domicile in the United States.

(8) Gainful employment—Lawful activities intended to provide an income to a person or allow a person to avoid the expense of paying another person to perform the tasks (as in child care or the maintenance of a home). A person who is self-employed, employed as a homemaker, or who is living off his/her earnings may be considered gainfully employed for tuition purposes, as may a person whose primary support is public assistance.

(9) General Academic Teaching Institution—The University of Texas at Austin; The University of Texas at El Paso; The University of Texas of the Permian Basin; The University of Texas at Dallas; The University of Texas at San Antonio; Texas A&M University, Main University; The University of Texas at Arlington; Tarleton State University; Prairie View A&M University; Texas A&M University–Galveston; Texas Tech University; University of North Texas; Lamar University; Lamar State College–Orange; Lamar State College–Port Arthur; Texas A&M University–Kingsville; Texas A&M University–Corpus Christi; Texas Woman’s University; Texas Southern University; Midwestern State University; University of Houston; University of Texas–Pan American; The University of Texas at Brownsville; Texas A&M University–Commerce; San Houston State University; Texas State University–San Marcos; West Texas A&M University; Stephen F. Austin State University; Sul Ross State University; Angelo State University; and The University of Texas at Tyler, and as defined in Texas Education Code, §61.003(3).

(10) Institution or institution of higher education—Any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003(8).

(11) Legal guardian—A person who is appointed guardian under the Texas Probate Code, Chapter 693, or a temporary or successor guardian.

(12) Maintain a residence—To physically reside in a location.

(13) Managing conservator—A parent, a competent adult, an authorized agency, or a licensed child-placing agency appointed by court order issued under the Texas Family Code, Title 5.

(14) Nonresident tuition—The amount of tuition paid by a person who does not qualify as a Texas resident under this subchapter unless such person qualifies for a waiver program under §21.735 of this title (relating to Waivers that Permit Nonresidents to Pay Resident Tuition).

(15) Parent—A natural or adoptive parent, managing or possessory conservator, or legal guardian of a person. The term does not include a step-parent.

(16) Possessory conservator—A natural or adoptive parent appointed by court order issued under the Texas Family Code, Title 5.

(17) Private high school—A private or parochial school accredited by an accrediting agency that is recognized and accepted by the Texas Private School Accreditation Commission. The term does not include a home school.

(18) Public technical institute or college—The Lamar Institute of Technology or any campus of the Texas State Technical College System.

(19) Regular semester—A fall or spring semester, typically consisting of 16 weeks.

(20) Resident tuition—The amount of tuition paid by a person who qualifies as a Texas resident under this subchapter.

(21) Temporary absence—Absence from the State of Texas with the intention to return, generally for a period of less than five years.

(22) United States Citizenship and Immigration Services (USCIS)—The bureau of the U.S. Department of Homeland Security that is responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities.

§21.729. Effective Date of this Subchapter.
Each institution shall apply these rules beginning with enrollments for the Fall Semester, 2006.

(a) The following persons shall be entitled to pay resident tuition at all institutions of higher education:

(1) a person who:

  (A) graduated from a public or accredited private high school in this state or received the equivalent of a high school diploma in this state, and

  (B) maintained a residence continuously in this state for:

    (i) the thirty-six months preceding the date of graduation or receipt of the diploma equivalent, as applicable; and

    (ii) the 12 months preceding the census date of the academic semester in which the person enrolls in an institution.

(2) a person who:

  (A) established a domicile in this state not less than 12 months before the census date of the academic semester in which the person enrolls in an institution; and

  (B) maintained a residence continually in the state for the 12 months immediately preceding the census date of the academic semester in which the person enrolls in an institution.

(3) a dependent whose parent:

  (A) established a domicile in this state not less than 12 months before the census date of the academic semester in which the person enrolls in an institution; and

  (B) maintained a residence continually in the state for the 12 months immediately preceding the census date of the academic semester in which the person enrolls in an institution.

(b) In addition to person who is a Citizen of the United States, the following persons may establish a domicile in this state for the purposes of subsection (a)(2) or (3) of this section:

(1) a Permanent Resident;

(2) a Permanent Resident applicant whose application has been approved by USCIS.
(3) an eligible nonimmigrant that holds one of the types of visas listed in Chart I and incorporated into this subchapter for all purposes;

Figure: 19 TAC §21.730(b)(3)

(4) a person classified by the USCIS as a Refugee, Asylee, Parolee, Conditional Permanent Resident, or Temporary Resident;

(5) a person holding Temporary Protected Status, and Spouses and Children with approved petitions under the Violence Against Women Act (VAWA), an applicant with an approved USCIS I-360, Special Agricultural Worker, and a person granted deferred action status by USCIS;

(6) a person who has filed an application for cancellation of removal or adjustment of status under the Nicaraguan and Central American Relief Act (NACARA), Haitian Refugee Immigrant Fairness Act (HRIFA), or the Cuban Adjustment Act, and who has been issued a fee/filing receipt or Notice of Action by USCIS; and

(7) a person who has filed for adjustment of status to that of a person admitted as a Permanent Resident under 8 United States Code 1255, or under the "registry" program (8 United States Code 1259), or the Special Immigrant Juvenile Program, and has been issued a fee/filing receipt or Notice of Action by USCIS.

(c) The domicile of a dependent’s parent is presumed to be the domicile of the dependent unless the dependent establishes eligibility for resident tuition under subsection (a)(1) of this section.

(d) A domicile in Texas is presumed if, at least 12 months prior to the census date of the semester in which he or she is to enroll, the person owns real property in Texas, owns a business in Texas, is married to a person who has established a domicile in Texas; or has executed a currently-valid Last Will and Testament that has been deposited with a county clerk in Texas, indicating the person is a resident of Texas. Gainful employment other than work-study and other such student employment can also be a basis for establishing a domicile.

(e) The temporary absence of a person or a dependent’s parent from the state for the purpose of service in the U.S. Armed Forces, Public Health Service, Department of Defense and service with the U.S. Department of State, or as a result of an employment assignment shall not affect a person’s ability to continue to claim resident status. The person or the dependent’s parent shall provide documentation of the reason for the temporary absence.

(f) The temporary presence of a person or a dependent’s parent in Texas for the purpose of service in the U.S. Armed Forces, Public Health Service, Department of Defense or service with the U.S. Department of State, or as a result of any other type of employment assignment does not preclude the person or parent from establishing a domicile in Texas.


(a) To initially establish residency under §21.730 of this title, (relating to Determination of Resident Status), a person shall provide the institution with a completed set of Core Residency Questions as described in Chart II and incorporated into this subchapter for all purposes.

Figure: 19 TAC §21.731(a)

(b) An institution may request that a person provide documentation to support the answers to the Core Residency Questions. A list of appropriate documents is described in Chart IV of §21.733(a) of this title (relating to Reclassification Based on Additional or Changed Information), and incorporated into this subchapter for all purposes.

(c) If a person who establishes residency under §21.730(a) of this title, is not a Citizen of the United States or a Permanent Resident, the person shall, in addition to the other requirements of this section, provide the institution with a signed affidavit stating that the person will apply to become a Permanent Resident as soon as the person becomes eligible to apply. The affidavit shall be required only when the person applies for resident status and shall be in the form described in Chart III and incorporated into this subchapter for all purposes.

Figure: 19 TAC §21.731(c)

(d) An institution shall not impose any requirements in addition to the requirements established in this section for a person to establish resident status.


(a) Except as provided under subsection (c) of this section, a person who was enrolled in an institution for any part of the 2006 state fiscal year and who was classified as a resident of this state under Subchapter B, Chapter 54, Texas Education Code, in the last academic period of that year for which the person was enrolled is considered to be a resident of this state for purposes of this subchapter, as of the beginning of the fall semester, 2006.

(b) Except as provided by subsection (c) of this section, a person who has established resident status under this subchapter is entitled to pay resident tuition in each subsequent academic semester in which the person enrolls at that institution and is entitled to pay resident tuition in each subsequent academic semester in which the person enrolls at another institution.

(c) A person who enrolls in an institution after two or more consecutive regular semesters during which the person is not enrolled in a public institution shall submit the information required in §21.731 of this title, (relating to Information Required to Establish Resident Status), and be evaluated with respect to all the applicable requirements before his or her resident status can be determined.

§21.733. Reclassification Based on Additional or Changed Information.

(a) If a person is initially classified as a nonresident based on information provided through the set of Core Residency Questions, the person may request reconsideration by providing the institution with supporting documentation as described in Chart IV.

Figure: 19 TAC §21.733(a)

(b) A person shall provide the institution with any additional or changed information which may affect his or her resident or nonresident tuition classification under this subchapter.

(c) An institution may change the resident or nonresident status of a person who had previously been classified as a resident or nonresident under this subchapter based on additional or changed information provided by the person.

(d) Any change made under this section shall apply to the first succeeding semester in which the person is enrolled, if the change is made on or after the census date of that semester. If the change is made prior to the census date, it will apply to the current semester.

§21.734. Errors in Classification.

(a) If an institution erroneously permits a person to pay resident tuition and the person is not entitled or permitted to pay resident tuition under this subchapter, the institution shall charge nonresident tuition to the person beginning with the semester following the date that the institution discovers the error.

(b) Not later than the first day of the following semester, the institution may notify the person that he or she must pay the difference between resident and nonresident tuition for each previous semester in which the student should not have paid resident tuition, if:

A person who is classified as a nonresident under the provisions of this section shall be permitted to pay resident tuition, if the person qualifies for one of the following waiver programs:

1. Economic Development and Diversification Program.
   - A nonresident person, including a Citizen, a Permanent Resident of the U.S., a person who is eligible to be a Permanent Resident of the U.S., and an eligible nonimmigrant) whose family has been transferred to Texas by a company under the state’s Economic Development and Diversification Program, and a person’s spouse and children shall pay resident tuition as soon as they move to Texas, if the person provides the institution with a letter of intent to establish Texas as his/her home. A person who moves to Texas to attend an institution before his/her family is transferred is permitted to pay the resident tuition beginning with the first semester or term after the family moves to the state.

2. Program for Teachers, Professors, their Spouses and Dependents.
   - A nonresident person (including a Citizen, Permanent Resident of the U.S., a person who is eligible to be a Permanent Resident of the U.S., and an eligible nonimmigrant) employed as a teacher or professor at least half time on a regular monthly salary basis (not as hourly employee) by an institution shall pay resident tuition at any institution in the state and the spouse and dependent children of the nonresident person shall also pay resident tuition.

3. Program for Teaching Assistants and Research Assistants, their Spouses and Dependents.
   - A nonresident person (including a Citizen, Permanent Resident of the U.S., a person who is eligible to be a Permanent Resident of the U.S., and an eligible nonimmigrant) employed by an institution as a teaching or research assistant on at least a half-time basis in a position related to his/her degree program shall pay resident tuition at any institution in this state and the spouse and dependent children of the nonresident person shall also pay resident tuition.

4. Program for Competitive Scholarship Recipients.
   - A nonresident person (including a Citizen, Permanent Resident of the U.S., a person who is eligible to be a Permanent Resident of the U.S., and an eligible nonimmigrant) who receives a competitive scholarship from the institution is entitled to pay resident tuition.

In order for the person to be eligible for this waiver program, the competitive scholarship must:

- Total at least $1,000 for the period of time covered by the scholarship, not to exceed 12 months; and
- Be awarded by a scholarship committee authorized in writing by the institution’s administration to grant scholarships that permit this waiver of nonresident tuition; and
- Be awarded according to criteria published in the institution’s paper or electronic catalog, available to the public in advance of any application deadline; and
- Be awarded under circumstances that cause both the funds and the selection process to be under the control of the institution; and
- Permit awards to both resident and nonresident persons.

The scholarship award shall specify the semester or semesters for which the scholarship is awarded and a waiver of nonresident tuition under this provision shall not exceed the semester or semesters for which the scholarship is awarded.

If the scholarship is terminated for any reason prior to the end of the semester or semesters for which the scholarship was initially awarded, the person shall pay nonresident tuition for any semester following the termination of the scholarship.

The total number of persons receiving a waiver of nonresident tuition in any given semester under this provision shall not exceed 5 percent of the students enrolled in the same semester in the prior year in that institution.

If the scholarship recipient is concurrently enrolled at more than one institution, the waiver of nonresident tuition is only effective at the institution awarding the scholarship. An exception for this rule exists for a nonresident person who is simultaneously enrolled in two or more institutions of higher education under a program offered jointly by the institutions under a partnership agreement. If one of the
partnership institutions awards a competitive scholarship to a person, the person is entitled to a waiver of nonresident tuition at the second institution.

(G) If a nonresident person is awarded a competitive academic scholarship or stipend under this provision and the person is accepted in a clinical biomedical research program designed to lead to both a doctor of medicine and doctor of philosophy degree, he or she is eligible to pay the resident tuition rate.

(5) Programs for Lowered Tuition for Individuals from Bordering States or Mexico.

(A) Programs that Require Reciprocity. Waivers of nonresident tuition made through each of the following three programs for persons from states neighboring Texas must be based on reciprocity and the institution shall not grant these waivers unless the institution has been provided with a current written agreement with a similar institution in the other state, agreeing to lower tuition for Texas students attending that institution. A participating Texas institution shall file a copy of such agreements with the Board and the agreements shall not be more than two years old. The amount of tuition charged shall not be less than the Texas resident tuition rate.

(i) Persons residing in New Mexico, Oklahoma, Arkansas or Louisiana may pay a lowered nonresident tuition when they attend Texas A&M–Texarkana, Lamar State College–Port Arthur, Lamar State College–Orange or any public community or technical college located in a county adjacent to their home state.

(ii) Persons residing in New Mexico and Oklahoma may pay a lowered nonresident tuition when they attend a public technical college located within 100 miles of the border of their home state.

(iii) Persons residing in counties or parishes of New Mexico, Oklahoma, Arkansas or Louisiana adjacent to Texas may pay a lowered nonresident tuition at any institution.

(iv) If a person or a dependent child’s family moves to Texas from a bordering state after the person or dependent child has received a waiver of nonresident tuition based on reciprocity as described in this section, the person is eligible for a continued waiver of nonresident tuition for the 12-month period after the relocation to Texas.

(B) Programs That Do Not Require Reciprocity.

(i) Persons who reside in another state may pay a lowered nonresident tuition not less than $30 per semester credit hour above the current resident tuition rate when they attend a general academic teaching institution located within 100 miles of the Texas border if:

(I) the governing board of the institution approves the tuition rate as in the best interest of the institution and finds that such a rate will not cause unreasonable harm to any other institution; and

(II) the Commissioner approves the tuition rate by finding that the institution has a surplus of total educational and general space as calculated by the Board’s most current space projection model. This obligation to obtain the approval of the Commissioner is continuing and approval to participate in this waiver program must be obtained at least every two years.

(ii) Persons who reside in New Mexico, Oklahoma, Arkansas or Louisiana and who have graduated or completed 45 semester credit hours while enrolled on a reciprocal basis through Texarkana College may pay resident tuition if they attend Texas A&M–Texarkana.

(C) Programs for Residents of Mexico. Subject to the following provisions, persons who are currently residents of Mexico and those persons who are temporarily residing outside of Mexico but with definite plans to return to Mexico shall pay resident tuition.

(i) An unlimited number of residents of Mexico who have demonstrated financial need and attend a general academic teaching institution or a component of the Texas State Technical College System, if the institution or component is located in a county adjacent to Mexico, Texas A&M University--Corpus Christi, Texas A&M University–Kingsville, the University of Texas at San Antonio, or Texas Southmost College shall pay resident tuition.

(ii) A limited number of residents of Mexico who have financial need may attend a general academic teaching institution or campus of the Texas State Technical College System located in counties not adjacent to Mexico and pay resident tuition. This waiver program is limited to the greater of two students per 1000 enrollment, or 10 students per institution.

(iii) An unlimited number of residents of Mexico who have demonstrated financial need and register in courses that are part of a graduate degree program in public health conducted by an institution in a county immediately adjacent to Mexico shall pay resident tuition.

(6) Program for the beneficiaries of the Texas Tomorrow Fund. A person who is a beneficiary of the Texas Tomorrow Fund shall pay resident tuition and required fees for semester hours paid under the prepaid tuition contract. If the person is not a Texas resident, all tuition and fees not paid under the contract shall be paid at the nonresident rate.

(7) Program for Inmates of the Texas Department of Criminal Justice. All inmates of the Texas Department of Criminal Justice shall pay resident tuition.

(8) Program for Foreign Service Officers. A Foreign Service officer employed by the U.S. Department of State and enrolled in an institution shall pay resident tuition if the person is assigned to an office of the U.S. Department of State that is located in Mexico.

(9) Program for Registered Nurses in Postgraduate Nursing Degree Programs. An institution may permit a registered nurse authorized to practice professional nursing in Texas to pay resident tuition and fees without regard to the length of time that the registered nurse has resided in Texas, if the nurse:

(A) is enrolled in a program designed to lead to a master’s degree or other higher degree in nursing; and

(B) intends to teach in a program in Texas designed to prepare students for licensure as registered nurses.

(10) Programs for Military and Their Families. Members of the U.S. Armed Forces, Army National Guard, Air National Guard, Army, Air Force, Navy, Marine Corps or Coast Guard Reserves and Commissioned Officers of the Public Health Service, and their Spouses or Dependent Children.

(A) Assigned to Duty in Texas. Nonresident members of the U.S. Armed Forces, members of Texas units of the Army or Air National Guard, Army, Air Force, Navy, Marine Corps or Coast Guard Reserves and Commissioned Officers of the Public Health Service who are assigned to duty in Texas, and their spouses, or dependent children, shall pay resident tuition. To qualify, the person shall submit during his or her first semester of enrollment in which he or she will be using the waiver program, a statement from an appropriately authorized officer in the service, certifying that he or she (or a parent) will be assigned to duty in Texas on the census date of the term he or she plans to enroll.
and that he or she, if a member of the National Guard or Reserves, is not in Texas only to attend training with Texas units. Such persons shall pay resident tuition so long as they reside continuously in Texas or remain continuously enrolled in the same degree or certificate program.

For purposes of this subsection, a person is not required to enroll in a summer semester to remain continuously enrolled.

(B) After Assignment to Duty in Texas. A spouse and/or dependent child of a nonresident member of the U.S. Armed Forces, or of a Commissioned Officer of the Public Health Service who has been reassigned elsewhere after having been assigned to duty in Texas shall pay resident tuition so long as the spouse or child resides continuously in Texas. For purposes of this subsection, a person is not required to enroll in a summer semester to remain continuously enrolled.

(C) Out-of-State Military. A spouse and/or dependent child of a member of the U.S. Armed Forces, or of a Commissioned Officer of the Public Health Service who is stationed outside of Texas shall pay resident tuition if the spouse and/or child moves to this state and files a statement of intent to establish residence in Texas with the institution that he or she attends.

(D) Survivors. A spouse and/or dependent child of a member of the U.S. Armed Forces, or of a Commissioned Officer of the Public Health Service who died while in service, shall pay resident tuition if the spouse and/or child moves to Texas within 60 days of the date of death. To qualify, a person shall submit satisfactory evidence to the institution that establishes the date of death of the member and that the spouse and/or dependent child has established a domicile in Texas.

(E) Spouse and Dependents Who Previously Lived in Texas. A spouse and/or dependent child of a member of the U.S. Armed Forces, or of a Commissioned Officer of the Public Health Service who previously resided in Texas for at least six months shall pay resident tuition, if the member or commissioned officer, at least 12 months prior to the census date of the spouse’s or dependent child’s enrollment in an institution:

(ii) filed proper documentation with the military or Public Health Service to change his/her permanent residence to Texas and designated Texas as his/her place of legal residence for income tax purposes; and

(iii) registered to vote in Texas, and

(p) had registered to vote in Texas for at least 12 months prior to the census date of the term or semester, and

(q) provides documentation that the member has, not less than 12 months prior to the census date of the term in which he or she plans to enroll, taken the 1 of the 3 following actions:

(i) purchased real estate in Texas with no delinquent property taxes;

(ii) registered an automobile in Texas, or

(iii) executed a currently-valid will that has been deposited with a county clerk in Texas that indicates he/she is a resident of Texas.

(G) NATO Forces. Foreign persons stationed in Texas under the agreement between the parties to the North Atlantic Treaty regarding status of forces, their spouses and dependent children, shall pay resident tuition.

(H) Radiological Science Students at Midwestern State University. Members of the U.S. Armed Forces stationed outside the State of Texas who are enrolled in a bachelor of science or master of science degree program in radiological sciences at Midwestern State University by instructional telecommunication shall pay resident tuition and other fees or charges provided for Texas residents, if they began the program of study while stationed at a military base in Texas.

(11) Program for the Center for Technology Development and Transfer. Under agreements authorized by Texas Education Code, §65.45, a person employed by the entity with whom the University of Texas System enters into such an agreement, or the person’s spouse or child, may pay resident tuition when enrolled in a University of Texas System institution.

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

Filed with the Office of the Secretary of State on August 24, 2005.

TRD-200503667

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2005

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

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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §22.22 - 22.24

The Texas Higher Education Coordinating Board proposes amendments to §§22.22 - 22.24, concerning the Tuition Equalization Grant Program. Senate Bill 1227 and House Bill 1172, 79th Legislature, Regular Session, amended Texas Education Code, §61.225 and §61.227 and added new §61.2251, changing eligibility requirements for the Tuition Equalization Grant Program. Specifically, changes to §22.22 reflect the addition of definitions for terms that are used in this subchapter and the elimination of terms no longer relevant to program operations. Changes to §22.23 indicate institutions participating in the
program must notify the Coordinating Board if their accrediting agency places them on probation, and that the institutions may be penalized if they fail to refund unused program monies to the Board in a timely manner. Changes to §22.24 reflect new student eligibility requirements. The changes apply to students awarded their first grants on or after September 1, 2005. Provisions for individuals awarded grants prior to September 1, 2005, remain as they have been in the past. The primary changes include a requirement of full-time enrollment in order to receive an initial or continuation grant; and maintenance of an overall grade point average of 2.5 while completing a minimum number of hours per academic year (at least 24 hours per academic year for undergraduate students and 18 hours per year for graduate students).

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of administering the sections will be that the 24-hour requirement and shorter terms for participation will encourage students to complete their degrees sooner, generating savings for the students and the state. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The amendments are proposed under the Texas Education Code, §61.229, which states that the Coordinating Board authority to adopt rules necessary to implement the program.

The amendments affect the Texas Education Code, Chapter 61, §§61.221 - 61.2251.

§22.22. Definitions.

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

1. **Awarded**—offered to a student.

2. **[4] Board**—the Texas Higher Education Coordinating Board.

3. **Central processing**—An approach to administering a grant program by having institutions submit application information to the Board, which then issues funds to students in keeping with a schedule specified by the institution in the application data.

4. **Commissioner**—The Commissioner of Higher Education, the Chief Executive Officer of the Board.

5. **Cost of attendance**—A Board-approved estimate of the expenses incurred by a typical financial aid student in attending a particular college or university. It includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).

6. **Degree or certificate program** of four years or less—a baccalaureate degree or certificate program other than in architecture, engineering or any other program determined by the Board to require more than four years to complete.

7. **Disbursement date**—the date on which the Board generates a voucher requesting a grant disbursement for an institution.

8. **[5] Encumbered funds**—Program funds that have been offered to a specific student, which offer the student has accepted, and which may or may not have been disbursed to the student.

9. **Exceptional financial need**—the need an undergraduate student has if his or her expected family contribution is less than or equal to $1000.

10. **Enrollment on at least a half-time basis**—for undergraduates, enrolled for the equivalent of six or more semester credit hours. For graduate students, enrolled for the equivalent of 4.5 or more semester credit hours.

11. **[6] Expected family contribution**—The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology.

12. **[7] Full-time enrollment** [student].—For undergraduates, enrollment [a person who is enrolled or is expected to be enrolled] for the equivalent of twelve or more semester credit hours. For graduate students, enrollment [a person who is enrolled or expected to be enrolled] for the equivalent of nine or more semester credit hours.

13. **[8] Financial need**—The cost of attendance at a particular public or private institution of higher education less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with Board guidelines.

14. **Graduate student**—a person who has been awarded a baccalaureate degree.

15. **Initial award**—the first Tuition Equalization Grant awarded to a specific person.

16. **[9] Half-time student**—For undergraduates, a person who is enrolled or is expected to be enrolled for the equivalent of six or more semester credit hours. For graduate students, a person who is enrolled or expected to be enrolled for the equivalent of 4.5 or more semester credit hours.

17. **Issue Date**—the date on which the Board’s centralized processing system generates a voucher requesting a grant disbursement for specific students.

18. **[10] Period of enrollment**—The term or terms within a [the current] state fiscal year (September 1-August 31) for which the student was enrolled in an approved institution and met all the eligibility requirements for an award through this program.

19. **Private or independent institution**—any college or university defined as a private or independent institution of higher education by Texas Education Code, §61.003.

20. **Program**—the Tuition Equalization Grant Program.

21. **[13] Program Officer**—The individual named by each participating institution’s chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including maintenance of all records and preparation and submission of reports reflecting program...
transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.

(20) [444] Resident of Texas—A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B, of this title (relating to Determining Residence Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(21) [444] Tuition Equalization Grant need (TEG need)—The total amount of TEG [Tuition Equalization Grant] funds that full-time students at an approved institution would be eligible to receive if the program were fully funded.

(22) Undergraduate—an individual who has not yet received a baccalaureate degree.

§22.23. Institutions.

(a) Eligibility.

(1) Any college or university defined as a private or independent institution of higher education by Texas Education Code, § 61.003, or that is located in Texas and meets the same program standards and accreditation as public institutions of higher education as determined by the Board, except theological or religious seminaries, are eligible to participate in the TEG [Tuition Equalization Grant] Program.

2 - (3) (No change.)

(b) (No change.)

(c) Responsibilities.

1) Probation Notice. If the institution is placed on public probation by its accrediting agency, it must immediately notify the Board and advise grant recipients of this condition and maintain evidence in each student’s file to demonstrate that the student was so informed.

2) (No change.)

3) Reporting.

(A) Requirements/Deadlines. All institutions must meet Board reporting requirements in a timely fashion.

(i) (No change.)

(ii) Each participating institution shall have its TEG [Tuition Equalization Grant] Program operations audited on a regular basis by an independent auditor or by an internal audit office that is independent of the financial aid and disbursing offices. Reports on findings and corrective action plans (if necessary) are due to the Board by April 15 each year for institutions on annual audit schedules, and every other April 15 for institutions on bimannual audit cycles. Bimannual reports must cover operations for the prior two years.

(B) Penalties for Late Reports and/or Late Refunds.

(i) (No change.)

(ii) The Commissioner may penalize an institution by reducing its allocation of funds in the following year by up to 10 percent for each late refund of grant funds. If grant funds are returned more than a week after the announced return date, they will be considered late. [The maximum penalty for a single year is 30 percent of the school’s allocation. If penalties are invoked in two consecutive years the institution may be penalized an additional 20 percent.]

(iv) The maximum penalty for a single year is 30 percent of the school’s allocation. If penalties are invoked in two consecutive years, the institution may be penalized an additional 20 percent.

(C) (No change.)

(4) Program Reviews. If selected for such by the Board, participating institutions must submit to program reviews of activities related to the TEG [Tuition Equalization Grant] Program.


To receive an award through [the program described in] the TEG [Tuition Equalization Grant] Program, a student must:

(1) be enrolled for a minimum number of semester credit hours, which requires: [at least half-time in an approved institution]

(A) if the student received a TEG in an academic year prior to 2005 - 2006 or was awarded a TEG for the 2005 - 2006 academic year prior to September 1, 2005, enrollment on at least a half-time basis; or

(B) if the student was awarded his or her initial TEG award on or after September 1, 2005, full-time enrollment;

(2) (No change.)

(3) maintain satisfactory academic progress,[as defined by the institution] in his or her program of study which requires: [i]

(A) if the person received a TEG in an academic year prior to 2005 - 2006 or was awarded a TEG for the 2005-2006 academic year prior to September 1, 2005, the person must meet the academic progress requirements as set by the institution; or

(B) if the person was awarded his or her initial TEG award on or after September 1, 2005:

(ii) completion of at least 24 semester credit hours in the person’s most recent academic year in an undergraduate degree or certificate program, or completion of at least 18 semester credit hours in the person’s most recent academic year in a graduate or professional degree program (unless fewer hours are required for the completion of the degree); and

(iii) establishment and maintenance of an overall grade point average of at least 2.5 on a four-point scale or the equivalent on coursework previously attempted at public or private institutions.

(C) Grade point average calculations shall be made in accordance with institutional policies except that if a grant recipient’s grade point average falls below program requirements and the student transfers to another institution, the receiving institution cannot make a continuation award to the transfer student until he/she provides official transcripts of previous coursework to the new institution’s financial aid office and that office re-calculates an overall grade point average, including hours and grade points for courses taken at the old and new institutions that proves the student’s overall grade point average now meets or exceeds program requirements.

(4) be a resident of Texas [resident], unless such student is a national merit scholarship finalist;
The Texas Higher Education Coordinating Board proposes new §§22.25 - 22.32, concerning the Tuition Equalization Grant Program. Senate Bill 1227 and House Bill 1172, 79th Legislature, Regular Session, amended Texas Education Code, §§61.225 and §61.227 and added new §61.2251, changing eligibility requirements for the Tuition Equalization Grant Program. Rider 45, page 3 of the General Appropriations Bill (Senate Bill 1) authorizes the transfer of an amount not to exceed the lesser of 10 percent or $10,000 between the TEXAS Grant Program, the Texas College Work-Study, and the Tuition Equalization Grant Program. Specifically, §22.25 specifies the length of time an individual may continue to receive awards through the program. Section 22.26 reflects the circumstances under which an institution may allow a student to continue to receive awards even though the student has dropped below the academic performance requirements of the program on the basis of hardship. Section 22.27 indicates the limitations on the size of the grant that can be awarded to a person and that the funds must be used to meet expenses related to attending college. Section 22.28 advises institutions on the procedures for adjusting awards. Section 22.29 describes the conditions under which an award may be made to a student who is no longer enrolled. Section 22.30 describes the bases upon which funds are divided among eligible institutions and how the fund distribution is adjusted during a given year. Section 22.31 reflects the ability of institutions to transfer the lesser of 10 percent or $10,000 between the Tuition Equalization Grant Program, Toward EXcellence, Access and Success Grant Program and the Texas College Work-Study Program. Section 22.32 indicates the Board’s responsibility to disseminate rules and general information about the program.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enacting or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of administering the sections will be that the 24-hour requirement and shorter terms for participation will encourage students to complete their degrees sooner, generating savings for the students and the state. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

19 TAC §§22.25 - 22.30

(EDITOR'S NOTE: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §§22.25 - 22.30, concerning the Tuition Equalization Grant Program. These sections are being proposed for repeal and new §§22.25 - 22.32 are being proposed simultaneously in this issue of the Texas Register.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enacting or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of administering the sections will be that the 24-hour requirement and shorter terms for participation will encourage students to complete their degrees sooner, generating savings for the students and the state. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The repeal is proposed under the Texas Education Code, §§61.229, which provides the Coordinating Board with the authority to adopt rules to enforce the requirements, conditions and limitations of Texas Education Code, §§§61.221-61.230.

The repeal affects Texas Education Code, §§61.221 - 61.230.

§22.25. Award Amounts and Uses.
§22.27. Adjustments to Awards Made Through Campus-Based Processing.

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.
Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@theeb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The new sections are proposed under the Texas Education Code, §61.229, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §§61.221 - 61.250.

The new sections affect the Texas Education Code, §§61.221 - 61.250.

§22.25. End of Eligibility.

(a) A person awarded TEG for a year prior to the 2005-2006 academic year or on or before September 1, 2005, for the 2005 - 2006 academic year may continue to receive grants as long as he or she meets the relevant eligibility requirements of §22.24 of this title (relating to Eligible Students).

(b) An undergraduate who is awarded a TEG for the first time on or after September 1, 2005, shall not be eligible for a grant on either:

(1) the fifth anniversary of the initial award of a TEG to the person, if the person is enrolled in a degree or certificate program of four years or less; or

(2) the sixth anniversary of the initial award of a TEG to the person, if the person is enrolled in a degree or certificate program of more than four years;

(c) A graduate student who is awarded a TEG for the first time on or after September 1, 2005, may continue to receive grants as long as he or she meets the relevant eligibility requirements of §22.24 of this title (relating to Eligible Students).


In the event of a hardship or for other good cause, the Program Officer at an eligible institution may allow an otherwise eligible person to receive a TEG while enrolled less than full time or if the student’s grade point average or number of hours completed falls below the satisfactory academic progress requirements as referred to in §22.24 of this title (relating to Eligible Students). Such conditions may include, but are not limited to:

(1) a showing of a severe illness or other debilitating condition that may affect the student’s academic performance; or

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student’s provision of care may affect his or her academic performance.

§22.27. Award Amounts and Uses.

(a) Funding. Funds awarded through this program may not exceed the amount appropriated by the Legislature for that purpose.

(b) Award Amount.

(1) No award shall exceed the least of:

(A) the student’s financial need; or

(B) the difference between the amount of tuition paid at the participating institution and the amount the student would have paid for tuition had he or she been enrolled at a comparable public institution; or

(C) the program maximum.

(2) A grant to a part-time student whose initial TEG was awarded prior to September 1, 2005 shall be made on a pro rata basis of a full-time award.

(c) Program maximum.

(1) The TEG Program award maximum is determined by the Board in accordance with Texas Education Code, §61.227 (relating to Payment of Grant Amount).

(2) An undergraduate awarded his or her initial TEG grant on or after September 1, 2005, and who has exceptional financial need may receive a grant in an amount not to exceed 150 percent of the program maximum.

(d) Uses. No grant disbursed to a student may be used for any purpose other than for meeting the cost of attending an approved institution.

(e) Disbursement Limit. The amount of any disbursement may not exceed the difference between the tuition paid at the private or independent institution attended and the tuition the student would have paid to attend a comparable public institution.

(f) Over Awards. If, at a time after an award has been offered by the institution and accepted by the student, the student receives assistance that was not taken into account in the student’s estimate of financial need, so that the resulting sum of assistance exceeds the student’s financial need, the institution is not required to adjust the award under this program unless the sum of the excess resources is greater than $300.

§22.28. Adjustments to Awards Made through Campus-Based Processing.

If a student officially withdraws from enrollment, or for some other reason, the amount of a student’s disbursement exceeds the amount the student is eligible to receive; the institution shall follow its general institutional refund policy in determining the amount to be returned to the program.

(1) Funds administered through campus-based operations do not have to be returned directly to the Board, but should be re-awarded to other eligible students. If funds cannot be re-awarded in a timely manner, they should be returned to the Board in the form of an institution-issued check. Such payment shall be accompanied with sufficient documentation to enable the Board to identify the appropriate program for which the funds were originally issued.

(2) Funds should be returned promptly, but in no case shall they be returned more than 60 days from the issue date.

§22.29. Retroactive Disbursements.

(a) A student may receive a disbursement after the end of his/her period of enrollment if the student:

(1) Owes funds to the institution for the period of enrollment for which the award is being made; or

(2) Received a student loan that is still outstanding for the period of enrollment.

(b) Funds that are disbursed retroactively must either be used to pay the student’s outstanding balance from his/her period of enrollment at the institution or to make a payment against an outstanding student loan received during that period of enrollment. Under no circumstances are funds to be released to the student.

§22.30. Allocation and Reallocation of Funds.

(a) Allocations. Available program funds will be allocated to each participating institution in proportion to each institution’s TEG need.

(b) Reallocations. Institutions will have until a date specified by the Board via a policy memo addressed to the Program Officer at the institution to encumber the program funds that have been allocated to

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them. On that date, institutions lose claim to any unencumbered funds, and the unencumbered funds are available to the Board for reallocation to other institutions. If necessary for ensuring the full use of funds, subsequent reallocations may be scheduled until all funds are awarded and disbursed.

§22.31. Authority to Transfer Funds.

Institutions participating in a combination of the Toward EXcellence, Access and Success Grant, Tuition Equalization Grant, and Texas College Work-Study Programs, in accordance with instructions from the Board, may transfer in a given fiscal year up to the lesser of 10 percent or $10,000 between these programs.

§22.32. Dissemination of Information and Rules.

The Board is responsible for publishing and disseminating general information and program rules for the program described in this subchapter.

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

Filed with the Office of the Secretary of State on August 24, 2005.

TRD-200503638
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 27, 2005
For further information, please call: (512) 427-6114

SUBCHAPTER D. PROVISIONS FOR THE TEXAS PUBLIC EDUCATIONAL GRANT PROGRAMS

19 TAC §22.62

The Texas Higher Education Coordinating Board proposes amendments to §22.62 concerning the Texas Public Educational Grant Program. Texas Education Code, §54.034 permits institutions to make awards from funds generated through the sale of license plates with institutional insignia and/or funds generated through unclaimed Student Deposit Scholarship fees through the Texas Public Educational Grant Program, rather than as separate programs. Such funds could only be issued as need-based grants, through the Texas Public Educational Grant Program to students with financial need.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of administering the sections will be that this change will offer institutions an alternate path for issuing License Plate or Student Deposit Scholarship funds to eligible students. Institutions that choose to exercise these options will have two fewer discrete programs to administer. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P. O. Box 12788, Austin, Texas 78711, 512-427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The amendments are proposed under the Texas Education Code, §56.034.

The amendments affect the Texas Transportation Code, Chapter 504, §504 and the Texas Education Code, §54.5021.


(a) All institutions of higher education as defined in Texas Education Code, §61.003(8) shall [are required to] set tuition revenues aside for making grants through the Texas Public Educational Grant Program; and

(b) Institutions may also use funds generated through the Student Deposit Scholarship program established in Texas Education Code, §54.5021 or through the License Plate Insignia Scholarship Program, Transportation Code, §504.615.

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

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

TRD-200503765
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 27, 2005
For further information, please call: (512) 427-6114

19 TAC §22.64

The Texas Higher Education Coordinating Board proposes new §22.64 concerning the Texas Public Educational Grant Program. Texas Education Code, §54.034 permits institutions to make awards from funds generated through the sale of license plates with institutional insignia and/or funds generated through unclaimed Student Deposit Scholarship fees through the Texas Public Educational Grant Program, rather than as separate programs. Such funds could only be issued as need-based grants, through the Texas Public Educational Grant Program to students with financial need.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of administering the sections will be that this change will offer institutions an alternate path for issuing License Plate or Student Deposit Scholarship funds to eligible students. Institutions that choose to exercise these options will have two fewer discrete programs to administer. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P. O. Box 12788, Austin, Texas 78711, 512-427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.
The new section is proposed under the Texas Education Code, §56.034.

The new section affects the Texas Transportation Code, Chapter 504, §504 and the Texas Education Code, §54.5021.

§22.64. Use of Funds

(a) Funds generated through tuition set-asides may be used to:

(1) make need-based grants to resident or nonresident students; and

(2) fund emergency tuition, fee, and book loans as described in § 21.3 of this title, (relating to Loan Repayment Deferral and Loan Forgiveness for Emergency Tuition and Fee Loans).

(b) Funds transferred into the Texas Public Educational Grant Program from the Student Deposit Scholarship Program shall only be used for making need-based grants to resident students.

(c) Funds transferred into the Texas Public Educational Grant Program from the License Plate Insignia Scholarship Program shall only be used to make need-based grants to resident or nonresident students.

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

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

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 27, 2005
For further information, please call: (512) 427-6114

SUBCHAPTER H. PROVISIONS FOR THE LICENSE PLATE INSIGNIA SCHOLARSHIP PROGRAM

19 TAC §22.145

The Texas Higher Education Coordinating Board proposes amendments to §22.145, concerning the License Plate Insignia Scholarship Program. Texas Education Code, §54.5021 permits institutions to make awards from funds generated through the sale of license plates with institutional insignia through the Texas Public Educational Grant Program to students with financial need.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendments are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the amended section.

Ms. Hollis has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of administering the amended section will be that this change will offer institutions an alternate path for issuing License Plate Insignia Scholarship funds to eligible students. Institutions that choose to exercise this option will have one less discrete program to administer. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The amendments are proposed under Texas Education Code, §54.5021 and Texas Transportation Code, §504.615, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Transportation Code, §504.615 and Texas Education Code, §54.5021.

The amendments affect the Texas Transportation Code, §504.615 and Texas Education Code, §54.5021.

§22.145. Award Amounts and Uses.

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

(c) Uses. No scholarship disbursed to a student may be used for any purpose other than for meeting the cost of attending an approved institution. Institutions may use funds generated through the sale of license plates under Texas Transportation Code, §504.615, to issue need-based grants through the Texas Public Educational Grant Program, authorized in Texas Education Code, §§56.031 - 56.039.

(d) (No change.)

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

Filed with the Office of the Secretary of State on August 22, 2005.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 27, 2005
For further information, please call: (512) 427-6114

SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

19 TAC §§22.226 - 22.228

The Texas Higher Education Coordinating Board proposes amendments to §§22.226 - 22.228, concerning the Towards Excellence, Access and Success (Texas) Grant Program, Senate Bill 1227 and House Bill 1172, 79th Legislature, Regular Session, amended §§56.301, 56.302, 56.304, 56.305, 56.307, 56.3075 and 56.310, and new §§56.3021 of the Texas Education Code, changing several aspects of the TEXAS Grant Program. Specifically, §22.226 reflects the addiction of definitions for terms that are used in this subchapter. Changes to §22.227 indicate the need for institutions to notify the Coordinating Board if their accrediting agency places them on probation, and specifies institutions may be penalize for failing to submit required reports to the Board in a timely manner. Changes to §22.228 reflect the establishment of academic progress requirements for students awarded grants on or after September 1, 2005 that are different from the requirements for students awarded grants prior to that time. In order to address the added complexity of academic progress requirements, language regarding requirements for
previous recipients was deleted from this section and included in a new §22.229, which is addressed in the preamble for the proposed new section.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the amended sections.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of administering the amended sections will be that the 24-hour requirement and shorter terms for participation will encourage students to complete their degrees sooner, generating savings for the students and the state. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The amendments are proposed under the Texas Education Code, §§56.303, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §§56.301 - 56.311.

The amendments affect the Texas Education Code, §§56.301 - 56.311.


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

(1) Awarded--Offered to a student.

(2) Board--The Texas Higher Education Coordinating Board.

(3) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(4) Cost of attendance--A Board-approved estimate of the expenses incurred by a typical financial aid student in attending a particular college. It includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses.)

(5) Degree or certificate program of four years or less--A baccalaureate degree or certificate program other than in architecture, engineering or any other program determined by the board to require four years or less to complete.

(6) Degree or certificate program of more than four years--A baccalaureate degree or certificate program in architecture, engineering or any other program determined by the board to require more than four years to complete.

(7) Encumbered funds--Program funds that have been offered to a specific student, which offer the student has accepted, and which may or may not have been disbursed to the student.

(8) Enrolled on at least a three-quarter basis--Enrolled for the equivalent of nine semester credit hours in a regular semester.

(9) Entering undergraduate--A student enrolled in the first 30 semester credit hours or their equivalent, excluding hours taken during dual enrollment in high school and courses for which the student received credit through examination.

(10) Expected family contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology.

(11) Financial need--The cost of attendance at a particular public or private institution of higher education less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with Board guidelines.

(12) Initial year award--The grant award made in the student’s first year in the Texas Grant program, typically made up of a fall and spring disbursement.

(13) Institution of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit or other agency of higher education as defined in Texas Education Code, §61.003(8).

(14) Period of enrollment--The term or terms within the current state fiscal year (September 1 - August 31) for which the student was enrolled in an approved institution and met all the eligibility requirements for an award through this program.

(15) Private or Independent Institution of Higher Education--Any college or university defined as a private or independent institution of higher education by Texas Education Code, §61.003(15).

(16) Program Officer--The individual named by each participating institution’s chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including maintenance of all records and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.

(17) Recommended or advanced high school programs--The curriculum specified in the Texas Education Code, §28.025, and the rules promulgated there under by the State Board of Education.

(18) Required fees--A mandatory fee (required by statute) or discretionary fee (authorized by statute, imposed by the governing board of an institution) and that an institution charges to a student as a condition of enrollment at the institution or in a specific course.

(19) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B, of this title (relating to Determining Residence Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(20) Tuition--Statutory tuition, designated and/or Board-authorized tuition.


(a) Eligibility.

(1) Institutions [Public] and private or independent institutions of higher education [as defined in §61.003 of the Texas Education Code] are eligible to participate in the Texas Grant program.

(2) [No change.]

(3) Each [participating] institution must follow the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admissions.

(b) [No change.]
(c) Responsibilities.

(1) Probation Notice. If the institution is placed on public
prohibition by its accrediting agency, it must immediately advise the
Board and grant recipients of this condition and maintain evidence in
each student’s file to demonstrate that the student was so informed.

(2) (No change.)

(3) Reporting and Refunds.

(A) (No change.)

(B) Penalties for Late Reports or Refunds.

(i) An institution that posts or electronically submits a [progress] report a week or more after its due date will be ineligible to receive additional funding through the reallocation occurring at that time.

(ii) The Commissioner may penalize an institution by reducing its allocation of funds in the following year by up to 10% for each [progress or year-end] report that is postmarked or submitted electronically more than a week late. The penalty may also be invoked if the report is timely, but refunds owed to the Program by the institution are not made to the Board or the State Comptroller’s Office within one week after due.

(iii) The Commissioner may assess more severe penalties against an institution if any report or refund is received by the Board more than one month after its due date. [The maximum penalty for a single year is 30% of the school’s allocation. If penalties are invoked in two consecutive years the institution may be penalized an additional 20%.

(iv) The maximum penalty for a single year is 30 percent of the school’s allocation. If penalties are invoked in two consecutive years the institution may be penalized an additional 20 percent.

(4) (No change.)

§22.228. Eligible Students.

(a) To receive an initial award through the TEXAS Grant Pro-
gram, a student must:

1) - 7) (No change.)

8) if awarded the grant on or after September 1, 2005, be
enrolled in an institution of higher education.

(b) To receive a continuation award through the TEXAS Grant
Program, a student must:

1) - 5) (No change.)

6) make satisfactory academic progress towards an under-
graduate degree or certificate, as defined in §21.229 of this title (relat-
ing to Satisfactory Academic Progress). [which requires:

[A] as of the end of the person’s first academic year he
or she meets the satisfactory academic progress requirements as indi-
cated by the financial aid office of his or her institution.]

[B] If a student ends his/her first year in the program
without meeting the academic progress requirements of his/her institu-
tion, he/she may not get back into the program until the institution has
determined that the student has met its academic performance require-
ments.

[C] A grant recipient who is below program grade
point average requirements as of the end of a spring term may appeal
his/her grade point average calculation if he/she has taken courses pre-
viously at one or more different institutions. In the case of such an ap-
peal, the current institution (if presented with official transcripts from
the previous institutions), must calculate an overall grade point average
counting all classes and grade points previously earned. If the resulting
grade point average exceeds the current institution’s academic progress
requirement, an otherwise eligible student may receive an award in the
following fall term.

[D] As of the end of the second and subsequent years,
the student must complete at least 25 percent of the hours attempted in
his/her most recent academic year, and maintain an overall grade point
average of at least 2.5 on a four point scale or its equivalent, for all
coursework attempted at public or private or independent institutions
of higher education.

[iii] The completion rate calculations may be made in
keeping with institutional policies.

[iii] Grade point average calculations may be made in
keeping with institutional policies except that if a grant recipient’s
grade point average fails below program requirements and the student
transfers to another institution, the receiving institution cannot make a
continuation award to the transfer student until he/she provides official
transcripts of previous coursework to the new institution’s financial aid
office and that office re-calculates an overall grade point average, in-
cluding hours and grade points for courses taken at the old and new
institutions that proves the student’s overall grade point average now
meets or exceeds program requirements.

[iii] A grant recipient who is below program grade
point average requirements as of the end of a spring term may appeal
his/her grade point average calculation if he/she has taken courses pre-
viously at one or more different institutions. In the case of such an ap-
peal, the current institution (if presented with official transcripts from
the previous institutions), must calculate an overall grade point average
counting all classes and grade points previously earned. If the resulting
grade point average exceeds the program’s academic progress require-
ment, an otherwise eligible student may receive an award in the following fall term.

(7) (No change.)

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by
legal counsel and found to be within the agency’s legal au-
thority to adopt.

Filed with the Office of the Secretary of State on August 24, 2005.

TRD-200503642
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 27, 2005
For further information, please call: (512) 427-6114

19 TAC §§22.229 - 22.236

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

The Texas Higher Education Coordinating Board proposes the
repeal of §§22.229 - 22.236, concerning the Toward EXcellence,
Access, and Success Grant Program. Specifically, these sections are being repealed and proposed new §§22.229 - 22.240 are being published simultaneously with this repeal.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal.

Ms. Hollis has also determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of administering the repeal will be that the 24-hour requirement and shorter terms for participation will encourage students to complete their degrees sooner, generating savings for the students and the state. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The repeal affects the Texas Education Code, §§56.301 - 56.311. §§22.229 - 22.240 are proposed under the Texas Education Code, §§56.301 - 56.311.

19 TAC §§22.229 - 22.240

The Texas Higher Education Coordinating Board proposes new §§22.229 - 22.240, concerning the Toward EXcellence, Access, and Success (TEXAS) Grant Program. Senate Bill 1227 and House Bill 1172, 79th Legislature, Regular Session, amended §§56.301, 56.302, 56.304, 56.305, 56.307, 56.3075 and 56.310, and new §§56.3021 of the Texas Education Code, changing several aspects of the Texas Grant Program. Rider 45, page III-53 of the General Appropriations Bill (Senate Bill 1) authorizes the transfer of an amount not to exceed the lesser of 10 percent or $10,000 between the TEXAS Grant Program, the Texas College Work-Study, and the Tuition Equalization Grant Program. Specifically, §§22.229 lays out the academic progress requirements required of students in order to continue to be eligible for TEXAS Grants. Senate Bill 1227 and House Bill 1172 established new requirements for students who were awarded grants on or after September 1, 2005. Section 22.229 reflects the length of time that otherwise eligible students may continue to receive grants. Senate Bill 1227 and House Bill 1172 established new deadlines for students who were awarded grants on or after September 1, 2005. Section 22.231 describes conditions under which an institution may continue to award grants to students who fall below program academic progress requirements. Section 22.232 indicates that if funding is limited, priority is to be given to continuing students. Section 22.233 indicates that in awarding initial year funds, priority is to be given to students with the greatest financial need. Section 22.234 reflects the size of awards that may be made to individual students, that funds must be used to meet the costs of attending college, and that outside awards made late in a semester and that cause a student’s award to exceed need do not have to be adjusted unless the excess is more than $300. Section 22.235 describes the conditions under which a grant may be awarded to a student who is no longer enrolled. Section 22.236 describes how appropriations are divided among institutions, and indicates that no funds for additional new students will be provided to independent institutions on or after September 1, 2005. Section 22.237 authorizes the Coordinating Board to fund additional TEXAS Grants using excess Student Deposit Scholarship funds sent to the Board by institutions unable to use such funds in a timely manner as specified in Texas Education Code §54.502. Section 22.238 authorizes to develop an implement a process for naming specialty TEXAS Grant awards funded through gifts and donations. Section 22.239 reflects the ability of institutions to transfer the lesser of 10 percent or $10,000 between the Tuition Equalization Grant Program, Toward EXcellence, Access and Success Grant Program and the Texas College Work-study Program. Section 22.240 indicates the Board’s responsibility to disseminate rules and general information about the program.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the new sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of administering the sections will be that the 24-hour requirement and shorter terms for participation will encourage students to complete their degrees sooner, generating savings for the students and the state. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The new sections are proposed under the Texas Education Code, §§56.301, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §§56.301 - 56.311.

The new sections affect the Texas Education Code, §§56.301 - 56.311.

Filed with the Office of the Secretary of State on August 24, 2005.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2005
For further information, please call: (512) 427-6114
§22.229. Satisfactory Academic Progress.

(a) As of the end of the first academic year, each recipient of the TEXAS Grant shall meet the academic progress requirements as indicated by the financial aid office of his or her institution.

(1) A recipient who does not meet the academic progress requirements of his or her institution may not receive an award until the institution has determined that the academic performance requirements have been met.

(2) A recipient who is below program grade point average requirements as of the end of a spring term may appeal his/her grade point average calculation if he/she has taken courses previously at one or more different institutions. In the case of such an appeal, the current institution (if presented with official transcripts from the previous institutions), shall calculate an overall grade point average counting all classes and grade points previously earned. If the resulting grade point average exceeds the current institution’s academic progress requirement, an otherwise eligible student may receive an award in the following fall term.

(b) At the end of the second and subsequent years, a recipient who received a TEXAS grant prior to fall 2005, or was awarded an initial year TEXAS grant for the 2005 - 2006 academic year prior to September 1, 2005, shall:

(1) complete at least 75 percent of the hours attempted in his or her most recent academic year, as determined by institutional policies; and

(2) maintain an overall grade point average of at least 2.5 on a four point scale or its equivalent, for all coursework attempted at public or private or independent institutions of higher education.

(c) A recipient who was awarded an initial year award through the TEXAS Grant Program for the 2005 - 2006 academic year or after September 1, 2005, shall, at the end of the second and subsequent years:

(1) complete at least 75 percent of the hours attempted in his or her most recent academic year, as determined by institutional policies;

(2) complete at least 24 semester credit hours in his or her most recent academic year; and

(3) maintain an overall grade point average of at least 2.5 on a four point scale or its equivalent, for all coursework attempted at an institution or private or independent institution.

(d) A grant recipient who is below program grade point average requirements as of the end of a spring term may appeal his/her grade point average calculation if he/she has taken courses previously at one or more different institutions. In the case of such an appeal, the current institution (if presented with transcripts from the previous institutions), shall calculate an overall grade point average counting all classes and grade points previously earned. If the resulting grade point average exceeds the program’s academic progress requirement, an otherwise eligible student may receive an award in the following fall term.

§22.230. Discontinuation of Eligibility or Non-Eligibility.

(a) For recipients who received a TEXAS Grant prior to Fall 2005 or were awarded an initial year TEXAS Grant for the 2005 - 2006 academic year prior to September 1, 2005:

(1) Unless granted a hardship postponement in accordance with §22.231 of this title (relating to Hardship Provisions), a student’s eligibility for a TEXAS Grant ends six years from the start of the semester or term in which the student received his or her first disbursement of an initial TEXAS Grant award, if the student’s eligibility for a TEXAS Grant was based on the completion of the Recommended or Advanced High School Program or its equivalent in high school.

(2) Unless granted a hardship postponement in accordance with §22.231 of this title, a student’s eligibility ends four years from the date of the semester or term in which the student received his or her first disbursement of an initial TEXAS Grant award, if the student’s eligibility was based on receiving an associate’s degree.

(b) For recipients who were awarded an initial year award through the TEXAS Grant program for the 2005 - 2006 academic year on or after September 1, 2005, or for a subsequent academic year:

(1) Unless granted a hardship postponement in accordance with §22.231 of this title, a student’s eligibility for a TEXAS Grant ends:

(A) five years from the start of the semester or term in which the student received his or her first disbursement of an initial TEXAS Grant award, if the student’s eligibility for a TEXAS Grant was based on the completion of the Recommended or Advanced High School Program or its equivalent in high school and the student is enrolled in a degree or certificate program of four years or less;

(B) six years from the start of the semester or term in which the student received his or her first disbursement of an initial TEXAS Grant award, if the student’s eligibility for a TEXAS Grant was based on the completion of the Recommended or Advanced High School Program or its equivalent in high school and the student is enrolled in a degree or certificate program of more than four years;

(2) Unless granted a hardship postponement in accordance with §22.231 of this title, a student’s whose eligibility was based on receiving an associate’s degree loses eligibility:

(A) three years from the date of the semester or term in which the student received his or her first disbursement of an initial TEXAS Grant award if the student is enrolled in a degree or certificate program of four or fewer years;

(B) four years from the date of the semester or term in which the student received his or her first disbursement of an initial TEXAS Grant award if the student is enrolled in a degree or certificate program of more than four years.

(c) A student’s eligibility ends one year from the date of the semester or term in which the student received his or her first disbursement of an initial TEXAS Grant award, if the student’s eligibility was based on the expectation that the student would complete the Recommended or Advanced High School Program, but the student failed to do so. However, if such a student later receives an associate’s degree and again qualifies for TEXAS Grants, he or she can receive an additional four years of eligibility.

(d) A student who is eligible for a TEXAS Grant based on completion of the Recommended or Advanced High School Program or its equivalent in high school may receive a TEXAS Grant for no more than 150 semester credit hours or the equivalent.

(e) A student who is eligible for a TEXAS Grant based on receiving an associate’s degree may receive a TEXAS Grant for no more than 90 semester credit hours.

(f) A person is not eligible to receive an initial or continuation TEXAS Grant if the person has been convicted of a felony or an offense under Chapter 481, Health and Safety Code (Texas Controlled Substances Act), or under the law of any other jurisdiction involving a controlled substance as defined by Chapter 481, Health and Safety Code, unless the person has met the other applicable eligibility requirements under this subchapter and has:
(1) received a certificate of discharge by the Texas Department of Criminal Justice or a correctional facility or completed a period of probation ordered by a court, and at least two years have elapsed from the date of the receipt or completion; or

(2) been pardoned, had the record of the offense expunged from the person’s record, or otherwise been released from the resulting ineligibility to receive a TEXAS Grant.

(g) Other than as described in §22.231 of this title, if a person fails to meet any of the requirements for receiving a continuation award as outlined in subsection (b) of this section after completion of any year, the person may not receive a TEXAS Grant until he or she completes courses while not receiving a TEXAS Grant and meets all the requirements of subsection (b) of this section as of the end of that period of enrollment.


(a) In the event of a hardship or for other good cause, the Program Officer at an eligible institution may allow an otherwise eligible person to receive a TEXAS Grant while enrolled for an equivalent of less than three-quarter time or if the student’s grade point average or completion rate or number of completed hours falls below the satisfactory academic progress requirements of §22.229 of this title (relating to Satisfactory Academic Progress). Such conditions are not limited to, but include:

(1) a showing of a severe illness or other debilitating condition that may affect the student’s academic performance;

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student’s provision of care may affect his or her academic performance; or

(3) the requirement of fewer than nine hours to complete one’s degree plan.

(b) The director of financial aid may grant an extension of the year limits found in §22.230 of this title (relating to Discontinuation of Eligibility or Non-Eligibility) in the event of hardship. Documentation justifying the extension must be kept in the student’s files, and the institution must identify students granted extensions and the length of their extensions to the Coordinating Board, so that it may appropriately monitor each student’s period of eligibility.

(c) The financial aid director may allow a student to receive his/her first award after more than 16 months have passed since high school graduation if the student and/or the student’s family has suffered a hardship that would now make the student rank as one of the institution’s neediest. Documentation justifying the exception must be kept in the student’s files.

§22.232. Priorities in Funding.

If appropriations for the TEXAS Grant Program are insufficient to allow awards to all eligible students, continuation awards will be given priority.

§22.233. Priority in Awards to Students.

In determining who should receive an initial year TEXAS Grant, an institution shall give highest priority to students who demonstrate the greatest financial need at the time the award is made.

§22.234. Award Amounts and Adjustments.

(a) Funding. Funds awarded through this program may not exceed the amount of appropriations, gifts, grants and other funds that are available for this use.

(b) Award Amounts.

(1) The amount of a TEXAS Grant awarded through an institution may not be reduced by any gift aid for which the person receiving the grant is eligible, unless the total amount of a person’s grant plus any aid other than loans received equals or exceeds the student’s tuition and required fees. The amount of a TEXAS Grant awarded to a student attending a private or independent institution may not be reduced by any gift aid for which the person receiving the grant is eligible, unless the total amount of a person’s grant plus any gift aid exceeds the student’s financial need.

(2) The Board shall determine and announce the maximum amount of a TEXAS Grant award prior to the start of each fiscal year. The calculation of the maximum amount will be based on the mandates contained in Texas Education Code, §56.307. However, no student’s award shall be greater than the amount of the student’s financial need.

(3) For students enrolled in eligible private or independent institutions,

(A) if the student’s award was made prior to June 18, 2005, the amount of the TEXAS Grant, when combined with the amount received through the Tuition Equalization Grant Program (Texas Education Code, §61.221) may not exceed the student’s need or the total amount of tuition and required fees charged to the student for the academic periods for which one or more of the grants were awarded;

(B) if the student’s award was made on June 18, 2005, or thereafter, the amount of the TEXAS Grant may not exceed the maximum award possible through the Tuition Equalization Grant Program (Texas Education Code, §61.221).

(C) No student attending a private or independent institution who is awarded a TEXAS Grant on or after September 1, 2005, may receive both a TEXAS Grant and a Tuition Equalization Grant in the same term or semester.

(4) An eligible institution may not charge a person receiving a TEXAS Grant through that institution, an amount of tuition and required fees in excess of the amount of the TEXAS Grant received by the person unless it also provides the student sufficient aid other than loans to meet his or her full tuition and required fees. Nor may it deny admission to or enrollment in the institution based on a person’s eligibility to receive or actual receipt of a TEXAS Grant.

(5) The eligible institution may require a student to forgo or repay the amount of an initial TEXAS Grant awarded to the student as described in §22.228(a)(6)(B) of this title (relating to Eligible Students) if the student is determined to have failed to complete the Recommended or Advanced High School Program or its equivalent as evidenced by the final high school transcript.

(6) If the money available for TEXAS Grants is sufficient to provide grants to all eligible applicants in the amounts specified in paragraphs (1) - (4) of this subsection, the Board may use any excess money to award a grant in an amount not more than three times the amount that may be awarded under paragraphs (1) - (4) of this subsection, to a student who:

(A) is enrolled in a program that fulfills the educational requirements for licensure or certification by the state in a health care profession that the Board, in consultation with the Texas Workforce Commission and the Statewide Health Coordinating Council, has identified as having a critical shortage in the number of license holders needed in this state;

(B) has completed at least one-half of the work toward a degree or certificate that fulfills the educational requirement for licensure or certification; and
§22.235 Retroactive Disbursements.

(a) A student may receive a disbursement after the end of his/her period of enrollment if the student:

(1) owes funds to the institution for the period of enrollment for which the award is being made; or

(2) received a student loan that is still outstanding for the period of enrollment.

(b) Funds that are disbursed retroactively must either be used to pay the student’s outstanding balance from his/her period of enrollment at the institution or to make a payment against an outstanding loan received during that period of enrollment. Under no circumstances are funds to be released to the student.

§22.236 Allocation and Reallocation of Funds.

(a) Allocations:

(1) Initial Year Funds. Available program funds for initial year awards will be allocated to each participating institution in proportion to each institution’s share of the state’s undergraduate financial aid population with significant amounts of financial need, except that, beginning with September 1, 2005, no additional initial year funds will be allocated to private or independent institutions.

(2) Renewal Year Funds. Available program funds for continuation or renewal awards will be allocated in proportion to the number of prior year recipients reported for each institution, adjusted for the institution’s student retention rate.

(b) Reallocations. Institutions will have until a date specified by the Board via a policy memo addressed to the Program Officer at the institution to encumber the program funds that have been allocated to them. On that date, institutions lose claim to any unencumbered funds, and the unencumbered funds are available to the Board for reallocation to other institutions. If necessary for ensuring the full use of funds, subsequent reallocations may be scheduled until all funds are awarded and disbursed.

(c) Disbursement of Funds to Institutions. As requested by institutions throughout the academic year, the Board shall forward to each participating institution a portion of its initial and renewal year allocations of funds for immediate release to students or immediate application to student accounts at the institution.

(d) Release of Funds to Students. The institution may release all or part of the proceeds of a TEXAS Grant to an eligible person only if the tuition and required fees incurred by the person at the institution have been paid.

§22.237 Funds Provided from Student Deposit Fees.

Student deposit funds that are not claimed by students may only be used to make TEXAS Grants. If the year-end balance of funds at an institution exceeds 150 percent of the amount its students have forfeited during that year, the excess funds are to be forwarded to the Coordinating Board for disbursement through the TEXAS Grant Program. If an institution established an endowment fund from funds forfeited prior to the end of state Fiscal Year 2001, no additional forfeited funds may be added to the endowment corpus. All forfeited funds and their earnings (including the earnings of the endowment fund) must be used in calculating the year-end balance subject to the 150 percent limit, and are to be used for making need-based grants.

§22.238 Funds Provided through Gifts and Donations.

The Board may develop and implement an appropriate process for the naming and sponsoring of specialty TEXAS Grant awards funded through gifts and donations to the program.

§22.239 Authority to Transfer Funds.

Institutions participating in a combination of the Toward EXcellence, Access and Success Grant, Tuition Equalization Grant, and Texas College Work-Study Programs, in accordance with instructions from the Board, may transfer in a given fiscal year up to the lesser of 10 percent or $10,000 between these programs.

§22.240 Dissemination of Information and Rules.

The Board and its advisory committee is responsible for publishing and disseminating general information and program rules for the program described in this subchapter. The Board shall distribute to each eligible institution and to each school district a copy of the rules adopted under this subchapter.

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

Filed with the Office of the Secretary of State on August 24, 2005.
TRD-200503641
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 27, 2005
For further information, please call: (512) 427-6114

SUBCHAPTER M. TEXAS EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19 TAC §§22.253 - 22.256

The Texas Higher Education Coordinating Board proposes amendments to §§22.253 - 22.256, concerning the Texas Educational Opportunity Grant Program (formerly the Toward EXcellence, Access and Success (Texas) Grant II Program).

Senate Bill 1227, 79th Legislature, Regular Session amended Texas Education Code, §§56.402 - 56.407, changing several aspects of the Towards EXcellence, Access and Success (Texas) Grant II Program.

Specifically, §§22.253, 22.254, and 22.256 reflect the program name change from the Toward EXcellence, Access and Success (Texas) Grant II Program to the Texas Educational Opportunity Grant Program.

In addition, changes to §22.254 reflect the addition of definitions for terms that are used in this subchapter. The term “awarded” is relevant in determining whether a student’s awards fall under old program requirements or new requirements established by the 79th Legislature. The terms “institution” and “Texas Educational Opportunity Grant” are added to simplify and clarify future
references in rules to eligible institutions and the grant program described in this title.

Changes to §22.254 indicate institutions participating in the program must notify the Coordinating Board if their accrediting agency places them on probation, and that the institutions may be penalized if they fail to refund unused program monies to the Board in a timely manner.

Changes to §22.256 reflect the addition of new continuation award requirements for individuals awarded their first awards on or after September 1, 2005. Originally, the program required all students to maintain a 2.5 overall grade point average and complete at least 75 percent of the hours they attempted in order to continue in the program during all years in the program. These requirements will remain in place for students awarded their first grants prior to fall 2005. A student receiving his or her first grants in fall 2005 or later will need to meet the satisfactory academic performance requirements of his or her institution as of the end of the first year in the program and meet the program-specific requirements as of the end of his or her second year in the program. The changes also indicate these requirements must be met by the student unless they are waived by the institution due to hardship.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the amendments.

Ms. Lois Hollis has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of administering the amendments will be that the changes in the first year’s academic performance requirements will increase the retention rate of grant recipients, giving them an additional year to make the full transition from high school (or the general work force) to college. The name change will greatly improve the ability of agency publications to distinguish between the TEOG program and the much larger Towards EXcellence, Access and Success Grant Program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The amendments are proposed under the Texas Education Code, §56.403, which states that the Coordinating Board is authorized to adopt any rules necessary to implement the program.

The amendments affect the Texas Education Code, §§56.401 - 56.4075.

§22.253. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, §§56.401 - 56.4075, Texas Educational Opportunity Grant [Subchapter P, Toward EXcellence, Access, & Success (TEXAS) Grant I] Program. These rules establish procedures to administer this grant program. [the subchapter as prescribed in the Texas Education Code, §§56.401 - 56.4075.]

(b) (No change.)

§22.254. Definitions.

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

(1) Awarded—Offered to a student.

(2) [§] Board—The Texas Higher Education Coordinating Board.

(3) [§] Commissioner—The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(4) [§] Cost of attendance—A Board-approved estimate of the expenses incurred by a typical financial aid student in attending a particular college. It includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).

(5) [§] Encumbered funds—Program funds that have been offered to a specific student, which offer the student has accepted, and which may or may not have been disbursed to the student.

(6) [§] Enrolled on at least a half-time basis—Enrolled for the equivalent of six semester credit hours in a regular semester.

(7) [§] Entering student—A student enrolled in the first 30 semester credit hours or their equivalent, excluding hours taken during dual enrollment in high school and courses for which the student received credit through examination.

(8) [§] Expected family contribution—The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology.

(9) [§] Financial need—The cost of attendance at a particular public or private institution of higher education less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with Board guidelines.

(10) [§] Initial year award—The grant award made in the student’s first year in the Texas Educational Opportunity Grant [TEXAS Grant I] Program, typically made up of a fall and spring disbursement.

(11) Institution—A public junior college as defined in Texas Education Code, §61.003(2); a public technical institution as defined in Texas Education Code, §61.003(7); and Lamar State College-Orange and Lamar State College-Port Arthur.

(12) [§] Period of enrollment—The term or terms within the current state fiscal year (September 1 - August 31) for which the student was enrolled in an approved institution and met all the eligibility requirements for an award through this program.

(13) Program—The Texas Educational Opportunity Grant Program.

(14) [§] Program Officer—The individual named by each participating institution’s chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including maintenance of all records and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.

(15) [§] Resident of Texas—A resident of the State of Texas as determined in accordance with §§21.21 - 21.27 [Chapter 21, Subchapter B] of this title (relating to Determining Residence Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.
§22.255. Institutions.

(a) Eligibility.

(1) Each institution as defined in §22.254 of this title (relating to Definitions) [Public junior colleges, technical colleges and state colleges as defined in §61.003 of the Texas Education Code] are eligible to participate in the [TEXAS Grant II] program.

(2) (No change.)

(3) Each eligible [participating] institution must follow the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admissions.

(b) Approval.

(1) Agreement. Each eligible [approved] institution must enter into an agreement with the Board, the terms of which shall be prescribed by the Commissioner.

(2) (No change.)

(c) Responsibilities.

(1) Probation Notice. If the institution is placed on [public] probation by its accrediting agency, it must immediately advise the Board and grant recipients of this condition and maintain evidence in each student’s file to demonstrate that the student was so informed.

(2) (No change.)

(3) Reporting and Refunds.

(A) (No change.)

(B) Penalties for Late Reports or Refunds.

(ii) An institution that postmarks or electronically submits a [progress] report a week or more after its due date will be ineligible to receive additional funding through the reallocation occurring at that time.

(iii) The Commissioner may penalize an institution by reducing its allocation of funds in the following year by up to 10% for each [progress of year-end] report that is postmarked or submitted electronically more than a week late. The penalty may also be invoked if the report is on time, but any refund owed to the program by the institution arrives at the board or the State Comptroller’s Office more than a week after its due date.

(iii) The Commissioner may assess more severe penalties against an institution if any report is received by the Board more than one month after its due date. The Commissioner may penalize an institution by reducing its allocation of funds in the following year by up to 10% for each late refund of grant funds. If grant funds are returned more than a week after the announced return date, they will be considered late. [The maximum penalty for a single year is 30% of the school’s allocation. If penalties are invoked in two consecutive years the institution may be penalized an additional 20%.

(iv) The maximum penalty for a single year is 30% of the school’s allocation. If penalties are invoked in two consecutive years the institution may be penalized an additional 20%.

(C) (No change.)

(4) Program Reviews. If selected for such by the Board, participating institutions must submit to program reviews of activities related to the [TEXAS Grant II] Program.

§22.256. Eligible Students.

(a) To receive an initial award through the Texas Educational Opportunity Grant [TEXAS Grant II] Program, a student must:

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

(b) To receive a continuation award through the Texas Educational Opportunity Grant [TEXAS Grant II] Program, a student must:

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

(7) make satisfactory academic progress towards an undergraduate degree or certificate, which requires:

(A) for persons receiving their first awards prior to fall semester, 2005, completion of at least 75% of the hours attempted in the student’s most recent academic year, and maintenance of an overall grade point average of at least 2.5 on a four point scale or its equivalent.

(B) for persons receiving their first awards for fall 2005 or later:

(i) compliance with the academic progress requirements of the institution as of the end of the first academic year; and

(ii) in subsequent academic years, completion of at least 75% of the hours attempted in the student’s most recent academic year, and maintenance of an overall grade point average of at least 2.5 on a four point scale or its equivalent.

(C) [4A] The completion rate calculations may be made in keeping with institutional policies.

(D) [4B] Grade point average calculations may be made in keeping with institutional policies except that if a grant recipient’s grade point average falls below program requirements and the student transfers to another institution, the receiving institution cannot make a continuation award to the transfer student until he/she provides official transcripts of previous coursework to the new institution’s financial aid office and that office re-calculates an overall grade point average, including hours and grade points for courses taken at the old and new institutions that proves the student’s overall grade point average now meets or exceeds program requirements.

(c) Discontinuation of Eligibility or Non-Eligibility.

(1) A student may not receive a Texas Educational Opportunity Grant [TEXAS Grant II] for more than 75 semester credit hours or its equivalent.

(2) A student’s eligibility for a Texas Educational Opportunity Grant [TEXAS Grant II] award ends four years from the start of the semester or term in which the student received his or her initial award [of a TEXAS Grant II].

(3) A person is not eligible to receive an initial or continuation Texas Educational Opportunity Grant [TEXAS Grant II] award if the person has been convicted of a felony or an offense under Chapter 481, Health and Safety Code (Texas Controlled Substances Act), or under the law of any other jurisdiction involving a controlled substance as defined by Chapter 481, Health and Safety Code, unless the person has met the other applicable eligibility requirements under this subchapter and has:

(A) (No change.)

(B) been pardoned, had the record of the offense expunged from the person’s record, or otherwise been released from the resulting ineligibility to receive a [TEXAS] grant.

(4) Unless granted a hardship extension in accordance with §22.257 of this title (relating to Hardship Provisions for Students Awarded Grants On or After September 1, 2005), if [4I] a person fails to meet any of the requirements for receiving a continuation award as outlined in subsection (b) of this section after completion of any year,
the person may not receive a Texas Educational Opportunity Grant [TEXAS Grant II] award until he or she completes courses while not receiving a Texas Educational Opportunity Grant [TEXAS Grant II] and meets all the requirements of subsection (b) of this section as of the end of that period of enrollment.

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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Jan Greenberg
General Counsel
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SUBCHAPTER M  TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT II PROGRAM

19 TAC §§22.257 - 22.262

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

The Texas Higher Education Coordinating Board proposes the repeal of §§22.257 - 22.262, concerning the Texas Educational Opportunity Grant Program (formerly the Toward EXcellence, Access and Success (Texas) Grant II Program). These sections are being proposed for repeal and new §§22.257 - 22.263 are being proposed simultaneously in this issue of the Texas Register.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the repeals are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeals.

Ms. Hollis has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of administering the sections will be that the changes in the first year’s academic performance requirements will increase the retention rate of grant recipients, giving them an additional year to make the full transition from high school (or the general work force) to college. The name change will greatly improve the ability of agency publications to distinguish between the TEOG program and the much larger Towards EXcellence, Access and Success Grant Program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeals as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The repeals are proposed under the Texas Education Code, §§56.403, which states that the Coordinating Board is authorized to adopt any rules necessary to implement the program.

The repeals affect the Texas Education Code, §§56.401 - 56.4075.

§22.257. Priorities in Funding.
§22.258. Priorities in Awards to Students.
§22.259. Award Amounts and Adjustments.
§22.261. Allocation and Reallocation of Funds.
§22.262. Dissemination of Information and Rules.

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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General Counsel
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SUBCHAPTER M  TEXAS EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19 TAC §§22.257 - 22.263

The Texas Higher Education Coordinating Board proposes new §§22.257 - 22.263, concerning the Texas Educational Opportunity Grant Program (formerly the Toward EXcellence, Access and Success (Texas) Grant II Program). Senate Bill 1227, 79th Legislature, Regular Session amended Texas Education Code, §§56.402 - 56.407, changing several aspects of the Towards EXcellence, Access and Success (TEXAS) Grant II Program.

Specifically, §22.257 describes the hardship provisions under which the institution may allow a student who otherwise does not meet program academic progress requirements to continue to receive awards. Section 22.258 indicates that if funding is limited, continuing students are to be given priority in making awards over new students. Section 22.259 indicates that in making initial awards to students, priority is to be given to students with the greatest financial need. Section 22.260 specifies the amount of funds that may be awarded to students attending various types of institutions, and that funds are to be used for the purpose of meeting expenses related to attending college. Students receiving late awards that cause them to receive aid in excess of their need to not have to make refunds to the program if the excess amount is less than or equal to $300. Section 22.261 describes the circumstances under which funds may be disbursed retroactively to an institution on behalf of a student. Section 22.262 describes the allocation of funds among institutions, and how funds are to be delivered to the institutions. Section 22.263 confirms the Coordinating Board’s responsibility to disseminate information and rules regarding the program.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the new sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the new sections.

Ms. Hollis has also determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of administering the new sections will be that the
changes in the first year’s academic performance requirements will increase the retention rate of grant recipients, giving them an additional year to make the full transition from high school (or the general work force) to college. The name change will greatly improve the ability of agency publications to distinguish between the TEOG program and the much larger Towards Excellence, Access and Success Grant Program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the new sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@tcb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The new sections are proposed under the Texas Education Code, §56.403, which states that the Coordinating Board is authorized to adopt any rules necessary to implement the program.

The new sections affect the Texas Education Code, §§56.401 -56.407.


In the event of a hardship or for other good cause, the Program Officer at an eligible institution may allow an otherwise eligible person who is awarded a grant on or after September 1, 2005 to receive a Texas Educational Opportunity Grant while enrolled for an equivalent of less than one-half time or if the student’s grade point average or completion rate falls below the satisfactory academic progress requirements of §22.256(b)(7) of this title (relating to Eligible Students). Such conditions are not limited to, but include:

1. a showing of a severe illness or other debilitating condition that may affect the student’s academic performance;

2. an indication that the student is responsible for the care of a sick, injured, or needy person and that the student’s provision of care may affect his or her academic performance; or

3. the requirement of fewer than six hours to complete one’s degree plan.

§22.258. Priorities in Funding.

If appropriations for the Texas Educational Opportunity Grant Program are insufficient to allow awards to all eligible students, continuation awards will be given priority.

§22.259. Priorities in Awards to Students.

In determining who should receive an initial Texas Educational Opportunity Grant award, an institution should give highest priority to students who demonstrate the greatest financial need at the time the award is made.

§22.260. Award Amounts and Adjustments.

(a) Funding. Funds awarded through this program may not exceed the amount of appropriations, grants and other funds that are available for this use.

(b) Award Amounts.

1. The amount of a Texas Educational Opportunity Grant award may not be reduced by any gift aid for which the person receiving the grant is eligible, unless the total amount of a person’s grant plus any gift aid received exceeds the student’s financial need.

2. The Board shall determine and announce the maximum amount of a Texas Educational Opportunity Grant award prior to the start of each fiscal year. The calculation of the maximum amount will be based on the mandates contained in Texas Education Code, §56.407. However, no student’s award shall be greater than the amount of the student’s financial need.

(3) An approved institution may not charge a person receiving a Texas Educational Opportunity Grant through that institution, an amount of tuition and required fees in excess of the amount of the Texas Educational Opportunity Grant award received by the person. Nor may it deny admission to or enrollment in the institution based on a person’s eligibility to receive or actual receipt of a Texas Educational Opportunity Grant award. If an institution’s tuition and fee charges exceed the Texas Educational Opportunity Grant award amount, it may address the shortfall in one of two ways:

(A) It may use other available sources of financial aid, other than a loan or work-study funds to cover any difference in the amount of a Texas Educational Opportunity Grant award and the student’s actual amount of tuition and required fees at the institution; or

(B) it may waive the excess charges for the student. However, if a waiver is used, the institution may not report the recipient’s tuition and fees in a way that would increase the general revenue appropriations to the institution.

(c) Uses. A person receiving a Texas Educational Opportunity Grant award may only use the money to pay any usual and customary cost of attendance at an institution of higher education incurred by the student.

(d) Over Awards. If, at a time after an award has been offered by the institution and accepted by the student, the student receives assistance that was not taken into account in the student’s estimate of financial need, so that the resulting sum of assistance exceeds the student’s financial need, the institution is not required to adjust the award under this program unless the sum of the excess resources is greater than $300.

§22.261. Retroactive Disbursements.

(a) A student may receive a disbursement after the end of his/her period of enrollment if the student:

1. owes funds to the institution for the period of enrollment for which the award is being made; or

2. received a student loan that is still outstanding for the period of enrollment.

(b) Funds that are disbursed retroactively must either be used to pay the student’s outstanding balance from his/her period of enrollment at the institution or to make a payment against an outstanding loan received during that period of enrollment. Under no circumstances are funds to be released to the student.

§22.262. Allocation and Reallocation of Funds.

(a) Allocations.

1. Initial Year Funds. Available program funds for initial year awards will be allocated to each participating institution in proportion to each institution’s share of the state’s undergraduate financial aid population with significant amounts of financial need.

2. Renewal Year Funds. Available program funds for continuation or renewal awards will be allocated in proportion to the number of prior year recipients reported for each institution, adjusted for the institution’s student retention rate.

(b) Reallocations. Institutions will have until a date specified by the Board via a policy memo addressed to the Program Officer at the institution to encumber the program funds that have been allocated to them. On that date, institutions lose claim to any unencumbered funds.
and the unencumbered funds are available to the Board for reallocation to other institutions. If necessary for ensuring the full use of funds, subsequent reallocations may be scheduled until all funds are awarded and disbursed.

(c) Disbursement of Funds to Institutions. As requested by institutions throughout the fall and spring terms, the Board shall forward to each participating institution a portion of its initial and renewal year allocations of funds for immediate release to students or immediate application to student accounts at the institution.

(d) Release of Funds to Students. The institution may release all or part of the proceeds of a Texas Educational Opportunity Grant award to an eligible person only if the tuition and required fees incurred by the person at the institution have been paid.

§22.263. Dissemination of Information and Rules.

The Board and its advisory committee are responsible for publishing and disseminating general information and program rules for the program described in this subchapter. The Board shall distribute to each eligible institution and to each school district a copy of the rules adopted under this subchapter.

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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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board

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SUBCHAPTER O. EXEMPTION PROGRAM FOR CHILDREN OF PROFESSIONAL NURSING PROGRAM FACULTY AND STAFF

19 TAC §§22.292 - 22.297

The Texas Higher Education Coordinating Board proposes new §§22.292 - 22.297, concerning the Exemption Program for Children of Professional Nursing Program Faculty and Staff. Senate Bill 132, 79th Legislature, Regular Session, added Texas Education Code §54.222, creating a new tuition exemption for otherwise eligible persons whose parent is employed as a professional nursing faculty member or staff member. Specifically, §22.293 provides definitions for terms that are used in this subchapter and §22.294 indicates that institutions are to exempt eligible students from the payment of tuition. Section 22.295 provides student eligibility requirements for receiving an exemption and the number of terms that a person may receive the exemptions. Section 22.296 indicates the exemption is to be prorated if the parent is not employed on a full-time basis. Section 22.297 provides information about the process of applying for an exemption under the program.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the new sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections.

Ms. Hollis has also determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of administering the sections will be that the exemption will encourage professional nursing faculty and staff members to continue their employment and/or induce additional persons to seek such employment, thus enabling our institutions to admit and educate more nurses. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The new sections are proposed under the Texas Education Code, §54.221(g), which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §54.221.

The new sections affect Texas Education Code, §54.221.

§22.292. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, §54.221, Children of Professional Nursing Program Faculty and Staff. These rules establish procedures to administer this exemption program.

(b) Purpose. The purpose of this program is to provide exemptions from the payment of tuition to eligible students to encourage their parents to continue employment as professional nurse faculty or staff members in the State of Texas.

§22.293. Definitions.

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

(1) Board--the Texas Higher Education Coordinating Board.

(2) Child--a child 25 years of age or younger, including an adopted child.

(3) Commissioner--the Commissioner of Higher Education, the Chief Executive Officer of the Board.

(4) Full-time member of faculty or staff--an individual who is classified by the human resources department of his or her institution of higher education as employed full-time.

(5) Graduate professional nursing program--an educational program of a public institution of higher education that prepares students for a master’s or doctoral degree in nursing.

(6) Institution of Higher Education or Institution--any public technical institute, public junior college, public senior college or university, medical or dental unit or other agency of higher education as defined in Texas Education Code, §61.003(8).

(7) Resident of Texas--a resident of the State of Texas as determined in accordance with §§21.21 - 21.27 of this title (relating to Determining Residence Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(8) Tuition--includes statutory tuition, designated tuition and board-authorized tuition.

(9) Undergraduate professional nursing program--a public educational program for preparing students for initial licensure as registered nurses.
§22.294. Tuition Exemption.
Each institution of higher education shall exempt from the payment of tuition all eligible students.

§22.295. Eligible Students.
(a) To receive an award through the Exemption Program for Children of Professional Nursing Faculty and Staff, a student shall:

(1) be a resident of Texas;
(2) not have been granted a baccalaureate degree;
(3) be enrolled at an institution that offers an undergraduate or graduate program of professional nursing;
(4) be the child of an individual who:
   (A) at the beginning of the semester or other academic term for which an exemption is sought:
      (i) holds a master’s or doctoral degree in nursing, and is employed full-time by a undergraduate or graduate professional nursing program offered by the institution that the child is attending and is employed as a member of the faculty or staff with duties that include teaching, performing research, serving as an administrator, or performing other professional services other than serving as a teaching assistant, or
      (ii) holds a baccalaureate degree in nursing and is employed by a professional nursing program offered by the institution as a full-time teaching assistant, or
      (B) during all or part of the semester or other academic term for which an exemption is sought:
         (i) holds a master’s or doctoral degree in nursing, and has contracted with an undergraduate or graduate professional nursing program in this state to serve as a full-time member of its faculty or staff with duties that include teaching, performing research, serving as an administrator, or performing other professional services other than serving as a teaching assistant, or
         (ii) holds a baccalaureate degree in nursing and has contracted with a professional nursing program offered by the institution to serve as a full-time teaching assistant.

(b) Discontinuation of Eligibility.
(1) A person’s eligibility ends when the person has:
   (A) previously received exemptions under this subchapter for 10 semesters or summer sessions at any institution or institutions or higher education, or
   (B) received a baccalaureate degree.

(2) For the purpose of this provision, a summer session that is less than nine weeks in duration is considered one-half of a summer session.

§22.296. Proration of Exemption.
If the parent is employed on less than a full-time basis, the value of the exemption is to be prorated in accordance with the parent’s employment load. Under no circumstances, however, is the exemption to be for an amount less than 25 percent of the student’s tuition.


To apply for an exemption through this subchapter, a student shall submit to the institution a completed Professional Nursing Faculty and Staff Exemption Application.

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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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER P. EXEMPTION PROGRAM FOR CLINICAL PRECEPTORS AND THEIR CHILDREN
19 TAC §§22.302 - 22.309

The Texas Higher Education Coordinating Board proposes new §§22.302 - 22.309, concerning the Exemption Program for Clinical Preceptors and Their Children. Senate Bill 132, 79th Legislature, Regular Session, added Texas Education Code §54.222, creating a new partial tuition exemption for otherwise eligible persons who work as clinical preceptors, providing supervision to nursing students in a clinical setting. Specifically, §22.303 provides definitions for terms that are used in this subchapter and §22.304 indicates that institutions are to exempt eligible students from the payment of up to $500 of tuition per term or semester. Section 22.305 provides the eligibility requirements for preceptors and §22.306 provides the eligibility requirements for the children of preceptors. Section 22.307 indicates the number of terms that persons may receive the exemptions. Section 22.308 indicates the exemption may not be for more than the person’s tuition or $500, whichever is less. Section 22.309 provides information about the process of applying for an exemption under the program.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the new sections are in effect, there will be no fiscal implications to state or local government as a result of enacting or administering the sections.

Ms. Hollis has also determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of administering the sections will be that the exemption will encourage students to continue their work as preceptors, thus enabling more nursing students to receive additional clinical instruction. It is estimated that the use of preceptors can as much as double the number of nursing students that can be managed and effectively instructed by one faculty member. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.
The new sections are proposed under the Texas Education Code, §54.222(g), which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §54.222.

The new sections affect Texas Education Code, §54.222.

§22.302. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, §54.222, Preceptors for Professional Nursing Education Programs. These rules establish procedures to administer this exemption program.

(b) Purpose. The purpose of this program is to provide partial exemptions from the payment of tuition to eligible persons employed as clinical preceptors and to their children in order to encourage the preceptors to continue their employment and induce others to seek such employment in the state of Texas.

§22.303. Definitions.

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

(1) Board—Texas Higher Education Coordinating Board.

(2) Child—a child 25 years of age or younger, including an adopted child.

(3) Clinical preceptor or preceptor—a registered nurse or other license health professional who meets the requirements below, not paid as a faculty member by the governing board of an institution of higher education, but who directly supervises a nursing student’s clinical learning experience in a manner prescribed by a signed written agreement between the educational institution, preceptor and affiliating agency. A clinical preceptor has the following qualifications:

(A) competence in designated areas of practice,

(B) a philosophy of health care congruent with that of the nursing program,

(C) current licensure or privilege as a registered nurse in the State of Texas, and

(D) if not a registered nurse, holds a current license in Texas as a health care professional with a minimum of a bachelor’s degree in that field.

(4) Commissioner—the Commissioner of Higher Education, the Chief Executive Officer of the Board.

(5) Institution of Higher Education or Institution—any public technical institute, junior college, senior college or university, medical or dental unit or other agency of higher education as defined in Texas Education Code, §61.003(8).

(6) Program—the Exemption Program for Clinical Preceptors and Their Children.

(7) Resident of Texas—a resident of the State of Texas as determined in accordance with §§21.21 - 21.27 of this title (relating to Determining Residence Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(8) Tuition—includes statutory tuition, designated tuition and Board-authorized tuition.

(9) Undergraduate professional nursing program—a public educational program for preparing students for initial licensure as registered nurses.

§22.304. Tuition Exemption.

Each institution of higher education shall exempt all eligible students from the payment of up to $500 of tuition per term or semester.

§22.305. Eligible Preceptors.

To receive an exemption under this program, a preceptor must:

(1) be a resident of Texas;

(2) be a registered nurse;

(3) be enrolled at an institution that offers an undergraduate program of professional nursing; and

(4) be serving under a written preceptor agreement with an undergraduate professional nursing program as a clinical preceptor for students enrolled in the program for the semester or other academic term for which the exemption is sought.

§22.306. Eligible Students.

To receive an exemption under this program, a student must:

(1) be a resident of Texas;

(2) be enrolled at an institution that offers an undergraduate program of professional nursing; and

(3) be the child of a clinical preceptor who is serving under a written preceptor agreement with an undergraduate professional nursing program as a clinical preceptor for students enrolled in the program for the semester or other academic term for which the exemption is sought.

§22.307. Discontinuation of Eligibility.

(a) An individual’s eligibility for the program ends when the person has:

(1) previously received exemptions under this subchapter for 10 semesters or summer sessions at any institution or institutions of higher education, or

(2) received a baccalaureate degree.

(b) For the purposes of this program, a summer session that is less than nine weeks in duration is considered one-half of a summer session.

§22.308. Value of the Exemption.

The value of an exemption granted under this program is equal to $500 or the student’s tuition, whichever is less.


To apply for an exemption under this program, a student shall complete the Clinical Preceptor Exemption Application, developed by the Board and distributed and processed by participating institutions.

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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General Counsel
Texas Higher Education Coordinating Board

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

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25.6 The Texas Higher Education Coordinating Board proposes amendments to §25.3 - 25.6, concerning the Optional Retirement Program (ORP), to incorporate recent legislative changes, make technical corrections, add clarifying language, add administrative flexibility for institutions in establishing local supplemental contribution rates, provide an alternative process for companies to certify compliance with Texas Government Code (TGC) Chapter 804 regarding Qualified Domestic Relations Orders (QDROs), and establish certain institutional notification and documentation requirements. Specifically, these amendments will:

(1) delete references to the 90-day Teacher Retirement System (TRS) waiting period, which will expire on September 1, 2005, and make conforming changes in §25.3--Definitions, §25.4--Eligibility to Elect ORP, and §25.6--Uniform Administration of ORP;

(2) delete provisions in §25.4--Eligibility to Elect ORP, and §25.6--Uniform Administration of ORP, relating to pre-termination transfer/rollover of certain TRS contributions to an ORP account due to technical difficulties with this type of transaction;

(3) add a requirement in §25.4(e)--Opportunity to Elect, for institutions to document each ORP-eligible employee’s ORP election period dates and which plan was selected, effective for employees who become eligible to elect ORP on or after September 1, 2006, to decrease instances where appropriate records could not be produced to clarify an employee’s ORP status upon subsequent employment in later years;

(4) add requirement in §25.4(f)--90-Day ORP Election Period, and §25.6(h)--Required Notices to Employees, for institutions to provide written notification to each ORP-eligible employee indicating beginning and ending dates of ORP election period and local procedures for submitting the election form and additional required paperwork, to improve communication of the deadline for ORP-eligible employees to make their one-time irrevocable election of ORP;

(5) add clarifying language for the following provisions (no policy change): §25.4(j)--Dual Employment in TRS/ORP Positions at Different Employers; §25.5(f)--Employment in a non-ORP-Eligible Position; §25.5(g)--Employment in a Non-Benefits-Eligible Position; and §25.5(h)--Retirement System Membership after ORP Vesting;

(6) delete references to Internal Revenue Service (IRS) Code §415(m) in §25.6(a)(5)--Eligible Compensation (technical correction);

(7) delete “fiscal” from the requirement in §25.6(a)(6)(C)(iii)--Annual Determination, that institutions providing a supplemental contribution rate must establish it once per fiscal year to be effective for the entire fiscal year, to provide administrative flexibility to institutions while preserving the once-per-year requirement for stability;

(8) establish an alternative process in §25.6(d)(1)--Company Responsibilities, for companies to certify compliance with TGC Chapter 804 provisions concerning QDROs, to provide administrative flexibility to institutions and companies; and

(9) clarify that the notification requirement for terminating employees in §25.6(h)--Required Notices to Employees, concerning withdrawal of ORP funds, only applies to those covered by the group insurance program administered by Employees’ Retirement System (technical correction).

Toni Alexander, ORP Coordinator for the Texas Higher Education Coordinating Board, has determined that for each year of the first five years the amendments are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the amended sections.

Ms. Alexander has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the amended sections will be improved administration of this retirement program for public higher education employees. There is no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Toni Alexander, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711-2788, or by e-mail to toni.alexander@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The amendments are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with general rule-making authority; Texas Government Code, §830.002(c), which provides the Coordinating Board with authority to develop policies, practices, and procedures to provide greater uniformity in the administration of ORP; §830.101(b), which provides the Coordinating Board with specific rule-making authority to establish eligibility for participation in ORP; and §830.006(b), which provides that institutions must keep records, make certifications, and furnish to the Coordinating Board information and reports as required by the Coordinating Board to enable it to carry out its ORP-related functions.

The proposed amendments affect Texas Government Code, §§830.001 - 830.205.

§25.3. Definitions.

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

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

(6) ERS Waiting Period--A period of 90 calendar days beginning with the first day of employment with the Board in a position that is otherwise eligible for membership in ERS. In accordance with state law, active membership in ERS does not become effective until the 91st calendar day.

(A) The ERS waiting period does not apply to:

(i) new employees of the Board who are already members of ERS based on contributions made during prior employment with the Board or other state agency that have not been withdrawn; or

(ii) new employees of the Board who elected ORP in lieu of ERS in a prior period of employment with the Board and who are eligible to resume ORP participation.

(B) As provided in §25.4(h) of this title (relating to Active Membership in Retirement System Requirement), a new employee of the Board who becomes employed in an ORP-eligible position and

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who is subject to the ERS waiting period is not permitted to elect ORP in lieu of ERS until satisfying the ERS waiting period because the election of ORP is in lieu of active membership in ERS.

(7) [464] Full-time--For purposes of determining initial ORP eligibility, the term "full-time" shall mean employment for the standard full-time workload established by the institution ("100 percent effort") at a rate comparable to the rate of compensation for other persons in similar positions for a definite period of four and one-half months or a full semester of more than four calendar months.

(8) [472] Initial ORP Eligibility Date--The first day of an ORP-eligible employee’s 90-day ORP election period. An employee’s initial ORP eligibility date shall be determined as follows:

(A) Employees of Institutions of Higher Education. For employees of a Texas public institution of higher education, the initial ORP eligibility date shall be the first day of employment in an ORP-eligible position.

(B) Employees of the Board.

(i) [464] Non-ERS Members. For a new employee of [a Texas public institution of higher education who has never been a member of TRS or a new employee of] the Board who has never been a member of ERS[4] or who is a former member of ERS [the applicable retirement system] who canceled membership by withdrawing employee contributions from ERS [the retirement system] after termination from a prior period of employment, the initial ORP eligibility date shall be the 91st calendar day of employment in [a TRS eligible position or, for employees of the Board] an ERS-eligible position[4] that is also an ORP-eligible position.

(ii) [464] Current ERS Members. For an employee of the Board who is a current member of [TRS or, for employees of the Board, a current member of] ERS[4] at the time that he or she becomes employed in an ORP-eligible position, the initial ORP eligibility date shall be the first day of employment in an ORP-eligible position.

(9) [482] Initial ORP Eligibility Period--The period of time beginning with the first date of employment in an ORP-eligible position[4], without regard to a person’s 90-day waiting period for membership in TRS or ERS, if applicable, that is expected to be 100 percent effort for a period of at least one full semester or four and one-half months. For new employees of the Board who become employed in an ORP-eligible position, the initial ORP eligibility period includes the 90-day ERS waiting period, if applicable.

(10) [494] Major Department Requirement--One of the factors used to determine whether a position is ORP-eligible in the Other Key Administrator category as defined in §25.4(k) of this title (relating to Eligible Positions). A department or budget entity at a public institution of higher education shall meet this requirement if:

(A) the department or budget entity is considered a "major" department by the institution based on the specific organizational size and structure of that institution; and

(B) the department or budget entity has its own budget, policies and programs.

(11) [440] ORP--The Optional Retirement Program.

(12) [441] ORP Election Period--The period of time during which ORP-eligible employees have a once-per-lifetime opportunity to elect to participate in ORP in lieu of the applicable retirement system. The ORP election period shall begin on an employee’s initial ORP eligibility date, as defined in paragraph (7) of this section, and shall end on the earlier of:

(A) the date the employee makes an ORP election by signing and submitting the appropriate forms to the ORP employer; or

(B) the 90th calendar day after the employee’s initial ORP eligibility date, not including the initial ORP eligibility date and including the 90th calendar day. If the 90th calendar day after the initial ORP eligibility date falls on a weekend or holiday, the deadline shall be extended until the first working day after the 90th calendar day.

(13) [442] ORP Employer--All public institutions of higher education in Texas and the Board.

(14) [443] ORP Retiree--An individual who participated in ORP while employed with a Texas public institution of higher education or the Board and who established retiree status by meeting the applicable retiree insurance requirements and enrolling in retiree group insurance provided by ERS, The University of Texas System, or The Texas A&M University System, regardless of whether currently enrolled.

(15) [444] Principal Activity Requirement--One of the factors used to determine whether a position is ORP-eligible based on the percent of effort required by the position to be devoted to ORP-eligible duties. The principal activity requirement shall be met if at least 51 percent of the position’s duties are devoted to ORP-eligible duties in one of the ORP-eligible categories defined in §25.4(k) of this title (relating to Eligible Positions), with two exceptions:

(A) During Initial ORP Eligibility Period. During an employee’s initial ORP eligibility period (when the position is required to be 100 percent effort to qualify as ORP-eligible), if the ORP-eligible duties associated with an ORP-eligible category are less than 51 percent of the activities for a particular position, the position shall be considered to meet the principal activity requirement if all of the position’s other duties are ORP-eligible duties under one of the other ORP-eligible categories defined in §25.4(k) of this title (relating to Eligible Positions), for a total of 100 percent effort devoted to ORP-eligible duties, as would be the case, for example, for a position with required duties that are 50 percent instruction and/or research (faculty position) and 50 percent department chair (faculty administrator position).

(B) After Initial ORP Eligibility Period. For a participant who has completed the initial ORP eligibility period but who has not vested in ORP and who fills a position that is less than 100 percent effort but at least 50 percent effort, then the principal activity requirement shall be considered met if at least 50 percent effort is devoted to applicable ORP-eligible duties in one of the ORP-eligible categories defined in §25.4(k) of this title (relating to Eligible Positions).

(16) [445] TRS--The Teacher Retirement System of Texas.

[146] TRS/ERS Waiting Period--A period of 90 calendar days beginning with the first day of employment in a position that is otherwise eligible for membership in TRS or ERS. In accordance with state law, active membership in the applicable retirement system does not become effective until the 91st calendar day.

[A] The TRS/ERS waiting period does not apply to:

[44] new employees who are already members of the applicable retirement system based on contributions made during prior employment that have not been withdrawn; or

[44] new employees who elected ORP in lieu of the applicable retirement system in a prior period of employment and who are eligible to resume ORP participation;

[44] As provided in §25.4(l) of this title (relating to Active Membership in Retirement System Requirements), a new employee who becomes employed in an ORP-eligible position and who is subject
(17) (No change.)

§25.4. Eligibility to Elect ORP.

(a) Eligibility Criteria. An employee shall be eligible to make a once-per-lifetime irrevocable election of ORP in lieu of the applicable retirement system if all of the following criteria are met:

(1) (No change.)

(2) 100 Percent Effort: Employment in an ORP-eligible position on a full-time basis (i.e., 100 percent effort) for a period of at least one full semester or four and one-half months, [including the 90-day waiting period for active membership in ERS for employees of the Board [the applicable retirement system], if applicable].

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

(3) - (4) (No change.)

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

(e) Opportunity to Elect.

(1) The governing board of each Texas public institution of higher education shall provide an opportunity to all eligible employees in the component institutions governed by the board to elect ORP in lieu of TRS in accordance with these rules. The Board shall provide an opportunity to all eligible employees to elect ORP in lieu of ERS in accordance with these rules.

(2) Documentation.

(A) ORP employers shall maintain documentation in each ORP-eligible employee’s employment record that an opportunity to elect ORP was provided. Such documentation shall indicate the beginning and ending dates of the employee’s ORP election period.

(B) The documentation required by this paragraph may be maintained in an electronic format in accordance with applicable provisions for such records.

(C) This paragraph applies to employees who become eligible to elect ORP on or after September 1, 2006, including employees who are hired for the Fall 2006 semester whose first active duty date is in the month of August 2006.

(f) 90-Day ORP Election Period. An employee who meets the eligibility criteria in section (a) of this section shall be provided an ORP election period, as defined in §25.3 of this title (relating to Definitions), during which an election to participate in ORP may be made by signing and submitting the appropriate forms to the ORP employer.

(1) After 90-Day [TRS/ERS] Waiting Period. For new employees of the Board, the [The] 90-day ORP election period shall follow the 90-day [TRS/ERS] membership waiting period [for new employees], if applicable.

(2) (No change.)

(3) Written Notification. In accordance with §25.6(h)(2) of this title (relating to ORP Election Period Dates), each ORP employer shall, within 15 business days of an ORP-eligible employee’s initial ORP eligibility date, provide written notification to the ORP-eligible employee that indicates the beginning and ending dates of his or her ORP election period and the local procedures for submitting the election form and additional required paperwork.

(4) [44] Once-per-Lifetime Irrevocable Election. An employee who is eligible to elect ORP shall have only one opportunity during his or her lifetime, including any future periods of employment in Texas public higher education, to elect ORP in lieu of the applicable retirement system, and the election may never be revoked.

(A) Default Election. Failure to elect ORP during the 90-day ORP election period shall be a default election to continue membership in the applicable retirement system.

(i) ORP in Lieu of TRS. An employee of a Texas public institution of higher education who does not elect ORP in lieu of TRS during the 90-day ORP election period shall never again be eligible to elect ORP in lieu of TRS, even if subsequently employed in an ORP-eligible position at the same or another Texas public institution of higher education.

(ii) ORP in Lieu of ERS. An employee of the Board who does not elect ORP in lieu of ERS during the 90-day ORP election period shall never again be eligible to elect ORP in lieu of ERS, even if subsequently employed in an ORP-eligible position at the Board.

(B) Irrevocable. An election of ORP shall be irrevocable. An employee who elects ORP shall remain in ORP, except as provided by subsections (f) and (g) of §25.5 of this title (relating to ORP Vesting and Participation). A default election of the applicable retirement system, as described in subparagraph (3)(A) of this subsection shall be irrevocable. An employee who fails to elect ORP during the ORP election period shall remain in the applicable retirement system in accordance with the rules and laws governing eligibility for the retirement system.

(C) Separate Elections. As provided in subsection (d) of this section, an election of ORP in lieu of TRS at a Texas public institution of higher education shall be considered separate and distinct from an election of ORP in lieu of ERS at the Board; therefore, an election of ORP in lieu of one retirement system shall not preclude an employee’s election of ORP in lieu of the other retirement system if subsequently employed in a position that is eligible to elect ORP in lieu of the other retirement system.

(5) [44] Company Selection Required at Election. An employee who elects to participate in ORP shall select an ORP company from the ORP employer’s list of authorized companies in conjunction with the election of ORP. An ORP employer shall establish a policy that failure to select an authorized company may result in disciplinary action up to and including termination of employment because retirement contributions are required by law as a condition of employment.

(6) [45] Waiver of Retirement System Benefits. An election of ORP shall be a waiver of the employee’s rights to any benefits that may have accrued from prior membership in the applicable retirement system, other than benefits resulting from transfers of service credit between the applicable retirement systems and reinstatement of withdrawn service credit under the ERS/TRS service transfer law, even if the participant has met the applicable system’s vesting requirement. Except as provided by subsections (f) and (g) of §25.5 of this title (relating to ORP Vesting and Participation) and the ERS/TRS service transfer law, an ORP participant shall not be eligible to become an active member of the applicable retirement system or receive any benefits from the system other than a return of employee contributions that may have been deposited with the system (and accrued interest, if any).

(g) Participation Start Date. The first day that ORP contributions are made shall be determined as follows.

(1) Election on Initial ORP Eligibility Date.

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(A) Employees of Institutions of Higher Education.

(i) New Employees. For new employees who sign and submit the appropriate ORP election forms on or before their initial ORP eligibility date, the participation start date shall be the initial ORP eligibility date (i.e., first day of ORP-eligible employment).

(ii) Transfers within Same Institution. For employees who transfer from a non-ORP-eligible position to an ORP-eligible position within the same institution and who sign and submit the appropriate ORP election forms on or before their initial ORP eligibility date, the participation start date shall be the initial ORP eligibility date (i.e., first day of ORP-eligible employment), unless the initial ORP eligibility date is not the first day of the month, in which case, to avoid dual contributions to both TRS and ORP during the same month, as provided in §25.6(a)(4) of this title (relating to No Dual Contributions), the participation start date shall be the first day of the month following the month in which the initial ORP eligibility date falls, or the first day of the applicable payroll period, if payroll is not processed on a monthly basis.

(B) Employees of the Board. The participation start date for ORP-eligible Board employees who elect ORP on their initial ORP eligibility date, as defined in §25.3 of this title (relating to Definitions), by signing and submitting the appropriate forms on or before their initial ORP eligibility date shall be based on whether they were subject to the 90-day ERS waiting period.

(i) Board Employees not subject to 90-Day ERS Waiting Period.

(II) New Employees. For new Board employees who are not subject to the 90-day ERS waiting period because they are already members of ERS and who sign and submit the appropriate ORP election forms on or before their initial ORP eligibility date, the participation start date shall be the initial ORP eligibility date (i.e., first day of ORP-eligible employment).

(ii) Transfers within the Board. For Board employees who are not subject to the 90-day ERS waiting period because they are already members of ERS and who transfer from a non-ORP-eligible position at the Board to an ORP-eligible position at the Board, and who sign and submit the appropriate ORP election forms on or before their initial ORP eligibility date, the participation start date shall be the initial ORP eligibility date (i.e., first day of ORP-eligible employment), unless the initial ORP eligibility date is not the first day of the month, in which case, to avoid dual contributions to both TRS and ORP during the same month, as provided in §25.6(a)(4) of this title, the participation start date shall be the first day of the month following the month in which the initial ORP eligibility date falls, or the first day of the applicable payroll period, if payroll is not processed on a monthly basis.

(ii) Board Employees subject to 90-Day ERS Waiting Period. To avoid partial month contributions for employees who are subject to the 90-day ERS waiting period and who sign and submit the appropriate ORP election forms on or before their initial ORP eligibility date, the amount of the ORP contribution for the month in which their initial ORP eligibility date falls shall be based on salary earned during that entire month, so the participation start date shall be the first day of the month in which the initial ORP eligibility date falls, or the first day of the applicable payroll period, if payroll is not processed on a monthly basis.

(2) Election After Initial ORP Eligibility Date. The participation start date for ORP-eligible employees who sign and submit the appropriate ORP election forms after their initial ORP eligibility date, shall be the first day of the month following the date that the forms are signed and submitted, with the following exceptions.

(A) During Month of Initial ORP Eligibility Date. ORP employers may establish a policy that employees who elect ORP by signing and submitting the appropriate forms after their initial ORP eligibility date but before the payroll has been processed for the month in which the initial ORP eligibility date falls may be treated as if they had signed and submitted the forms on or before their initial ORP eligibility date as provided by [in the same manner as the employees described in] paragraph (1) of this subsection.

(B) No change.

(C) [43] Retirement System Membership Before Election. As provided in subsection (i) of this section, ORP-eligible employees who elect ORP after their initial ORP eligibility date, except as provided in subparagraph [43](A) of this paragraph [subsection], shall be reported as members of the applicable retirement system for any months prior to their election of ORP. [As provided in §25.6(a)(2) of this title (relating to Withdrawal of Retirement System Funds), employee contributions that are made to the applicable retirement system after an employee becomes eligible to elect ORP but prior to an election of ORP, including the month in which the ORP election is made, if applicable, may be withdrawn from the retirement system after an election of ORP is made, and may be rolled over or transferred to the

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participants ORP account, in accordance with IRS provisions regarding this type of transaction.

(h) Active Membership in Retirement System Requirement. Participation in ORP shall be an alternative to active membership in the applicable retirement system; therefore, a person who becomes employed in an ORP-eligible position shall not be eligible to elect ORP unless he or she is either a current member of the applicable retirement system (i.e., has employee contributions on account with the applicable retirement system) or has satisfied the 90-day waiting period for active membership in the applicable retirement system.

(1) Board Employees Subject to 90-Day [TRS/ERS] Waiting Period. [Employees who are not current members of TRS when they become employed in an ORP-eligible position at a Texas public institution of higher education shall not be eligible to elect ORP in lieu of TRS until the 90-day TRS waiting period has been satisfied.] Employees who are not current members of ERS when they become employed in an ORP-eligible position at the Board shall not be eligible to elect ORP in lieu of ERS until the 90-day ERS waiting period has been satisfied.

(2) (No change.)

(i) Automatic Retirement System Enrollment. A new employee at a Texas public institution of higher education who is eligible to elect ORP in lieu of TRS shall be automatically enrolled in TRS; following the 90-day TRS waiting period, if applicable, until an election to participate in ORP is made by signing and submitting the appropriate forms to the institution as provided in subsection (g) of this section. A new Board employee who is eligible to elect ORP in lieu of ERS shall be automatically enrolled in ERS, following the 90-day ERS waiting period, if applicable, until an election to participate in ORP is made by signing and submitting the appropriate forms to the Board as provided in subsection (g) of this section.

(j) Dual Employment in TRS/ORP Positions at Different Employers.

(1) Simultaneous Retirement Plan Membership Not Permitted.

(A) Dual Employment with Institution and Non-Higher Education TRS-Covered Employer.

(ii) Active TRS Membership not Permitted. A member of TRS who is employed in the Texas public school system (including all Texas Independent School Districts and regional educational service centers) or with any other Texas public educational institution or state agency that is covered by TRS but does not offer ORP in lieu of TRS, and who concurrently becomes employed in an ORP-eligible position with a Texas public institution of higher education and elects to participate in ORP, may not remain an active member of TRS as an employee of the non-higher education TRS-covered employer once ORP participation has started at the institution.

(ii) No TRS Contributions. Notwithstanding the participant’s employment in what would otherwise be considered a TRS-eligible position at a non-higher education TRS-covered employer, TRS contributions may not be made for the participant by that employer while he or she is actively participating in ORP, but shall resume if the employee is required to return to active TRS membership as provided in paragraph (2) of this subsection.

(B) Dual Employment with Different Institutions.

(i) Active TRS Membership not Permitted. A member of TRS who is employed with a Texas public institution of higher education in a position that is eligible for TRS but is not ORP-eligible and who becomes concurrently employed with another Texas public institution of higher education in a position that is ORP-eligible and who elects to participate in ORP, may not remain an active member of TRS once ORP participation has started.

(ii) Retirement Contributions.

(I) No TRS Contributions. Notwithstanding the participant’s employment in what would otherwise be considered a TRS-eligible position at an institution, TRS contributions may not be made for the participant by that institution while he or she is actively participating in ORP at another institution, but shall resume if the employee is required to return to active TRS membership as provided in paragraph (2) of this subsection.

(II) Before Vesting in ORP. An employee who elects ORP at one institution while concurrently employed in what would otherwise be a TRS-eligible position at another institution is not eligible for ORP contributions based on the participant’s TRS-only employment prior to the participant vesting in ORP.

(III) After Vesting in ORP. Once the participant vests in ORP, the institution employing the participant in a position that would otherwise be eligible for TRS shall enroll him or her in ORP.

(2) Returning to TRS.

(A) Dual Employment with Institution and Non-Higher Education TRS-Covered Employer.

(i) Termination of Employment with Institution. If the individual described in paragraph (1)(A) of this subsection terminates all employment with the institution while concurrently employed in a TRS-eligible position with a non-higher education TRS-covered employer, then, regardless of ORP vesting status, he or she shall return to active TRS membership with the non-higher education TRS-covered employer and shall be ineligible for any future ORP participation in lieu of TRS, even if subsequently employed in an ORP-eligible position with the same or another institution.

(ii) Transfer to Non-ORP Eligible Position at Institution. If, prior to meeting the ORP vesting requirement, the individual described in paragraph (1)(A) of this subsection transfers to a position at the institution that is not ORP-eligible but is eligible for TRS, then he or she shall return to active TRS membership with both the institution and the non-higher education TRS-covered employer and shall be ineligible for any future ORP participation in lieu of TRS, even if subsequently employed in an ORP-eligible position with the same or another institution.

(iii) Transfer to Non-Benefits-Eligible Position at Institution. In accordance with §25.5(g) of this title (relating to Employment in a Non-Benefits-Eligible Position), an individual described in paragraph (1)(A) of this subsection who transfers to a non-benefits-eligible position at the institution shall not be eligible for ORP contributions and shall not be eligible for active TRS membership. This individual shall remain ineligible for TRS contributions at the non-higher education TRS-covered employer while employed in the non-benefits-eligible position at the institution. If this individual subsequently terminates all employment with the institution, then the provisions in clause (i) of this subparagraph will apply.

(B) Dual Employment with Different Institutions.

(i) Termination of Employment in ORP-eligible Position Before Vesting. If, prior to satisfying the ORP vesting requirement, the individual described in paragraph (1)(B) of this subsection
terminates ORP participation by terminating employment or transferring to a non-ORP-eligible position with the same institution while concurrently employed in a TRS-eligible position with another Texas public institution of higher education, then he or she shall return to active TRS membership and shall be ineligible for any future ORP participation in lieu of TRS, even if subsequently employed in an ORP-eligible position with the same or another institution.

(ii) Termination of Employment in ORP-eligible Position After Vesting. If, after satisfying the ORP vesting requirement, the individual described in paragraph (1)(B) of this subsection terminates employment in the ORP-eligible position by terminating employment with the institution or transferring to a non-ORP-eligible position while concurrently employed in a TRS-eligible position with another Texas public institution of higher education, then he or she shall not return to TRS membership and shall continue to make ORP contributions at the other institution based on the employment in the TRS-eligible position (i.e., a benefits-eligible position) as provided in paragraph (1)(B)(ii)(III) of this subsection.

(iii) Transfer to Non-Benefits-Eligible Position. In accordance with §25.5(g) of this title, an individual described in paragraph (1)(B) of this subsection who transfers from the ORP-eligible position to a non-benefits-eligible position at the same institution shall not be eligible for ORP contributions at that institution and shall not be eligible for active TRS membership at either institution while employed in the non-benefits-eligible position.

(I) Termination Before Vesting in ORP. If this individual terminates employment in the non-benefits-eligible position before satisfying the ORP vesting requirement, then the provisions in clause (i) of this subparagraph for an individual who terminates employment in an ORP-eligible position before vesting in ORP will apply.

(II) Termination After Vesting in ORP. If this individual terminates employment in the non-benefits-eligible position after satisfying the ORP vesting requirement, then the provisions in clause (ii) of this subparagraph for an individual who terminates employment in an ORP-eligible position after vesting will apply.

[g] Dual Employment in TRS/OPR Positions at Different Employers.

[h] Simultaneous Retirement Plan Membership Not Permitted.

(A) Dual Employment with ORP Employer and Non-ORP Employer. A member of TRS who is employed in the Texas public school system (including all Texas Independent School Districts and regional educational service centers) or with any other Texas public educational institution or state agency that is covered by TRS but does not offer ORP in lieu of TRS, and who concurrently becomes employed in an ORP-eligible position with a Texas public institution of higher education and elects to participate in ORP may not remain an active member of TRS as an employee of the non-ORP employer once ORP participation has started. TRS contributions may not be made for the participant’s employment with the non-ORP employer while he or she is actively participating in ORP.

(B) Dual Employment with Different ORP Employers. A member of TRS who is employed with a Texas public institution of higher education in a position that is eligible for TRS but is not ORP-eligible and who becomes concurrently employed with another Texas public institution of higher education in a position that is ORP-eligible and who elects to participate in ORP, may not remain an active member of TRS once ORP participation has started. TRS contributions may not be made for the participant’s employment in the TRS-only position at the other Texas public institution of higher education while he or she is actively participating in ORP. Once the participant vests in ORP, ORP contributions shall be made based on the concurrent employment in the TRS-only position.

(2) Returning to TRS.

(A) If the individual described in subparagraph (1)(A) of this subsection terminates ORP participation while concurrently employed in a TRS-eligible position with a non-ORP employer, then he or she shall return to active TRS membership with the non-ORP employer and shall be ineligible for any future ORP participation in lieu of TRS.

(B) If the individual described in subparagraph (1)(B) of this subsection terminates ORP participation prior to vesting in ORP while concurrently employed in a TRS-eligible position with another Texas public institution of higher education, then he or she shall return to active TRS membership and shall be ineligible for any future ORP participation in lieu of TRS.

(C) If the individual described in subparagraph (1)(B) of this subsection terminates ORP participation after satisfying the ORP vesting requirement, while concurrently employed in a TRS-eligible position with another Texas public institution of higher education, then he or she shall not return to TRS membership and shall continue to make ORP contributions based on the employment in the TRS-only position.

(k) - (p) (No change.)

§25.5. ORP Vesting and Participation.

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

(f) Employment in a non-ORP-Eligible Position. An ORP participant who terminates employment in an ORP-eligible position and becomes employed in a position that is not eligible for ORP, but is eligible for the applicable retirement system, shall remain in ORP or become a member of the applicable retirement system in accordance with the following provisions.

(1) Not Vested in ORP. An ORP participant who terminates employment in an ORP-eligible position prior to satisfying [has satisfied] the ORP vesting requirement and who becomes employed in a position that is not eligible for ORP, but is eligible for the applicable retirement system, shall become a member of the applicable retirement system, and shall thereafter be ineligible to participate in ORP in lieu of the applicable retirement system, even if subsequently employed in an ORP-eligible position and/or if membership in the applicable retirement system is canceled through a withdrawal of employee contributions.

(A) ORP in Lieu of TRS. An ORP participant who elected ORP in lieu of TRS at a Texas public institution of higher education, who has not satisfied the ORP vesting requirement, who terminates employment in an ORP-eligible position, and who becomes employed with the same or another Texas public institution of higher education in a position that is not eligible for ORP, but is eligible for TRS, shall become a member of TRS for the remainder of his or her employment with any Texas public institution of higher education. This individual shall never be eligible to participate in ORP in lieu of TRS again, even if subsequently employed in an ORP-eligible position at the same or another Texas public institution of higher education and/or if the individual cancels his or her TRS membership by withdrawal of employee contributions.

(B) (No change.)

(2) Vested in ORP. An ORP participant who terminates employment in an ORP-eligible position after satisfying [has satisfied] the ORP vesting requirement and who becomes employed in a position that
is not eligible for ORP but is eligible for the applicable retirement system, shall remain in ORP unless he or she became an active member of the applicable retirement system during a break in service prior to employment in the non-ORP-eligible position, in which case, he or she shall never be eligible for ORP in lieu of the applicable retirement system again, even if subsequently employed in an ORP-eligible position and/or if membership in the applicable retirement system was canceled through a withdrawal of employee contributions.

(A) ORP in Lieu of TRS. An ORP participant who has vested in ORP in lieu of TRS, who terminates employment in an ORP-eligible position, and who subsequently becomes employed with any Texas public institution of higher education in a position that is not ORP-eligible, but is TRS-eligible, shall continue to participate in ORP and shall not be eligible for TRS membership, unless he or she terminates employment with all Texas public institutions of higher education and becomes employed in a TRS-eligible position with the Texas public school system (e.g., Independent School Districts, regional educational service centers) or any other Texas public educational institution or agency that is covered by TRS but does not offer ORP in lieu of TRS, which will require the participant to become a member of TRS. Such an individual (i.e., one who has had active TRS membership since terminating ORP participation), upon becoming subsequently reemployed with any Texas public institution of higher education:

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

(B) ORP in Lieu of ERS. An ORP participant who has vested in ORP in lieu of ERS at the Board, who terminates employment in an ORP-eligible position with the Board, and who subsequently becomes employed with the Board in a position that is not ORP-eligible, but is ERS-eligible, shall, nevertheless, continue to participate in ORP and shall not be eligible for ERS membership, unless he or she terminates employment with the Board and becomes employed in an ERS-eligible position with a Texas state agency that does not offer ORP in lieu of ERS, which will require the participant to become a member of ERS. Such an individual (i.e., one who has had active ERS membership since terminating ORP participation), upon becoming subsequently reemployed with the Board:

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

(g) Employment in a Non-Benefits-Eligible Position.

(1) An employee who elected ORP in lieu of TRS and who terminates employment in the ORP-eligible position and becomes employed with the same or another Texas public institution of higher education in a non-benefits-eligible position shall not be eligible to participate in ORP (i.e., have contributions sent to the ORP company) for the period of time while employed in the non-benefits-eligible position.

(2) An employee who is participating in ORP at one institution of higher education and who simultaneously becomes employed at another institution in a non-benefits-eligible position is not eligible to participate in ORP at the institution in which he or she is employed in a non-benefits-eligible position.

(3) Definition. For purposes of this subsection, a non-benefits-eligible position shall be defined as a position that is one or more of the following:

(A) less than 50 percent effort;

(B) expected to last less than a full semester or a period of four and one-half months (i.e., temporary); or

(C) requires student status as a condition of employment.

(4) Combining of Percent Effort at Different Institutions Not Permitted. When calculating an employee’s percent effort to determine whether a position is non-benefits-eligible as provided in paragraph (3) of this subsection, an institution shall include only the individual’s employment with that institution. For example, an individual who is simultaneously employed at 25 percent effort with Institution A and at 50 percent effort with Institution B shall not be eligible to participate in ORP at Institution A even though he or she may already be participating at Institution B based on a minimum 50 percent effort at Institution B. An exception may be made for an individual who is simultaneously employed with more than one component institution under the same governing board that operates its ORP either as a single plan for all components or includes the applicable components in the same plan. In this case, the employee’s percent effort at each component may be combined to meet the minimum 50 percent effort requirement.

(5) Regardless of Vested Status. An employee shall not be eligible to participate in ORP while employed in a non-benefits-eligible position regardless of his or her ORP vested status.

(6) No Effect on ORP Eligibility. Because a non-benefits-eligible position is not eligible for TRS, employment in a non-benefits-eligible position normally shall have no effect on an employee’s ORP eligibility status upon his or her subsequent return to a benefits-eligible position, regardless of vested status.

(7) Alternate Plan at Certain Community Colleges. Participation in an alternate retirement plan for part-time employees who are not eligible for TRS at a community college that has opted out of the federal social security program shall have no effect on a person’s ORP eligibility status upon his or her subsequent return to a benefits-eligible position.

(h) Retirement System Membership after ORP Vesting. A vested ORP participant shall not be eligible for active membership in the applicable retirement system unless he or she terminates all employment with the ORP employer and becomes employed in a position that is eligible for the applicable retirement system with an employer that does not offer ORP.

(1) ORP in Lieu of TRS. A vested ORP participant who elected ORP in lieu of TRS shall not be thereafter eligible for TRS membership, unless he or she terminates employment with all Texas public institutions of higher education and becomes employed in a TRS-eligible position with the Texas public school system (e.g., Independent School Districts, regional educational service centers) or any other Texas public educational institution or agency that is covered by TRS but does not offer ORP in lieu of TRS, which will require the participant to become a member of TRS. Such an individual (i.e., one who has had active TRS membership since terminating ORP participation), upon becoming subsequently reemployed with any Texas public institution of higher education:

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

(2) ORP in Lieu of ERS. A vested ORP participant who elected ORP in lieu of ERS shall not thereafter be eligible for ERS membership, unless he or she terminates employment with the Board and becomes employed in an ERS-eligible position with a Texas state agency that does not offer ORP in lieu of ERS, which will require the participant to become a member of ERS. Such an individual (i.e., one who has had active ERS membership since terminating ORP participation), upon becoming subsequently reemployed with the Board:

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

(i) - (j) (No change.)
§25.6. Uniform Administration of ORP.

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

(3) No Co-Mingling of ORP and non-ORP Funds.

(A) No Non-Texas ORP Funds. No non-Texas ORP funds may be rolled over or transferred to an ORP account prior to [the earlier of] the participant’s termination of ORP participation [or reaching age 70-1/2, other than as provided in §25.6(b) of this title relating to Withdrawal of Retirement System Funds], a rollover or transfer of the participant’s contributions that were made to the applicable retirement system after the employee became eligible to elect ORP but prior to an election of ORP in accordance with IRS provisions regarding this type of transaction.

(B) No TSA/TDA Funds. Amounts that have been contributed by the participant through the Tax-Sheltered Annuity/Tax-Deferred Account Program[, including any amounts that may have been contributed during the employee’s 90-day waiting period for membership in the applicable retirement system,] may not be rolled over or transferred to an ORP account prior to [the earlier of] the participant’s termination of ORP participation [or reaching age 70-1/2].

(C) (No change.)

(4) (No change.)

(5) Eligible Compensation.

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

|C| 415(m) Plan. Institutions are authorized by the ORP statute to establish a plan authorized under §415(m) of the Internal Revenue Code of 1986, as amended, for a participant’s ORP contributions that exceed the 401(a)(17) limit.

(C) [D] Stopping ORP Contributions. An [In the absence of a 415(m) plan, an] ORP employer shall discontinue ORP contributions for participants who reach the 401(a)(17) limit for the remainder of the applicable plan year.

(6) Contribution Rates. The amount of each participant’s ORP contribution shall be a percentage of the participant’s eligible compensation as established by the ORP statute and the General Appropriations Act for each biennium. Each contribution shall include an amount based on the employee rate and an amount based on the employer rate.

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

(C) Supplemental Employer Rate. Institutions may provide a supplement to the state base rate under the following conditions.

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

(iii) Annual Determination. The governing board of each institution shall determine the amount of the supplement once per [fiscal] year, to be effective for the entire [fiscal] year.

(iv) - (v) (No change.)

(7) - (11) (No change.)

(b) Withdrawal of Retirement System Funds. An employee who elects to participate in ORP may withdraw any employee contributions (plus accrued interest, if any) that he or she may have accumulated in the applicable retirement system prior to the election of ORP. [Employee contributions that were made to the applicable retirement system after the employee became eligible to elect ORP but prior to an election of ORP including the month in which the ORP election is made, if applicable, may be rolled over or transferred to the participant’s ORP account, in accordance with IRS provisions regarding this type of transaction.]

(c) (No change.)

(d) Qualified Domestic Relations Orders (QDROs).

(1) Company Responsibilities. Each ORP employer shall ensure that all ORP contracts include a provision that the ORP company is solely responsible for determining whether a domestic relations order is qualified and payable in accordance with Texas Government Code, Chapter 804. In lieu of requiring a contractual provision, ORP employers may require companies to certify, as part of the ORP employer’s ORP company authorization process as provided in subsection (c) of this section, that the ORP company is solely responsible for determining whether a domestic relations order is qualified and payable in accordance with Texas Government Code, Chapter 804.

(2) (No change.)

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

(h) Required Notices to Employees.

(1) Basic Information for Newly Eligible Employees. On or before an ORP-eligible employee’s initial ORP eligibility date, which is the first day of his or her 90-day ORP election period, each institution shall provide the ORP-eligible employee with written introductory information on ORP developed by the Board and titled, "An Overview of TRS and ORP for Employees Eligible to Elect ORP.”

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

|C| Employees Subject to 90-Day TRS Waiting Period. Institutions may provide the required ORP information on or before the employee’s first date of employment if the employee is subject to the 90-day TRS waiting period. An election of ORP in lieu of TRS may not be made before the employee has satisfied the TRS waiting period, but the ORP employer may encourage ORP-eligible employees to consider their retirement plan choices during the TRS waiting period. Employees who elect ORP as soon as the TRS waiting period has been satisfied will maximize their ORP contributions and minimize the time it takes to satisfy the ORP vesting period.

(2) ORP Election Period Dates. Each ORP employer shall, within 15 business days of an ORP-eligible employee’s initial ORP eligibility date, provide written notification to the ORP-eligible employee that indicates the beginning and ending dates of his or her ORP election period and the local procedures for submitting the election form and additional required paperwork.

(3) [H] Participant’s ORP Responsibilities. On or before an ORP-eligible employee’s initial ORP eligibility date, which is the first day of his or her 90-day ORP election period, each ORP employer shall provide written notification to the ORP-eligible employee that:

(A) an election of ORP entails certain responsibilities for the employee, including selection and monitoring of ORP companies and investments; and

(B) the ORP employer has no fiduciary responsibility for the market value of a participant’s ORP investments or for the financial stability of the ORP companies chosen by the participant.

(4) [H] Possible Retiree Group Insurance Eligibility. ORP employers shall include in their normal out-processing procedures for terminated employees, a notification to ORP participants that includes the following information:

(A) the participant’s possible future eligibility for retiree group insurance as an ORP retiree;

30 TexReg 5522  September 9, 2005  Texas Register
The public benefit anticipated as a result of enforcing or administering the section is in the quicker, more decisive, and less subjective suspension and revocation of licenses held by individuals who are convicted of certain crimes.

There is no impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering the section.

Comments on the proposal may be submitted to Sherri Sanders, Interim Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the Texas Register.

The amendment is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes, the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties, and Senate Bill 610, 79th Legislature.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

§101.8. Persons with Criminal Backgrounds.

(a) Mandatory Suspension. The board shall suspend a license on proof that the person has been:

1. initially convicted of:
   (A) a felony;
   (B) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;
   (C) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;
   (D) a misdemeanor under §25.07, Penal Code; or
   (E) a misdemeanor under §25.071, Penal Code; or
2. subject to an initial finding of guilt by a trier of fact of a felony under:
   (A) Chapter 481 or 483, Health and Safety Code;
   (B) §485.033, Health and Safety Code; or
   (C) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq.);

(b) Mandatory Revocation. The board shall revoke the license of a person:

1. on final conviction of a person for an offense described under subsection (a) of this section, the board shall revoke the person’s license; or,
2. upon the incarceration of a person pursuant to a conviction of a felony under any state or federal law.

(c) Discretionary Revocation, Suspension, or Denial of License Application.

1. The board may revoke or suspend an existing license because of a person’s conviction under state or federal law of a misdemeanor that directly relates to the practice of dentistry or dental hygiene.
(2) The board may deny application for licensure because of a person’s conviction under state or federal law of a felony or misdemeanor that directly relates to the practice of dentistry or dental hygiene.

(3) In determining whether a criminal conviction directly relates to the practice of dentistry or dental hygiene, the board shall consider the factors listed in Occupation Code, §53.022.

(4) Those crimes that the board considers to be of such serious nature that they relate to fitness to practice a profession, or as directly related to the practice of dentistry or dental hygiene, include, but are not limited to:

(A) any felony of which fraud, dishonesty, or deceit is an essential element;

(B) any criminal violation of the Dental Practice Act or other statutes regulating or pertaining to the professions of dentistry or dental hygiene;

(C) any criminal violation of statutes regulating other professions in the healing arts;

(D) homicide;

(E) burglary;

(F) robbery;

(G) sexual assault;

(H) felony theft;

(I) any sexual offense against a child;

(J) felony driving while intoxicated; and,

(K) any felony subjecting a defendant to the sex offender registration requirements under Chapter 62 of the Code of Criminal Procedure.

(d) Process for consideration. The board may consider a person’s present fitness for licensure in determining whether a person’s conviction of a crime is cause for denial of an application or for disciplinary procedures. In determining a person’s present fitness for licensure, the Board shall consider the factors listed in Occupations Code, §53.023.

(1) It shall be the responsibility of the applicant or licensee to secure and provide to the Board the recommendations from the prosecution, law enforcement, and correctional authorities that prosecuted, arrested, or had custodial responsibility for the applicant or licensee in connection with each and every offense. Failure to provide such recommendations in their entirety is justification to refuse licensing or impose sanctions unless the applicant or licensee shows good cause for such failure.

(2) The applicant or licensee shall also furnish proof in such form as may be required by the Board that he or she has maintained a record of steady employment, has supported his or her dependents, has otherwise maintained a record of good conduct, and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which the applicant or licensee has been convicted.

(e) No person currently serving in prison for conviction of a felony under any state or federal law is eligible to obtain a license to practice dentistry or dental hygiene.

[6b] The State Board of Dental Examiners (Board) may revoke or suspend an existing license, or deny application for licensure because of a person’s conviction under state or federal law of a felony or misdemeanor that directly relates to the duties and responsibilities of the profession for which the person seeks licensure.

[6c] No person currently serving in prison for conviction of a felony under any state or federal law is eligible to obtain a license to practice dentistry or dental hygiene. The felony conviction of a person holding a license to practice dentistry or dental hygiene shall be cause for initiation of disciplinary procedures against such person.

[6d] In determining whether a criminal conviction directly relates to the practice of dentistry or dental hygiene, the Board shall consider the factors listed in Texas Occupations Code, §53.022.

[6e] Those crimes which the board considers to be of such serious nature that they relate to fitness to practice a profession, or as directly related to the practice of dentistry or dental hygiene, include, but are not limited to:

[6f] any felony of which fraud, dishonesty, or deceit is an essential element;

[6g] any criminal violation of the Dental Practice Act or other statutes regulating or pertaining to the professions of dentistry or dental hygiene;

[6h] any criminal violation of statutes regulating other professions in the healing arts;

[6i] homicide;

[6j] burglary;

[6k] robbery;

[6l] sexual assault;

[6m] felony theft;

[6n] any sexual offense against a child;

[6o] felony driving while intoxicated; and,

[6p] any felony subjecting a defendant to the sex offender registration requirements under Chapter 62 of the Code of Criminal Procedure.

[6q] The Board may consider a person’s present fitness for licensure in determining whether a person’s conviction of a crime is cause for denial of an application or for disciplinary procedures. In determining a person’s present fitness for licensure, the Board shall consider the factors listed in Texas Occupations Code, §53.023.

[6r] It shall be the responsibility of the applicant or licensee to secure and provide to the Board the recommendations from the prosecution, law enforcement, and correctional authorities that prosecuted, arrested, or had custodial responsibility for the applicant or licensee in connection with each and every offense. Failure to provide such recommendations in their entirety is justification to refuse licensing or impose sanctions unless the applicant or licensee shows good cause for such failure.

[6s] The applicant or licensee shall also furnish proof in such form as may be required by the Board that he or she has maintained a record of steady employment, has supported his or her dependents, has otherwise maintained a record of good conduct, and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which the applicant or licensee has been convicted.

[6t] The purpose of this section is to comply with the requirements of the Texas Occupations Code, §53.025.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on August 26, 2005.
TRD-200503697
Sherri Sanders
Interim Executive Director
State Board of Dental Examiners

Earliest possible date of adoption: October 9, 2005
For further information, please call: (512) 475-0972

CHAPTER 102. FEES
22 TAC §102.1

The Texas State Board of Dental Examiners (Board) proposes amendments to 22 TAC Chapter 102, §102.1, regarding the Board’s fee schedule. The amendments are proposed to correct the omission of updated faculty fees in a previous amendment.

There are no other substantive changes to the section.

Ms. Sherri Sanders, Interim Executive Director of the Texas State Board of Dental Examiners, has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

There is no public benefit anticipated as a result of enforcing or administering the section.

There is no impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering the section.

Comments on the proposal may be submitted to Sherri Sanders, Interim Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the Texas Register.

The amendment is proposed under Texas Government Code §2001.021 et seq., and Texas Civil Statutes, the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

§102.1. Fee Schedule.
(a) - (f) (No change.)
(g) Faculty [Dentist or dental hygienist faculty application--$25]
(1) Dentist faculty registration:
(A) Initial application--$75
(B) Annual renewal--$61
(C) Peer assistance--$9
(2) Dental hygienist faculty registration:
(A) Initial application--$75

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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State Board of Dental Examiners

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CHAPTER 107. DENTAL BOARD PROCEDURES
SUBCHAPTER B. PROCEDURES FOR INVESTIGATING COMPLAINTS
22 TAC §107.103

The Texas State Board of Dental Examiners (Board) proposes amendments to 22 TAC Chapter 107, §107.103, concerning dismissal of complaints. The amendments are proposed to enact certain changes imposed by Senate Bill 610, §2, 79th Legislature.

The proposed amendment would delete subsection (d), referring to the expunction of certain dismissed complaints, in its entirety, in accordance with the repeal of Tex. Occ. Code §255.006(d)(7).

The section as amended also contains revisions to clarify and standardize language, and to improve organization.

There are no other substantive changes to the section.

Ms. Sherri Sanders, Interim Executive Director of the Texas State Board of Dental Examiners, has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

There is no public benefit anticipated as a result of enforcing or administering the section.

There is no impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering the section.

Comments on the proposal may be submitted to Sherri Sanders, Interim Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the Texas Register.

The amendment is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes, the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties, and Senate Bill 610, 79th Legislature.
The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

§107.103. Dismissal of Complaints.

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

(d) Expunging dismissed complaints.

(1) The director of enforcement may, at his or her discretion, recommend that a complaint be expunged from SBDE records on written request from the respondent if:

(A) The complaint has been dismissed under this section;

(B) There has been no successful appeal;

(C) There is no pending appeal;

(D) At least 30 days has passed since the dismissal notice letter was sent to the complainant; and,

(E) The executive director has determined that the complaint was clearly groundless and completely without merit.

(2) A recommendation that a complaint be expunged shall be reviewed by a member of the enforcement committee. For complaints involving patient morbidity, professional conduct, or minimum standard of care, the reviewer must be a dentist member of the committee. The determination of this reviewer shall be final.

(3) The expunging of any complaint under this subsection must be reported to the full board at a public meeting of the board.

(4) This subsection does not apply to complaints dismissed by the full board pursuant to a recommendation from an informal settlement conference panel.

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

Filed with the Office of the Secretary of State on August 26, 2005.

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State Board of Dental Examiners

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CHAPTER 108. PROFESSIONAL CONDUCT

SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.7

The Texas State Board of Dental Examiners (Board) proposes amendments to 22 TAC Chapter 108, §108.7, concerning the minimum standard of care. The section as amended contains numerous revisions to clarify and standardize language, and to improve organization.

Proposed amendments to paragraph (3)(A) would require that a dentist document physical examinations, and to conduct such examinations periodically, as well as when a reasonable and prudent dentist would determine they are indicated.

Proposed amendments to paragraph (5) would eliminate language restricting acceptable providers of required courses in cardiopulmonary resuscitation, pursuant to a previous legislative mandate. Courses must include a demonstration of skills and a written evaluation.

The proposed amendment to paragraph (6) would require that dentists obtain written informed consent signed by the patient prior to certain procedures. Currently, the language uses the suggestive "should," which has been interpreted in the context of standard of care to imply a requirement. The proposed amendment replaces "should" with the more clearly mandatory word "shall."

There are no other substantive changes to the section.

Ms. Sherri Sanders, Interim Executive Director of the Texas State Board of Dental Examiners, has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

The public benefit anticipated as a result of enforcing or administering the section will be improved safety for dental patients via reasonably frequent limited physical examinations and reviews of medical histories, that may reveal and allow dentists to avoid potential complications. Further, the clearer requirement regarding written informed consent helps to ensure that patients receive a full disclosure of the nature of the treatment they are undergoing, as well as any possible complications that may arise as a consequence of treatment.

There is no impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering the section.

Comments on the proposal may be submitted to Sherri Sanders, Interim Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the Texas Register.

The amendment is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes, and Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

§108.7. Minimum Standard of Care, General.

Each dentist licensed by the State Board of Dental Examiners and practicing in Texas shall conduct his/her practice in a manner consistent with that of a reasonable and prudent dentist under the same or similar circumstance. Further, each dentist:

(1) Shall maintain patient records that meet the requirements set forth in §108.8 of this title (relating to Records of the Dentist).

(2) Shall maintain and review the patient’s medical history that shall include, but shall not necessarily be limited to, known allergies to drugs, serious illness, current medications, previous hospitalizations and significant surgery, and a review of the physiologic systems obtained by patient history.

(A) A “check list”, for consistency, may be utilized in obtaining initial information.
(B) The dentist shall review and update the medical history with the patient at any time a reasonable and prudent dentist in the same or similar circumstances would do.

(3) Shall conduct an initial limited physical examination which shall include, but shall not necessarily be limited to, measurement of blood pressure and pulse/heart rate.

(A) Blood pressure and pulse/heart rate measurements are not required to be taken on any patient twelve (12) years of age or younger, unless the patient’s medical condition or history indicate such a need.

(B) The dentist shall conduct and document a limited physical examination periodically, and/or when a reasonable and prudent dentist under the same or similar circumstances would determine it is indicated.

[2] Shall maintain and review an initial medical history and perform limited physical evaluation for all dental patients to suit:]

[(A) The initial medical history shall include, but shall not necessarily be limited to, known allergies to drugs, serious illness, current medications, previous hospitalizations and significant surgery, and a review of the physiologic systems obtained by patient history. A “check list,” for consistency, may be utilized in obtaining initial information. The dentist shall review the medical history with the patient at any time a reasonable and prudent dentist in the same or similar circumstances would do.]”

[(B) The initial limited physical examination shall include, but shall not necessarily be limited to, measurement of blood pressure and pulse/heart rate. Blood pressure and pulse/heart rate measurements are not required to be taken on any patient twelve (12) years of age or younger, unless the patient’s medical condition or history indicate such a need.

[2] Shall obtain and review an updated medical history and limited physical evaluation when a reasonable and prudent dentist under the same or similar circumstances would determine it is indicated.

(4) Shall, for office emergencies:

(A) maintain a positive pressure breathing apparatus including oxygen which shall be in working order;[

(B) maintain other emergency equipment and/or currently dated drugs as a reasonable and prudent dentist with the same or similar training and experience in the same or similar circumstances would maintain;

(C) provide training to dental office personnel in emergency procedures which shall include, but not necessarily be limited to, basic cardiac life support, inspection and utilization of emergency equipment in the dental office, and office procedures to be followed in the event of an emergency as determined by a reasonable and prudent dentist in the same or similar circumstances; and,

(D) shall adhere to generally accepted protocols and/or standards of care for management of complications and emergencies.

(5) Shall successfully complete a current course in basic cardiopulmonary resuscitation that includes a demonstration of skills and a written evaluation.[given or approved by either the American Heart Association or the American Red Cross.]

(6) Shall [should] maintain a written informed consent signed by the patient, or a parent or legal guardian of the patient if the patient is a minor, or a legal guardian of the patient if the patient has been adjudicated incompetent to manage the patient’s personal affairs. Such consent is required for all treatment plans and procedures where a reasonable possibility of complications from the treatment planned or a procedure exists, and such consent shall [should] disclose risks or hazards that could influence a reasonable person in making a decision to give or withhold consent.

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

Filed with the Office of the Secretary of State on August 26, 2005.

TRD-200503699
Sherri Sanders
Interim Executive Director
State Board of Dental Examiners

Earliest possible date of adoption: October 9, 2005
For further information, please call: (512) 475-0972

22 TAC §108.9

The Texas State Board of Dental Examiners (Board) proposes amendments to 22 TAC Chapter 108, §108.9, concerning dishonorable conduct. The amendments are proposed to clarify the applicability of the rule to not only dentist licensees, but other individuals holding licenses issued by the Board.

This clarification is effected in the proposed amendment by the elimination of the words "dentist" to modify "licensee," and the replacement of "dentist" with "licensee." It should be noted that the term "licensee" encompasses all individuals holding licenses, permits or registrations issued by the Board.

There are no other substantive changes to the section.

Ms. Sherri Sanders, Interim Executive Director of the Texas State Board of Dental Examiners, has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

There is no public benefit anticipated as a result of enforcing or administering the section.

There is no impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering the section.

Comments on the proposal may be submitted to Sherri Sanders, Interim Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the Texas Register.

The amendment is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes, and Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

§108.9. Dishonorable Conduct.

A [dental] licensee is in violation of this rule if he or she:
The Texas State Board of Dental Examiners (Board) proposes amendments to 22 TAC Chapter 108, §108.11, concerning Display of Registration. The amendments are proposed to enact certain statutory changes imposed by Senate Bill 610, §4, 79th Legislature. The section as amended also contains revisions to clarify and standardize language, and to improve organization.

The proposed amendment tracks the language of Tex. Occ. Code §256.103(c), as amended by Senate Bill 610, by adding language that essentially allows a grace period of 30 days from the issuance of a license until the current registration certificate must be publicly displayed. This time period sufficiently covers the time for production and delivery of the registration certificate.

There are no other substantive changes to the section.

Ms. Sherri Sanders, Interim Executive Director of the Texas State Board of Dental Examiners, has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

There is no public benefit anticipated as a result of enforcing or administering the section.

The impact on large, small or micro-businesses will be primarily to relieve concerns of licensees of being cited for a violation that occurs due to policies and procedures outside of their control.

There is no anticipated economic cost to persons as a result of enforcing or administering the section.

Comments on the proposal may be submitted to Sherri Sanders, Interim Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the Texas Register.

The amendment is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes, the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties, and Senate Bill 610, 79th Legislature.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

§108.11. Display of Registration.

(a) A dentist or dental hygienist shall display a current registration certificate in each office where the dentist or dental hygienist provides dental services. [When a dentist or dental hygienist provides dental services at more than one location, a duplicate registration certificate may be displayed. The duplicate may be obtained from the State Board of Dental Examiners for a fee set by the Board. No dentist or dental hygienist shall do any operation in the mouth of a patient, or treat any lesion of the mouth or teeth, without placing the current registration certificate on exhibit.]

(b) No dentist or dental hygienist shall provide treatment for a patient without placing the current registration certificate on exhibit.

(c) When a dentist or dental hygienist provides dental services at more than one location, a duplicate registration certificate may be displayed. The duplicate may be obtained from the State Board of Dental Examiners for a fee set by the Board.

(d) A dentist or dental hygienist may practice without displaying the person’s current registration certificate as required by this section for not more than 30 days after the person receives written confirmation from the board that the person's original license was issued.

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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Sherri Sanders
Interim Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 475-0972

22 TAC §114.1

CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

The Texas State Board of Dental Examiners (Board) proposes amendments to 22 TAC Chapter 114, §114.1, concerning the permitted duties for dental assistants. The amendments are proposed to enact certain requirements imposed by Senate Bill 610,
§5, 79th Legislature. The section as amended also contains revisions to clarify and standardize language, and to improve organization.

The proposed amendment tracks the language of Tex. Occ. Code §258.054(c) as amended by Senate Bill 610, expressly prohibiting a dentist from delegating or otherwise authorizing the making of x-rays to a dental assistant who is not certified by or registered with the Board to do so. Currently, the only language in statute and Board rule directly addressing the topic only say that a dental assistant may not perform such duties. While the prohibition against the delegation of such acts is clear from other provisions in the Dental Practice Act and Board rule, this addition makes it explicit.

There are no other substantive changes to the section.

Ms. Sherri Sanders, Interim Executive Director of the Texas State Board of Dental Examiners, has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

There is no public benefit anticipated as a result of enforcing or administering the section.

There is no anticipated economic cost to persons as a result of enforcing or administering the section.

Comments on the proposal may be submitted to Sherri Sanders, Interim Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the Texas Register.

The amendment is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes, the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties, and Senate Bill 610, 79th Legislature.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

§114.1. Permissible Duties.

(a) A dentist may delegate to a dental assistant the authority to perform only acts or procedures that are reversible. ([The employing dentist or dentist in charge must be physically present in the dental office when the delegated act is performed; the dentist shall remain responsible for any delegated act.] - two paragraphs added)

(1) An act or procedure that is reversible is capable of being reversed or corrected.

(2) Acts or procedures that are irreversible include, but are not limited to, the result of intra-oral use of any laser for any purpose, including all or part of a whitening process.

(b) A dentist may not delegate or otherwise authorize a dental assistant to position or expose a dental X-ray unless the dental assistant holds a certificate of registration issued under §114.2 of this chapter.

(1) An act or procedure that is reversible is capable of being reversed or corrected.

(c) The employing dentist or dentist in charge must be physically present in the dental office when the delegated act is performed.

(d) The dentist shall remain responsible for any delegated act.

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

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Sherri Sanders
Interim Executive Director
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For further information, please call: (512) 475-0972

22 TAC §114.3

The Texas State Board of Dental Examiners (Board) proposes amendments to 22 TAC Chapter 114, §114.3, concerning certification for the application of pit and fissure sealants by a dental assistant. The amendments are proposed to enact certain changes to Tex. Occ. Code §265.004, imposed by Senate Bill 610, §8, 79th Legislature. The section amends and contains revisions to clarify and standardize language, and to improve organization.

The proposed amendment allows a CODA-accredited dental assisting program to meet the 16-hour educational requirement for a dental assistant’s pit and fissure certification. Currently, only CODA-accredited dental hygiene programs are accepted.

There are no other substantive changes to the section.

Ms. Sherri Sanders, Interim Executive Director of the Texas State Board of Dental Examiners, has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

There is no public benefit anticipated as a result of enforcing or administering the section.

There is no anticipated economic cost to persons as a result of enforcing or administering the section.

Comments on the proposal may be submitted to Sherri Sanders, Interim Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the Texas Register.

The amendment is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes, the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties, and Senate Bill 610, 79th Legislature.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

§114.3. Application of Pit and Fissure Sealants.

(a) - (d) (No change.)
(c) A dental assistant wishing to obtain certification under this section must:

(1) Pay an application fee set by board [Board] rule;

(2) And on a form prescribed by the board [Board] provide proof that the applicant has:

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

(C) Completed a minimum of 16 hours of clinical and didactic education in pit and fissure sealants taken through a CODA-accredited dental hygiene or dental assisting program [program] approved by the board [Board] whose course of instruction includes:

(i) - (ix) (No change.)

(f) Before January 1 of each year, a dental assistant registered under this section who wishes to renew that registration must:

(1) Pay a renewal fee set by board [Board] rule;

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

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

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Sherri Sanders
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State Board of Dental Examiners
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For further information, please call: (512) 475-0972

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.4, §273.7

The Texas Optometry Board proposes amendments to §273.4, concerning fees. The amendments raise the license renewal fees by $7.00 in order to provide funding for the appropriations made by the 79th Legislature. The amendments also change the late renewal fee to 150 percent of the renewal fee for renewals one to ninety days late, and 200 percent of the renewal amount for renewals 90 to 365 days late to correspond with amendments contained in House Bill 1025. The amendments also set fees for a new category of license. House Bill 2680, 79th Legislature, Regular Session, requires the agency to create a retired license with reduced renewal fees. Each new license applicant will be required by the amendments to submit a $39.00 fee to be submitted by the Board to the Texas Department of Public Safety to obtain a criminal history record.

The agency also proposes amendments to §273.7, to implement House Bill 2680, 79th Legislature, Regular Session, by creating a retired license with reduced renewal fees and continuing education requirements for licensees providing health care services without compensation or expectation of compensation as a direct service volunteer of a charitable organization.

Chris Kloeris, Executive Director of the Texas Optometry Board, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for local government as a result of enforcing or administering the amendments. For state government, there will be increased revenue of $24,080.00 of the first year of the biennium and each year thereafter that the amended license fee amounts are in effect. This may be reduced by as much as $2,983 in the first year, and $942 each year thereafter because of licensees renewing as retired and paying a reduced renewal fee. Increased revenue of $2,775.00 each year will be realized due to the modification of the late renewal amount. The additional fees submitted by applicants will increase revenue by $6,435.00 each year, although the full amount of this fee will be remitted to the Texas Department of Public Safety and the Federal Bureau of Investigation.

Chris Kloeris also has determined that for each year of the first five years the amendments to §273.4 are in effect, the public benefit anticipated as a result of enforcing the amendments will be assurances that applicants will not be eligible for license with undisclosed criminal history, that late renewal fees are computed similarly, that funding of programs authorized by the 79th Legislature including additional investigative travel, acquisition of information technology, exempt salary increase and employee pay raise are implemented, and that licensees who wish to provide volunteer services as an optometrist or therapeutic optometrist may be licensed to do so with reduced costs.

The public benefit anticipated as a result of enforcing the amendments to §273.7 is that licensees who wish to provide volunteer services as an optometrist or therapeutic optometrist may be licensed to do so with reduced costs and time.

The economic costs for persons who are required to comply with the amendments, including small businesses, will be the same additional $7.00 license fee for each license holder. No disparate effect is foreseen on small or micro-businesses as the fee is imposed on individual professionals regardless of the size of any business. The late renewal fee is also imposed on individuals failing to timely pay and the additional criminal record charge is also imposed on individual applicants. Applicants may be required to submit a nominal fee to the local agency taking the fingerprints. Comments are solicited if a disparate cost of compliance can be established. The Retired License fee will not impose additional costs on licensees, including small or micro businesses.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the Texas Register.

The amendments are proposed under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.152, 351.301, 351.308, Government Code §411.122, House Bills 2680 and 1025, 79th Legislature, Regular Session.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession; §351.152 as granting the Board the authority to establish by rule reasonable and necessary fees to cover the costs of administering the act; §351.301 as setting the requirements for license renewal; §351.308 as setting the requirements for continuing education; and §411.122 authorizes the agency to obtain criminal history records. House Bill 1025 changes the computation of the late renewal fee; and House Bill 2680 requires the agency to create a retired license with reduced renewal fees and continuing education requirements for
licensees providing health care services without compensation or expectation of compensation as a direct service volunteer of a charitable organization.

No other sections are affected by the amendments.

§273.4. Fees (Not Refundable).

(a) Examination Fee $150.00. Applicant fee required for FBI criminal history in the amount charged by the Texas Department of Public Safety.

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

(d) Limited Faculty License $50.00. Applicant fee required for FBI criminal history in the amount charged by the Texas Department of Public Safety.

(e) - (f) (No change.)

(g) License Renewal $182.00 [$125.00] plus $200.00 additional fee required by Section 351.153 of the Act, and plus $1.00 fee required by House Bill 2985, 78th Legislature. The inactive licensee fee does not include $200.00 additional fee. Total fees: $383.00 [$376] active renewal; $183 [$176] inactive renewal

(h) License fee for late renewal, one to 90 days late: $273.00 plus $200.00 additional fee required by Section 351.153 of the Act, and plus $1.00 fee required by House Bill 2985, 78th Legislature. The inactive license fee does not include $200.00 additional fee. Total late license fees: $474.00 active renewal; $274.00 inactive renewal

(i) License fee for late renewal, 90 days to one year late: $364.00 plus $200.00 additional fee required by Section 351.153 of the Act, and plus $1.00 fee required by House Bill 2985, 78th Legislature. The inactive license fee does not include $200.00 additional fee. Total late license fees: $565.00 active renewal; $365.00 inactive renewal

(j) - (l) (No change.)

(m) License Without Examination Fee $300.00. Applicant fee required for FBI criminal history in the amount charged by the Texas Department of Public Safety.

(n) (No change.)

(o) Retired License $25.00 plus $200.00 additional fee required by Section 351.153 of the Act, and plus $1.00 fee required by House Bill 2985, 78th Legislature. Total fee: $226.00.

§273.7. Inactive Licenses and Retired License for Volunteer Charity Care.

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

(d) Occupations Code Section 112.051 requires the Board to adopt rules providing for reduced fees and continuing education requirements for a retired health care practitioner whose only practice is volunteer charity care.

(e) Application. An applicant for a Retired License must complete and submit to the Board the Retired License Application. There is no charge to apply. Applicants must supply proof that the continuing education requirements for a Retired License have been met. See §275.1 of this title (Rule 275.1).

(f) Scope of License. A holder of a Retired License may only practice optometry or therapeutic optometry when such practice is without compensation or expectation of compensation (except for the reimbursement of travel and supply expenses) as a direct service volunteer of a charitable organization.

(g) Charitable Organization. A charitable organization is defined in Section 84.003 of the Texas Civil Practice and Remedies Code and includes any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies), or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community, including these types of organizations with a Section 501(c)(3) or (4) exemption from federal income tax, some chambers of commerce, and volunteer centers certified by the Department of Public Safety.

(h) Renewal. A Retired License expires on the same date as a regular license. Prior to renewing the license, the licensee must supply proof that the continuing education requirements for a Retired License have been met.

(i) Penalty. The holder of a Retired License shall not receive compensation for the practice of optometry. To do so constitutes the practice of optometry without a license and subjects the optometrist or therapeutic optometrist to the penalties imposed for this violation.

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

Filed with the Office of the Secretary of State on August 24, 2005.

TRD-200503672

Chris Kleoeris
Executive Director
Texas Optometry Board

Earliest possible date of adoption: October 9, 2005

For further information, please call: (512) 305-8502

CHAPTER 275. CONTINUING EDUCATION

22 TAC §275.1

The Texas Optometry Board proposes amendments to §275.1, to implement House Bill 2680, 79th Legislature, Regular Session, by setting reduced continuing education requirements for licensees providing health care services without compensation or expectation of compensation as a direct service volunteer of a charitable organization.

Chris Kleoeris, Executive Director of the Texas Optometry Board, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state and local governments as a result of enforcing or administering the amendments.

Chris Kleoeris also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments is that licensees who wish to provide volunteer services as an optometrist or therapeutic optometrist may be licensed to do so with reduced expenditures and continuing education. It has also been determined that the amendments will not impose any additional costs to the persons affected by the rule including small or micro businesses.

Comments on the proposal may be submitted to Chris Kleoeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline

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for furnishing comments is thirty days after publication in the Texas Register.

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151, §351.308 and House Bill 2680, 79th Legislature, Regular Session.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession, §351.308 as setting the requirements for annual continuing education courses, and House Bill 2680, as requiring a retired license with reduced renewal fees and continuing education requirements for licensees providing health care services without compensation or expectation of compensation as a direct service volunteer of a charitable organization.

No other sections are affected by the amendments.


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

(g) An applicant for or a licensee renewing the Retired License shall obtain 8 hours of Board approved continuing education prior to receiving or renewing the license. All of the hours may be obtained on the Internet or by correspondence. At least one half of these hours must be diagnostic/therapeutic as approved by 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.

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Chris Kloeris
Executive Director
Texas Optometry Board

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For further information, please call: (512) 305-8502

CHAPTER 277. PRACTICE AND PROCEDURE

22 TAC §277.1, §277.9

The Texas Optometry Board proposes amendments to §277.1 concerning changes to the processing of complaints as required by the passage of House Bill 1025, 79th Legislature, Regular Session, and new §277.9 concerning the implementation of a policy that encourages the use of appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board’s jurisdiction as authorized by House Bill 1025, 79th Legislature, Regular Session. The amendments to §277.1 classify complaints according to the categories set out in the new legislation, require two board members to investigate complaints that directly relate to patient care and the investigation or disposition of which require expertise in optometry or therapeutic optometry, authorize the agency to issue cease and desist orders, give authority to agency staff to investigate some complaints and insure compliance with federal rules promulgated under the Health Insurance Portability and Accountability Act of 1996. The rule has also been reorganized.

Chris Kloeris, executive director of the Texas Optometry Board, 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.

Chris Kloeris also has determined that for each of the first five years the amendments to rule §277.1 are in effect, the public benefit anticipated as a result of enforcing the amendments will be that complaints are processed in an efficient and fair manner as determined by the legislature. The public benefit anticipated as a result of new rule §277.9 will be that persons may have disputes settled in a fair and orderly method with the potential to expedite the resolution at a cost less than standard formal methods of resolution for both the agency, licensees, and the public. Therefore, it has also been determined that the amendments will not impose any additional costs to the persons affected by the rule, including small or micro businesses.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the Texas Register.

The amendment and new rule are proposed under the Texas Optometry Act, Texas Occupations Code, §351.151, and House Bill 1025, 79th Legislature, Regular Session (Sections 351.0585, 351.169, 351.2035, 351.2036, 351.205, and 351.608 of the Optometry Act). No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession, and House Bill 1025, as requiring the staff to report on complaints, requiring the agency to classify complaints according to the categories, requiring two board members to investigate complaints that directly relate to patient care and the investigation or disposition of which do require expertise in optometry or therapeutic optometry, requiring agency to classify inspection violations as complaints, authorizing the agency to issue cease and desist orders, giving authority to agency staff to investigate some complaints, and requiring the agency to implement a policy that encourages the use of appropriate alternative dispute resolution procedures.


(a) Filing complaints. Complaints may be filed in writing with the agency, either in person at the board’s office, or by mail, [in any written form, including submission of a completed complaint form.] The board shall adopt a form as its official complaint form which shall include the following:

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

(3) date, time, and place of occurrence of alleged violation;

(4) complete description of incident giving rise to the complaint; and

(5) express authorization to release patient records to the Board where applicable.

(b) Classification of Complaints. [Complaint investigation and disposition.]

[44a] All complaints received shall be sent to the executive director. The board shall distinguish between categories of complaints as follows:

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The chair shall appoint a committee of members to the board of board rule, except in the case of a member of the board of board rule, to which the public health and economic function shall be known as the investigation-enforcement committee. The committee shall be composed of board members who are licensed practitioners and who are required to coordinate the state's public health and economic functions, and shall be composed of board members who are leaders in areas with each member of the investigation-enforcement committee being assigned areas of responsibility.

The committee shall be composed of board members who are licensed practitioners and who are required to coordinate the state's public health and economic functions, and shall be composed of board members who are leaders in areas with each member of the investigation-enforcement committee being assigned areas of responsibility.
complete all the of required findings in an initial examination, the completed report of investigation will be classified as an investigative complaint and forwarded by the executive director to the board member in charge.]}

(d) In determining the action to take under paragraph (2) of this subsection, if any, the board member in charge shall consider the seriousness of the omitted finding, the compliance history of the optometrist or therapeutic optometrist, and prior actions of the board concerning similar complaints. Omission of four or more basic competency findings requires the board member in charge to conduct an informal conference.]

(e) Complaints Investigated by Staff. Board staff may investigate complaints that do not directly relate to patient care and the investigation or disposition of which do not require expertise in optometry or therapeutic optometry. The investigation may employ members of the Investigation-Enforcement Committee to assist with the investigation as authorized by subsection (d)(2). A complaint shall be directed to the Investigation-Enforcement Committee if the executive director determines that the complaint should not be dismissed or settled or the executive director is unable to reach an agreed settlement.

(f) Request for Information. The committee or board staff may request that the subject of a complaint respond in writing to the allegations in the complaint. The subject of the complaint shall have 14 days from the receipt of the Board’s request to respond. The executive director may extend the time period upon a showing of good cause by the subject of the complaint.

(g) Dismissal and Tracking of Complaints. A complaint shall not be dismissed without appropriate consideration. The board and complainant shall be advised of complaint dismissals. A complaint dismissed by the executive director shall be approved by the Board at a Board Meeting. The executive director shall make a report at each board meeting regarding complaints to the Board.

(h) Basic Competence Violations.

(1) If during the investigation of an optometrist’s or therapeutic optometrist’s compliance with Section 351.353 of the Act and §279.7 of this title, the optometrist or therapeutic optometrist fails to complete all the of required findings in an initial examination, the completed report of investigation will be classified as a complaint and forwarded by the executive director to the committee members.

(2) In determining the action to take under subsection (d)(3), if any, the committee members shall consider the seriousness of the omitted finding, the compliance history of the optometrist or therapeutic optometrist, and prior actions of the board concerning similar complaints. Omission of four or more basic competency findings requires the committee members to conduct an informal conference.

§277.9 Alternative Dispute Resolution.

(a) Policy. The Board encourages the resolution and early settlement of all contested matters through voluntary settlement procedures. Board employees shall implement this policy.

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

(1) ADR—Alternative Dispute Resolution.

(2) Alternative dispute resolution procedure or ADR procedure—A nonjudicial and informally conducted forum for the voluntary settlement of contested matter through intervention of an impartial third party.

(3) Alternative dispute resolution director or ADR director—The director of the agency office empowered by the Board to coordinate and oversee ADR procedures and mediators.

(4) Contested matter—A request for an order or other formal or informal authorization from the Board that is opposed.

(5) Mediator—The person appointed by the ADR office director to preside over ADR proceedings regardless of which ADR method is used.

(6) Parties—The agencies, employees, managers, supervisors or customers who are in conflict.

(7) Participants—The executive director, the agency legal counsel, the complainant, the respondent, the person who timely filed hearing requests which gave rise to the dispute or if parties have been named, the named parties.

(8) Private mediator—A person in the profession of mediation who is not a Texas state employee and who has met all the qualifications prescribed by Texas law for mediators.

(c) Referral of Contested Matter for Alternative Dispute Resolution Procedures. The Board or the ADR director may seek to resolve a contested matter through any ADR procedure. Such procedures may include, but are not limited to, those applied to resolve matters pending at the State Office of Administrative Hearing (SOAH) and in the state’s district courts.

(d) Appointment of Mediator.

(1) For each matter referred for ADR procedures, the ADR director shall assign a mediator, unless the participants agree upon the use of a private mediator. The ADR director may assign a substitute or additional mediator to a proceeding as the ADR director deems necessary.

(2) A private mediator may be hired for Board ADR procedures provided that:

(A) the participants unanimously agree to use a private mediator;

(B) the participants unanimously agree to the selection of the person to serve as the mediator;

(C) the mediator agrees to be subject to the direction of the Board’s ADR director and to all time limits imposed by the director, the judge, statute or regulation.

(3) If a private mediator is used, the costs for the services of the mediator shall be apportioned equally among the participants, unless otherwise agreed upon by the participants, and shall be paid directly to the mediator. In no event, however, shall any such costs be apportioned to a governmental subdivision or entity that is a statutory party to the hearing.

(4) All mediators in Board mediation proceedings shall subscribe to the ethical guidelines for mediators adopted by the ADR Section of the State Bar of Texas.

(e) Qualifications of Mediators.

(1) The Board shall establish a list of mediators to resolve contested matters through ADR procedures.

(A) To the extent practicable, each mediator shall receive 40 hours of formal training in ADR procedures through programs approved by the ADR director.
Other individuals may serve as mediators on an ad hoc basis in light of particular skills or experience which will facilitate the resolution of individual contested matters.

(2) SOAH mediators, employees of other agencies who are mediators and private pro bono mediators may be assigned to contested matters as needed.

(A) Each mediator shall first have received 40 hours of Texas mediation training as prescribed above.

(B) Each mediator shall have some knowledge in the area of the contested matter.

(C) If the mediator is a SOAH judge, that person will not also sit as the judge for the case if the contested matter goes to a public hearing.

(f) Commencement of ADR.

(1) The Board encourages the resolution of disputes at any time, whether under this policy and procedure or not. ADR procedures under this policy may begin, at the discretion of the ADR director, at anytime once the dispute is deemed administratively complete and at least one letter of appeal has been filed with Board.

(2) Upon unanimous motion of the parties and the discretion of the judge, the provisions of this subsection may apply to contested hearings. In such cases, it is within the discretion of the judge to continue the hearing to allow use of the ADR procedures.

(g) Stipulations. When ADR procedures do not result in the full settlement of a contested matter, the participants, in conjunction with the mediator, shall limit the contested issues through the entry of written stipulations. Such stipulations shall be forwarded or formally presented to the judge assigned to conduct the hearing on the merits and shall be included in the hearing record.

(h) Agreements. Agreements of the participants reached as a result of ADR must be in writing and are enforceable in the same manner as any other written contract.

(i) Confidentiality of Communications in Alternative Dispute Resolution Procedures.

(1) Except as provided in subsections (3) and (4) of this section, a communication relating to the subject matter made by the participant in an ADR procedure whether before or after the institution of formal proceedings, is confidential, is not subject to disclosure, and may not be used as evidence in any further proceedings.

(2) Any notes or record made of an ADR procedure are confidential, and participants, including the mediator, may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

(3) An oral communication or written material used in or made a part of an ADR procedure is admissible or discoverable independent of the procedure.

(4) If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the judge to determine, in camera, whether the facts, circumstances and context of the communications or materials sought to be disclosed warrant a protective order or whether the communications or materials are subject to disclosure.

(5) The mediator may not, directly or indirectly, communicate with the judge or any Board Member, of any aspect of ADR negotiations made confidential by this section.

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

Filed with the Office of the Secretary of State on August 24, 2005.
TRD-200503673
Chris Kloeris
Executive Director
Texas Optometry Board
Earliest possible date of adoption: October 9, 2005
For further information, please call: (512) 305-8502

CHAPTER 279. INTERPRETATIONS

22 TAC §279.2

The Texas Optometry Board proposes amendments to §279.2 to revise those sections of the rule in conflict with House Bill 1025, 79th Legislature, Regular Session, by requiring release of a contact lens prescription at the completion of the examination, and setting out the duties and requirements for verifying a contact lens prescription. Similar sections are now contained in §279.6 to assist licensees in complying with federal law. Rule 279.6 will become unnecessary with the adoption of these amendments and will be repealed at that time. Section headings have also been added.

Chris Kloeris, executive director of the Texas Optometry Board, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state and local governments as a result of enforcing or administering the amendments.

Chris Kloeris 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 amendments is that patients will receive contact lens prescriptions, and verification information will be provided, pursuant to the requirements of federal law as codified in House Bill 1025. Since licensees are currently required under federal law to issue contact lens prescriptions at the conclusion of the examination and to verify contact lens prescriptions, it has been determined that the amendments will not impose additional costs to the persons (the agency’s licensees) affected by the rule. No additional costs are foreseen for small or micro business. Comments regarding possible costs for those required to comply with the amendments may be submitted to the Board.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the Texas Register.

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151, and the Contact Lens Prescription Act, Texas Occupations Code, §353.002, §353.005, §353.1015, §353.101, §353.104, §353.152, §353.156, §353.158 and §353.204 as amended or added by House Bill 1025, 79th Legislature, Regular Session, and federal law, 15 U.S.C. Sections 7601 - 7610. No other sections are affected by these amendments.
The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The Board interprets House Bill 1025 to require licensees to issue contact lens prescriptions at the completion of a contact lens exam and to verify prescriptions when requested by a dispenser authorized by the patient to obtain the verification, and requires the agency to adopt rules. Section 353.204 authorizes the agency to discipline optometrists and therapeutic optometrists for violations of the Contact Lens Prescription Act. The agency interprets the requirements of 15 U.S.C. Sections 7601 - 7610 to be similar to the requirements of House Bill 1025.

§279.2 Contact Lens Prescriptions.

(a) Federal law, 15 U.S.C. Sections 7601 - 7610 (Public Law 108-164), imposes requirements on the prescribing and dispensing of contact lenses that supersede some of the provisions of the Texas Optometry Act and Contact Lens Prescription Act, including requirements on the release of a prescription and requirements to verify a prescription. Section 279.6 of this title (relating to Interpretation of Requirements of Federal Contact Lens Prescription Law) should therefore be consulted contemporaneously with this section.

(b) [4bi] A prescription for contact lenses is defined as a written order signed by the examining optometrist, therapeutic optometrist or physician, or a written order signed by an optometrist, therapeutic optometrist or physician authorized by the examining doctor to issue the prescription. If the prescription is signed by a doctor other than the examining optometrist, therapeutic optometrist or physician, the prescription must contain:

1. the name of the examining doctor, and
2. the license number of both the examining doctor and the doctor signing the prescription.

(c) [4bi] Applicable Law. A contact lens prescription must comply with the requirements of the Texas Optometry Act, Sections 351.005, 351.356, 351.357, 351.359 and 351.607, and the Contact Lens Prescription Act, Sections 353.152, 353.153 and 353.158 and federal law, 15 U.S.C., Sections 7601 - 7610 (Public Law 108-164).

(d) [4bi] Contents of Prescription. A fully written contact lens prescription must contain all information required to accurately dispense the contact lens, including:

1. patient’s name;
2. the name, postal address, telephone number, and facsimile telephone number of the prescribing optometrist or therapeutic optometrist (required by federal law);
3. the date of examination (not including date of follow-up examinations) (required by federal law);
4. [2i] date the prescription is issued;
5. [4bi] an expiration date of not less than one year, unless a shorter period is medically indicated;
6. [4bi] examining optometrist’s signature or authorized signature;
7. [4bi] name of the lens manufacturer, if required to accurately dispense the lens;
8. [4bi] lens brand name, including:
   A. a statement that brand substitution is permitted if the optometrist intends to authorize a contact lens dispenser to substitute the brand name, and
   B. name of manufacturer, trade name of private label brand, and, if applicable, trade name of equivalent brand name [a statement specifying a substitute brand name] when the prescribed brand name is not available to the optical industry as a whole, unless the prescribing of a proprietary lens brand is medically indicated;
9. [2i] lens power;
10. [4bi] lens diameter, unless set by the manufacturer;
11. [4bi] base curve, unless set by the manufacturer; and
12. [4bi] number of lenses and recommended replacement interval.

(e) [4bi] Release of Prescription, Method. An optometrist or therapeutic optometrist shall [may] issue a prescription by [in the following manner:]

1. [4bi] giving or delivering an original signed copy of the prescription to the patient or to another person in accordance with subsection (d) above, [when requested by the patient];
2. [4bi] faxing an original signed prescription to a person authorized to fill the prescription. When faxing a prescription, the optometrist or therapeutic optometrist shall write “by fax” or similar wording on the original prescription prior to faxing;
3. transmitting a complete prescription as defined in this section, to a person authorized to fill the prescription, by e-mail or other computerized electronic means. When transmitting a prescription by computerized electronic means, including e-mail, the optometrist or therapeutic optometrist shall attach a digital signature in a commonly recognized format. The computerized electronic transmission shall also include the office address and license number of the optometrist or therapeutic optometrist;
4. under the Contact Lens Prescription Act, if the optometrist or therapeutic optometrist determines that the patient needs an emergency refill of the contact lens prescription, the prescription may be telephoned to a person authorized to fill the prescription.

(f) F axing Prescription. When directed by a dispenser designated to act on behalf of the patient, an optometrist or therapeutic optometrist shall fax an original signed prescription to the dispenser. When faxing a prescription, the optometrist or therapeutic optometrist shall write “by fax” or similar wording on the original prescription prior to faxing.

(g) Verification of Prescription. An optometrist or therapeutic optometrist shall verify a prescription when a dispenser designated to act on behalf of the patient requests a verification by telephone, facsimile or electronic mail.

(h) Verification Procedure. A dispenser designated to act on behalf of the patient is required to provide the optometrist or therapeutic optometrist with the following information when seeking a verification of a prescription:

1. the patient’s full name and address;
(2) contact lens power, manufacturer, base curve or appropriate designation, and diameter, as appropriate;

(3) quantity of lenses ordered;

(4) the date on which the patient requests lenses to be dispensed;

(5) the date and time of the verification request; and

(6) the name, telephone number, and facsimile number of a person at the contact lens dispenser’s company with whom to discuss the verification.

(i) Verification Requirements. If the format of the verification request allows, the optometrist or therapeutic optometrist, when verifying a prescription, should provide the contact lens dispenser with all of the information required in subsection (c) of this title. An optometrist or therapeutic optometrist who did not perform the examination, may verify a prescription according to subsection (a) of this title, providing to the dispenser the name and license number of the examining doctor if the format of the verification request so allows. Each request for a prescription verification should be recorded in the patient record, including the name of the dispenser, the date verification is requested, number of lenses requested, and response of the optometrist or therapeutic optometrist.

(j) Inaccurate or Invalid Verification. A contact lens dispenser seeking a contact lens prescription verification shall not fill the prescription if an optometrist or therapeutic optometrist informs a dispenser that the contact lens prescription is inaccurate, expired, or otherwise invalid. An optometrist or therapeutic optometrist is required to communicate the basis for the inaccuracy or invalidity of the prescription. If the prescription communicated by the dispenser to the optometrist or therapeutic optometrist is inaccurate or invalid, the optometrist or therapeutic optometrist is required to provide the correct information to the dispenser. A dispenser may dispense lenses without verification if an optometrist or therapeutic optometrist fails to communicate with the dispenser within 8 business hours, or a similar time as defined by the Federal Trade Commission.

(k) Number of Lenses. An optometrist or therapeutic optometrist dispensing contact lenses shall record on the prescription the number of lenses dispensed and return the prescription to the person. If all the contact lenses authorized by the prescription are dispensed by an optometrist or therapeutic optometrist, the following procedure complies with state law and should not be in conflict with federal law: the optometrist or therapeutic optometrist writes on the prescription “All Lenses Dispensed,” makes a copy of the prescription to retain in the licensee’s records, and returns the original to the person presenting the prescription.

(l) [¶] Extension. The Contact Lens Prescription Act requires an optometrist or therapeutic optometrist to authorize, upon request of the patient, a one time, two month extension of the contact lens prescription. [If the extension request also constitutes a request for an emergency refill, the optometrist or therapeutic optometrist may telephone the prescription extension to a person authorized to fill the prescription.]

(m) [¶] Private Labels. The prescribing optometrist or therapeutic optometrist has the authority to specify any and all parameters of an optical prescription for the therapeutic and visual health and welfare of a patient, but the prescription shall not contain restrictions limiting the parameters to private labels not available to the optical industry as a whole, unless the prescribing of a proprietary lens brand is medically indicated. The specifications of the prescription may not be altered without the consent of the prescribing doctor.

(n) [¶] Fee. The Contact Lens Prescription Act prohibits an optometrist or therapeutic optometrist from charging the patient a fee in addition to the examination fee and the fitting fee as a condition for giving a contact lens prescription to the patient or verifying a prescription according to subsections (g) and (h). An optometrist or therapeutic optometrist may not refuse to release a prescription solely because charges assigned or presented for payment to an insurance carrier, health maintenance organization, managed care entity, or similar entity have not been paid by that entity.

(o) [¶] Fitting Process. An optometrist or therapeutic optometrist may charge a fitting fee that includes fees for lenses required to be used in the fitting process. The fitting process may include the initial eye examination, an examination to determine the specifications of the contact lenses, and follow-up examinations that are medically necessary. Unless medically necessary, the optometrist or therapeutic optometrist may not require the patient to purchase a quantity of lenses in excess of the lenses the optometrist or therapeutic optometrist was required to purchase to complete the fitting process.

(p) The executive commissioner of the Health and Human Services Commission and the executive director of the Texas Optometry Board may enter into interagency agreements as necessary to implement and enforce this chapter.

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

Filed with the Office of the Secretary of State on August 24, 2005.

TRD-200503675

Chris Kloeris

Executive Director

Texas Optometry Board

Earliest possible date of adoption: October 9, 2005

For further information, please call: (512) 305-8502

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 181. VITAL STATISTICS

SUBCHAPTER B. VITAL RECORDS

25 TAC §181.22

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes amendments to §181.22, concerning the fees charged for vital records services.

BACKGROUND AND PURPOSE

The revisions are necessary to implement the Department of Information Resources (DIR) charges to the department for the Texas Online conversion and accessibility costs related to the imaging, indexing, and production of records that will improve customer service and business processes within the Vital Statistics Unit (VSU). These customer service enhancements will be paid from a $10 fee for various vital record services.

The VSU needs to image roughly 46 million vital records for which there is no backup in the event of a catastrophic event such as a fire. Protection of these records will be through the

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Amendments to §181.22 contain cost recovery fees for certain vital records services, fees for Texas Online conversion and accessibility, and new and revised heirloom document fees. Specifically, §181.22(a) adds a $1.00 cost recovery fee for research or certified copies of birth records. Section 181.22(b) adds a $1.00 cost recovery fee for research or certified copies of death certificates. Section 181.22(d) changes the fee for issuing heirloom birth certificates to $50.00 and the fee for researching a record that is not found to $38.00. Section 181.22(e) establishes a $50.00 fee for issuing heirloom wedding certificates. Section 181.22(f) adds a $1.00 cost recovery fee for the search for any information requested. Section 181.22(g) adds a $1.00 cost recovery fee for a search to verify the existence of a birth or death record. Section 181.22(h) adds a $1.00 cost recovery fee for a search to verify the existence of a marriage or divorce record. Section 181.22(i) adds a $1.00 cost recovery fee for a search to identify the court that granted an adoption. Section 181.22(j) deletes an unnecessary comma. Section 181.22(n) adds a $1.00 cost recovery fee for a search of the Paternity Registry. Section 181.22(o) adds a $1.00 cost recovery fee for a search of the Acknowledgment of Paternity Registry. Section 181.22(s) establishes a $10.00 Texas Online fee.

**FISCAL NOTE**

Geraldine R. Harris, State Registrar, has determined that for each fiscal year of the first five years the changed rule is in effect, there will be fiscal implications to the state as a result of implementing and administering the section as proposed.

The $10.00 Texas Online fee mandated by DIR for birth, death, marriage and divorce records is a pass through fee that will be paid to a DIR contractor for the Texas Online conversion project. The effect on state government will be an estimated increase in revenue to the state of $225,000 for FY 2006, $300,000 for FY 2007, $300,000 for FY 2008, $300,000 for FY 2009 and $300,000 for FY 2010. These revenues will offset the costs of administering grants to fund childhood immunizations and related education programs.

The effect on state government of the $50.00 fee increase authorized by HB 2101 for heirloom birth certificates will be an estimated increase in revenue to the state of $118,125 for FY 2006, $157,500 for FY 2007, $157,500 for FY 2008, $157,500 for FY 2009 and $157,500 for FY 2010. These revenues will offset the costs of administering grants to fund childhood immunizations and related education programs.

The effect on state government of the $1.00 cost recovery fee will be an estimated increase in revenue to the state of $245,513 for FY 2006, $335,534 for FY 2007, $343,922 for FY 2008, $352,520 for FY 2009 and $361,333 for FY 2010. These revenues will offset the costs of administering the VSU operations.

There will be a fiscal impact to local governments because local registrars will also see an increase in revenue, due to the requirements of §191.0045(d) of the Health and Safety Code, which requires local registrars to charge the same fee as the department for the sale of certified copies of birth and death records.

**SMALL AND MICRO-BUSINESS IMPACT ANALYSIS**

Geraldine Harris has also determined that there are no anticipated costs to small businesses or micro-businesses required to comply with the amendment as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section. There is no negative impact on local employment.

**PUBLIC BENEFIT**

Geraldine Harris has determined that for each year of the first five years the section will be in effect, the public will benefit from adoption of this section. This process will secure the records of the citizens of Texas by automating record storage and retrieval, creating a back-up records storage system, and ensure timely filing of customer requests.

Accessing the data through Texas Online and electronic retrieval of the data for mail and walk-in processing of requests will also result in faster and more accurate processing of all data requests.

**REGULATORY ANALYSIS**

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. The specific intent of these rule revisions is not to protect the environment or reduce risk to human health from environmental exposure and there is no adverse material impact on the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

**TAKINGS IMPACT ASSESSMENT**

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Geraldine Harris, Vital Statistics Unit, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111, or by email to Geraldine.Harris@dshs.state.tx.us. Comments will be accepted for 30 days following the publication of the proposal in the Texas Register. A mass mail out was sent to stakeholders (Local Registrars, County Clerks, the Texas Funeral Service Commission, and the three major corporations that own a majority of the funeral homes in Texas: Service Corporation International, Stewart Enterprise and Alderwoods) on June 24, 2005, asking for comments prior to publication.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies’ authority to adopt.

STATUTORY AUTHORITY

This proposed amendment is authorized under Health and Safety Code, §191.0045, which allows the department to charge fees; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation, administration, and provision of health and human services by the department.

The proposed amendment affects the Health and Safety Code, Chapters 191 and 1001; and Government Code, Chapter 531.


(a) The fee for a certified or research copy of a birth record shall be $10.00 ($5.00). Additional copies shall be $10.00 ($5.00) for each copy requested.

(b) The fee for a certified or research copy of a death certificate shall be $10.00 ($5.00) for the first or only copy requested, and $3.00 for each additional copy of the same record requested in the same request.

(c) A surcharge of $2.00 shall be added to the fee for searching and issuing each certified copy of a birth certificate, or conducting a search for a certificate of birth, as mandated by the Health and Safety Code, §191.0045.

(d) The fee for issuing each heirloom birth certificate of birth, or gift certificate for such, shall be $50.00 ($25.00). If a record is not found, $38.00 ($14.00) of the fee shall be returned to the applicant for service not performed.

(e) The fee for issuing each wedding anniversary certificate or gift certificate for such shall be $50.00.

(f) The fee to search for any record or information on file within the Bureau shall be $10.00 ($5.00), regardless of whether a certified copy is issued or not. [This fee shall include the cost of one certified copy of the birth, death, or fetal death record requested.]

(g) The fee for a search to verify the existence of a birth or death record shall be $10.00 ($5.00 with no copy issued).

(h) The fee for a search to verify a marriage or divorce record shall be $10.00 ($5.00, with no copy issued).

(i) The fee for a search and identification of the court that granted an adoption shall be $10.00 ($5.00).

(j) The fee for filing an amendment to an existing certificate of birth or death on file with the bureau shall be $15.00. An amendment to a certificate includes adding information to a record to make it complete and changing information on a record to make it correct. An additional fee is required to issue a certified copy of the amended record.

(k) The fee for filing an amendment based on a court ordered name change shall be $15.00.

(l) The fee for a new birth record based upon adoption[,] or parentage determination shall be $25.00 ($25).

(m) The fee for filing a delayed record of birth shall be $25.00.

(n) The fee for a search of the Paternity Registry shall be $10.00 ($5.00). The fee includes a certification stating whether or not the requested information is located in the Registry.

(o) The fee for a search of the Acknowledgment of Paternity Registry shall be $10.00 ($5.00). The fee includes a certified copy of the Acknowledgement of Paternity, if found.

(p) Each person applying to the Central Adoption Registry shall pay a registration fee of $30.00, which includes the $5.00 fee for determining if an agency that operates its own registry was involved in the adoption. (Also see §181.44 of this title (relating to the Inquiry Through the Central Index)).

(q) The fee charged for an expedited service shall be $5.00 per request in addition to any other fee required. Expedited service is any service requested via fax or overnight mail service. The expedited fee is nonrefundable if a record or the information requested is not found.

(r) The fee for the processing and issuance of a disinterment permit shall be $25.00. The fee is to be paid by the applicant for the permit, and must be submitted with the application.

(s) A Texas Online fee of $10.00 shall be added to all requests for birth, death, marriage, and divorce record searches and document production.

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

Filed with the Office of the Secretary of State on August 25, 2005.

TRD-200503683
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: October 9, 2005
For further information, please call: (512) 458-7236

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TITLE 30. ENVIRONMENTAL QUALITY
PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
CHAPTER 106. PERMITS BY RULE

PROPOSED RULES September 9, 2005 30 TexReg 5539
§106.534. Municipal Solid Waste Landfills and Transfer Stations.

The commission proposes an amendment to specify that landfill cell construction and waste disposal activities at transfer stations of the types specified may be authorized under this section. Landfill cell construction activities may include unloading, spreading, or compacting of waste and applying daily, immediate, or final cover. The current version of this permit by rule does not limit the type of landfill authorized if it complied with the Texas Solid Waste Disposal Act. Reference to the Texas Solid Waste Disposal Act was removed from this section because it included the authorization of industrial landfills, in addition to other waste operations such as bioreactors. This proposed amendment limits the type of landfill to which the permit by rule is applicable in order to exclude industrial landfills and bioreactors.

Use of permits by rule are limited by TCAA, §§382.05196, to those facilities that would make an insignificant contribution of air contaminants to the atmosphere. The proposed new §106.534(1) specifies when sites having facilities other than landfill cell construction and waste disposal would not qualify for the permit by rule and must meet the conditions of the concurrently proposed Chapter 330, Subchapter U, or apply for a permit under Chapter 116. This would include new or modified landfills and transfer stations that do not meet the requirements of this permit by rule authorization. Some examples of types of facilities common at landfills that are not included in this rule are engines and storage tanks.

The proposed new §106.534(2) requires a valid permit or registration under §330.7, Permit Required, when claiming this authorization to ensure compliance with the commission’s solid waste regulations.

The proposed new §106.534(3) requires that the site have a design capacity of less than 2.5 million megagrams (Mg) by mass or 2.5 million cubic meters by volume. This restriction will apply to landfills that are new or modified after the effective date of this rule.

The proposed new §106.534(4) requires that the site have a non-methane organic compound (NMOC) emission rate of less than 50 Mg per year (Mg/yr). This emission rate was selected based on the requirements in 40 Code of Federal Regulations (CFR) Part 60, Subpart WWW, Standards of Performance for Municipal Solid Waste Landfills. A landfill that is subject to 40 CFR Part 60, Subpart WWW and has an NMOC emission rate equal to or greater than 50 Mg/yr, must have a gas collection and control system preapproved and installed. The permit by rule authorization is intended to be used by those landfills that are small enough not to generate the amount of landfill gas that requires a gas collection and control system. In order to evaluate a worst-case scenario for landfill and transfer station fugitive gas emissions, an air quality dispersion modeling analysis was performed to evaluate the effect based on the 50 Mg/yr NMOC emission rate. The air quality dispersion modeling assumed the nature and characteristic for the transfer stations and landfills fugitive emissions where identical, which is an overly conservative approach. Upon the evaluation of the modeling results, the commission concluded that the MSWLF and transfer station emissions are protective of human health and the environment.
and that these uncontrolled emissions did not jeopardize public health and welfare.

The proposed new §106.534(5) requires that the emissions from the entire site do not exceed 25 tons per year of VOCs and PM. Air dispersion modeling was performed to verify that these limits are protective of human health and the environment.

Proposed §106.534(6) states that visible emissions from the site must not leave the property for a period exceeding 30 seconds in any six-minute period as determined by EPA Test Method 22. This opacity limit constitutes a reasonable measure of best available control technology standards of the air permits program and should minimize the potential for dust nuisances.

The proposed new §106.534(7) authorizes stand-alone transfer stations located at sites other than an MSWLF and requires compliance with the Texas Solid Waste Disposal Act. These stand-alone sites with a capacity greater than 40 cubic yards must be located such that any emission source is located a minimum of 165 feet from the nearest off-site receptor. The nearest off-site receptor is defined as any recreational area, commercial or industrial structure, residence, or other normally occupied structures not used solely by the owner or operator of the transfer station. The 165-foot distance limit was derived from the air quality dispersion modeling, which shows that human health and the environment are not adversely affected at this distance from the source of emissions. Stand-alone transfer stations with a capacity of 40 cubic yards or less do not have the 165-foot distance limit. This distance requirement does not apply to transfer stations located at a landfill because these sites have other distance requirements, such as setback, specified by Chapter 330, Municipal Solid Waste.

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 rule is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rule. The proposed rule may require some governmental entities that operate MSWLFs to acquire a standard permit instead of operating the landfill under a permit by rule but will not be charged any fee.

The proposed rule would clarify that only landfill cell construction, waste disposal, and transfer stations can be permitted by this rule. An MSWLF exceeding a certain capacity, having NMOC emissions above proposed levels, having VOC or PM emissions above proposed levels, or engaging in activities other than landfill cell construction and waste disposal would be required to meet the conditions of the standard permit or apply for a permit under Chapter 116 instead of operating under a permit by rule. Currently, about 120 local government MSWLFs operate under a permit by rule. Only local government MSWLFs not in compliance with the permit by rule or that, in the future, operate in a manner requiring compliance with the standard permit would be affected by the proposed rule. At this time, none of the 120 identified facilities are anticipated to be affected.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years that the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rules will be proper permitting and authorization of MSWLFs and their activities. The proposed rule will not have a significant fiscal impact on large businesses. Large businesses operating MSWLFs required to obtain authorization under the standard permit will be required to certify under the new air standard permit in Chapter 330, Subchapter U, but will not be charged any fee. Currently, it is estimated that 30 MSWLFs operating under a permit by rule are owned by individuals or businesses. Only those MSWLFs that operate in a manner requiring compliance with the standard permit would be affected by the proposed rule.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. Typically, MSWLFs needing authorization under the proposed standard permit are not owned or operated by small or micro-businesses. If a small or micro-business had to acquire a standard permit to operate a MSWLF, it would experience the same permitting costs as those experienced by large businesses or governmental entities.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed amendment does not meet the definition of a "major environmental rule" as defined in that statute. According to Texas Government Code, §2001.0225(g)(3), a "major environmental rule" is a rule that is specifically intended 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 intent of this proposed rulemaking is to resolve the misinterpretation that the current permit by rule language authorizes all activities at an MSWLF or transfer station when in fact various activities beyond cell construction require separate authorizations. The proposed amendment to §106.534 does not meet the definition of "major environmental rule" because it does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The purpose of the amendment is to detail precisely what activities are authorized under this section. The current rule language may lead to confusion among landfill operators and the general public as to what activities are authorized. The rulemaking is prospective and would neither affect facilities currently claiming the existing permit by rule, nor prevent landfills or transfer facilities from obtaining the necessary authorizations to construct.

In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or
4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the proposed amendment does not meet any of the four applicability requirements. Specifically, the proposed amendment implements the requirements of THSC, TCAA, §382.05196, regarding Permits by Rule. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking action and performed a preliminary assessment of whether this action would constitute a takings under Texas Government Code, Chapter 2007. Premulation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. This rule is proposed to amend §106.534 so that only cell construction and waste disposal activities are authorized under this section. The purpose of the amendment is to detail precisely what activities are authorized under this section. The current rule language may lead to confusion among landfill operators and the general public as to what activities are, or are not, authorized. Landfill owners and the general public will benefit from clearer rule language that specifies the requirements for landfill and transfer station operations that use this section to authorize air emissions. These requirements are established in order to protect public health and welfare from air emissions from these types of facilities. Landfill facilities that have activities other than cell construction and waste disposal, and transfer stations that cannot meet the setback requirements of the amended section, would not be precluded from obtaining an air quality permit through other authorizations. The proposed amendment does not affect private property in a manner that restricts or limits an owner’s right to the property that would otherwise exist in the absence of a governmental action. The proposed amendment does not add a requirement for an air authorization for landfills and transfer stations that did not exist previously. Therefore, the amendment to Chapter 106 would not constitute a takings under Texas Government Code, Chapter 2007. The commission invites public comment on the takings impact assessment.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the proposed revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Because §106.534 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program, 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 §106.534 requirement for each landfill or transfer station affected by the revisions at their site.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on September 29, 2005, at 10:00 a.m. in Building C, Room 131E, at the commission’s central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before 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 Joyce Spencer, Office of Legal Services at (512) 239-5017. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, MC 205, PO. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2003-066-116-PR. Comments must be received by 5:00 p.m., October 31, 2005. Copies of the proposed rule can be obtained from the commission’s Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Beecher Cameron, Air Permits Division, at (512) 239-1495.

STATUTORY AUTHORITY

The amendment is proposed under THSC, §382.011, which authorizes the commission to administer the requirements of the TCAA; THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; THSC, §382.057, which authorizes the commission to exempt from permitting, changes within any facility that would not make a significant contribution of air contaminants to the atmosphere; THSC, §382.051, which authorizes the commission to issue permits for construction of facilities that emit air contaminants; and THSC, §382.05196, which authorizes the commission to adopt permits by rule for types of facilities that would not make a significant contribution of air contaminants to the atmosphere.

The proposed amendment implements §§382.011, 382.017, 382.057, 382.051, and 382.05196.
§106.534. Municipal Solid Waste Landfills and Transfer Stations.

Municipal solid waste landfill (MSWLF) cell construction or modification of MSWLF Type I, Type I-AE, Type II, Type III, Type IV, Type IV-AE, and Type V transfer stations as defined in §330.5 of this title (relating to Classification of Municipal Solid Waste Facilities) that meet the conditions listed in this section [landfills and waste transfer stations operating in compliance with the Texas Solid Waste Disposal Act] are permitted by rule.

1. The following are not authorized by this section:

   A. MSWLF sites accepting more than 25 tons per day of waste that have facilities other than cell construction and waste disposal; or

   B. maintenance, startup, shutdown, or emission excursions under Chapter 101, Subchapter F of this title (relating to Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities).

2. The owner or operator must have obtained a valid permit or registration under §330.7 of this title (relating to Permit Required), for the site.

3. The MSWLF or transfer station must have a design capacity of less than 2.5 million megagrams (Mg) by mass or 2.5 million cubic meters by volume.

4. The MSWLF or transfer station must have a non-methane organic compound emission rate of less than 30 Mg per year as determined by United States Environmental Protection Agency (EPA) publication AP-42, Compilation of Air Pollutant Emission Factors.

5. Emissions from the site are limited to 25 tons per year of volatile organic compounds or particulate matter. There are no short-term limitations for particulate matter and volatile organic compounds.

6. Visible emissions from the site must not leave the property for a period exceeding 30 seconds in any six-minute period as determined by EPA Test Method 22, as found in 40 Code of Federal Regulations Part 60, Appendix A.

7. Transfer stations not located at an MSWLF site shall:

   A. operate in compliance with the Texas Solid Waste Disposal Act, and;

   B. be located such that all emission sources at the transfer station are located a minimum distance of 165 feet from the nearest receptor if the transfer station has a permitted capacity greater than 40 cubic yards. A receptor is defined as any recreational area, commercial or industrial structure, residence, or other normally occupied structures not used solely by the owner or operator of the transfer station.

8. Facilities shall comply with applicable requirements of all federal regulations and state rules.

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

Filed with the Office of the Secretary of State on August 26, 2005.

Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality

Earliest possible date of adoption: October 9, 2005

For further information, please call: (512) 239-5017

CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

SUBCHAPTER F. STANDARD PERMITS

30 TAC §116.621

(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 Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Environmental Quality (commission) proposes the repeal of 30 TAC §116.621. The repeal will be submitted to the United States Environmental Protection Agency as a revision to the state implementation plan.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED REPEAL

The commission’s current standard permit for municipal solid waste landfills requires that separate authorizations be obtained for activities typically found at larger landfills but that do not directly involve landfill cell construction or waste disposal. These activities include fuel storage, welding, abrasive blasting, and tire shredding. The commission drafted a new standard permit that can be used to authorize these and most other activities without obtaining the separate authorization. The commission intends to place this new air standard permit into 30 TAC Chapter 330, Municipal Solid Waste, in order to consolidate rules for facilities that have environmental effects in more than one media.

A corresponding rulemaking that includes changes to 30 TAC Chapter 106, Permits by Rule, is published in this issue of the Texas Register.

SECTION DISCUSSION

The commission proposes the repeal of §116.621, Municipal Solid Waste Landfills. The standard permit contained in this rule will be replaced by a standard permit authorizing air emissions from landfills and landfill support activities that will be placed into a new Subchapter U of Chapter 330. Facilities that are currently authorized will be required to certify under the new Chapter 330 standard permit within 180 days of its effective date.

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 repeal in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed repeal.

The purpose of the proposal is to repeal §116.621 of the commission’s rules. A more comprehensive version of the standard permit authorizing air emissions from landfill and landfill activities will be proposed in a separate action and placed in new Subchapter U of Chapter 330. Local governments operating municipal solid waste landfills (MSWLFs) that are currently authorized under §116.621 will be required to certify under the new standard permit within 180 days of its effective date, but the commission will not charge an additional fee.
PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated from the changes made by the proposed repeal will be proper permitting and authorization of MSWLFs and their activities.

The proposed repeal will not have a significant fiscal impact on large businesses. Large businesses operating MSWLFs that are currently authorized under §116.621 will be required to certify under the new standard permit within 180 days of its effective date, but the commission will not charge an additional fee.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. Typically, MSWLFs needing authorization under the current standard permit proposed for repeal and the new proposed standard permit in Chapter 330 are not owned or operated by small or micro-businesses. If a small or micro-business had to acquire a standard permit to operate an MSWLF, it would experience the same permitting costs as those experienced by large businesses or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed repeal does not meet the definition of a "major environmental rule" as defined in that statute. Therefore, Texas Government Code, §2001.0225, does not apply to this rulemaking. According to Texas Government Code, §2001.0225(g)(3), a "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, jobs, the environment, the public health and safety of the state or a sector of the state. The intent of this proposed rulemaking is to repeal the standard permit for MSWLFs in §116.621. Under the authority of Texas Clean Air Act, §382.05195, the commission proposes to concurrently propose a new standard permit in Chapter 330, Subchapter U, to replace the repealed standard permit. The proposed standard permit in Chapter 330 can be used to authorize other common landfill activities that are not allowed under §116.621 and that require separate authorization. Because future landfills will be authorized under the more comprehensive Chapter 330, Subchapter U standard permit, §116.621 is unnecessary. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking action and performed a preliminary assessment of whether this action would constitute a takings under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed repeal would be neither a statutory nor a constitutional taking of private real property. The proposed repeal of §116.621 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this proposal does not meet the definition of a takings under Texas Government Code, §2007.002(5). This rulemaking is proposed to repeal the MSWLF standard permit adopted by the commission in §116.621. A new standard permit in Chapter 330 will replace the repealed section. Landfill owners and operators would not be precluded from obtaining an air quality permit. The proposed new standard permit will provide a single authorization for more activities at landfills than are currently allowed under §116.621. Current holders of registrations under §116.621 will be required to certify under the new standard permit within 180 days of its effective date, but the commission will not charge an additional fee. Therefore, the proposed repeal would not constitute a takings under Texas Government Code, Chapter 2007. The commission invites public comment on the takings impact assessment.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. As required by §281.45(a)(3), Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP), and 31 TAC §§505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the proposed revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Because §116.621 contains applicable requirements under 30 TAC Chapter 122, Federal Operating Permits Program, 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 new standard permit in Chapter 330 for each landfill affected at their site.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on September 29, 2005, at 10:00 a.m. in Building C, Room 131E, at the commission's central office located at

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12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before 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 Joyce Spencer, Office of Legal Services, at (512) 239-5017. Requests should be made as far in advance as possible.

SUBMITAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2003-066-116-PR. Comments must be received by 5:00 p.m., October 31, 2005. Copies of the proposed rules can be obtained from the commission’s Web site at http://www.tceq.state.tx.us/nurules/proposal_adopt.html. For further information, please contact Beecher Cameron, Air Permits Division, at (512) 239-1495.

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also proposed under THSC, §382.002, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to adopt rules necessary for permits issued under THSC, Chapter 382; and THSC, §382.051, concerning Standard Permit, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The proposed repeal is also proposed under THSC, §§382.011, 382.012, 382.017, 382.051, and 382.05195.

§116.621. Municipal Solid Waste Landfills.

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

Filed with the Office of the Secretary of State on August 26, 2005.
TRD-200503692

Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality

Earliest possible date of adoption: October 9, 2005
For further information, please call: (512) 239-6017

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CHAPTER 330. MUNICIPAL SOLID WASTE


FOR THE PROPOSED RULES

CHARACTERISTICS OF THE PROPOSED RULES

The commission is initiating this rulemaking to revise and update Chapter 330. The municipal solid waste (MSW) program has undergone extensive change over the past ten years. Current regulations are based on landfill facilities, with storage and processing requirements referencing these requirements as appropriate. New regulatory requirements have been continually added to the original rule structure. Enough change has occurred to justify revamping the MSW rules to a new organizational structure to more appropriately reflect current programs.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission is initiating this rulemaking to revise and update Chapter 330. The municipal solid waste (MSW) program has undergone extensive change over the past ten years. Current regulations are based on landfill facilities, with storage and processing requirements referencing these requirements as appropriate. New regulatory requirements have been continually added to the original rule structure. Enough change has occurred to justify revamping the MSW rules to a new organizational structure to more appropriately reflect current programs.

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and requirements within the Municipal Solid Waste Permits Section. The commission proposes to restructure the rules from a predominantly landfill basis to a more general solid waste management facility basis having multiple solid waste management unit types. All persons managing MSW will be subject to these rules, as discussed within specific subchapters. Each subchapter is organized by a topic relating to a particular aspect of MSW management. Where possible, extensive cross-referencing to other subchapters has been eliminated.

Also, the commission is proposing some streamlining initiatives such as eliminating unnecessary requirements, reducing commission approvals of low impact waste management activities, and reducing or combining reporting requirements while improving overall data quality submitted to the commission. Along with improving the organizational flow of MSW requirements, the commission will update all relevant cross-references and citations.

SECTION BY SECTION DISCUSSION

The commission proposes administrative changes throughout the proposed rules to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines. These changes include spelling out acronyms, updating references to the TCEQ’s predecessor agencies, and updating cross-references.

Additionally, the commission proposes to change "applicant" to "owner or operator" throughout the rules. The commission proposes this change based on the requirements of 30 TAC §305.43(b), which states that for a solid waste permit application, the owner of a facility must submit an application, unless a facility is owned by one person and operated by another, in which case the operator must submit an application. The commission proposes to apply this change to permit and registration applications.

Further, the commission proposes to change "site" to "facility" throughout the rules. The definition of "facility" is based on the definition of "solid waste facility" found in Texas Health and Safety Code (THSC), §361.003, Definitions.

The commission proposes to change "MSWLF" to "MSW landfill" or "solid waste management unit" as appropriate throughout the rules. MSWLF is a term used in 40 Code of Federal Regulations (CFR) Part 258 for landfills that receive household waste. An MSWLF is also described in these rules as a Type I landfill. This change is necessary since requirements throughout these rules apply also to Type IV landfills and other solid waste management units in addition to landfills.

The commission proposes to refer to a landfill "cell" rather than a landfill "trench" throughout the rules to be consistent with the proposed new definition for a landfill cell that includes a trench or pit.

The commission proposes to refer to "medical waste" rather than "special waste from health care-related facilities" throughout the rules to establish a nomenclature more consistent with federal requirements for regulated medical waste.

The commission proposes to repeal certain sections and either delete the requirements contained in those sections or move the requirements from the repealed sections to new sections to improve the organization of the requirements in the chapter and to improve readability. The proposed reorganization of this chapter would remove redundancy in the requirements and gather similar requirements in the same section. Specific changes are noted in the following discussion regarding each section.

Finally, the commission proposes a comprehensive renumbering of sections in Chapter 330 to allow space for future rules, as necessary.

The commission proposes to amend §330.1, Declaration and Applicability, by changing the title to Purpose and Applicability to more appropriately reflect the contents of the section. The commission proposes to delete the requirement for the owner or operator to comply with all other applicable state and federal rules or laws in §330.1(a) because these other rules and laws are beyond the enforcement authority of the TCEQ. The commission proposes to move §330.3(a) to proposed new §330.1(a). The commission proposes to revise §330.1(a) to state that this chapter covers all aspects of MSW management, including air emissions from MSW landfill facilities and transfer stations. Cross-references to other subchapters from Subchapter B have been reduced. The air requirements are proposed in new Subchapter U, Standard Air Permits for Municipal Solid Waste Landfill Facilities and Transfer Stations. The commission proposes to revise §330.1(a) to specify when changed portions of this chapter will be implemented. The commission is proposing new §330.1 to state the general applicability provisions for existing permits, registrations, and other types of authorizations. Permits and registrations that existed before these rule revisions (2006 Revisions) are effective, generally remain valid except as expressly provided otherwise. Several of the revised subchapters include provisions that expressly supersede provisions contained in existing authorizations or require revisions to be made to existing authorizations. As to applications for permits and registrations that are pending upon the effective date of the revised rules, applications for new permits and major amendments to existing permits that are administratively complete and registration applications for which the executive director has completed a technical review shall be considered under the former rules. Authorizations, other than permits and registrations, that existed before the 2006 Revisions become effective shall generally comply with the 2006 Revisions within 120 days of the 2006 Revisions becoming effective.

The commission proposes to revise §330.1(b) to state that persons having a permit by rule must seek separate authorizations to conduct other waste management activities at a facility. This proposed provision will ensure that a person seeking to engage in waste management activities other than what is authorized by a permit by rule will obtain the proper authorizations. The commission proposes new §330.1(c), which clarifies the applicability of Subchapter A to sludge use, disposal, and transportation with respect to those requirements found in 30 TAC Chapter 312, Sludge Use, Disposal, and Transportation. The commission proposes a new subsection (d) to clarify that only those persons whose MSW composting operations are subject to a permit are subject to proposed Subchapter B, Permit and Registration Application Procedures.

The commission proposes to repeal §330.2, Definitions, and move the definitions from §330.2 to proposed new §330.3.

The commission proposes to repeal §330.3, Applicability. The commission proposes to move the requirements from §330.3(a) to proposed new §330.1(a); from §330.3(b) - (d) to proposed new §330.5(c) - (e); from §330.3(e) to proposed new §330.5(b)(1) - (3); from §330.3(f) to proposed new §330.63(d)(5); from §330.3(g) to proposed new §330.5(b)(4) - (6); from §330.3(h) to

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The commission proposes new §330.3, Definitions, to include new definitions for the following terms: animal crematory; bioreactor; commerce physical construction; contaminated water; grease trap waste; grill waste; landfill mining; low volume transfer station; new facility; notification; off-site; on-site; operating hours; process to further reduce pathogens; permitted landfill; physical construction; universal waste; waste acceptance hours; and white goods.

The commission proposes new §330.3 to include definitions for the following terms: ancillary equipment; boiler; Class 1 wastes; Class 2 wastes; Class 3 wastes; container; incinerator; injection well; land treatment unit; landfill; landfill cell; plasma arc incinerator; solid waste management unit; tank; and tank system. These definitions are derived from definitions in 30 TAC Chapter 335, Subchapter A, Industrial Solid Waste and Municipal Hazardous Waste.

The commission proposes new §330.3 to include revised definitions for the following terms: aquifer, to further establish what is considered significant quantities of groundwater; citizen collection station, to allow small quantities of commercial waste to be deposited in these stations for small communities where regular collection is not available; composite liner, to refer to geomembranes rather than flexible membranes and that the soil liner shall be recompacted soil deposited in lifts; contaminate, to be properly defined as a verb; facility, to include proposed waste management activities; floodplain, to add the criteria used by the Federal Emergency Management Agency when classifying flood hazard zones; generator; household waste, to remove the redundant mention of yard waste since brush includes yard waste and is used within the definition of household waste, and to remove the condition that brush not contain household waste since this is a circular definition and the definition of brush is exclusive of household waste; industrial solid waste, to more closely follow the definition in Chapter 335, Subchapter A, Industrial Solid Waste and Municipal Solid Waste; inert material, to include items previously defined as man-made inert material and concrete with reinforcing steel; monofil, to refer to a landfill cell rather than a landfill trench; municipal solid waste landfill unit, to include vertical expansions; polychlorinated biphenyls, to follow the definition found in 40 CFR Part 761; population equivalent, to include vertical expansions; processing, to closely follow the definition in Chapter 335, Subchapter A, Industrial Solid Waste and Municipal Hazardous Waste.

The commission proposes to move the following requirements from §330.2 because these terms are defined in 30 TAC §330.2(137)(O), and to delete any waste stream other than household or commercial garbage, refuse, or rubbish from the current definition in §330.2(137)(R) for special waste.

The commission proposes a revised definition for: special waste from health care-related facilities, to include treated and untreated waste and to reference the sources specified in 25 TAC §1.134; and storage, to include keeping, accumulating, or aggregating solid waste for greater than 24 hours.

The commission proposes to exclude the following definitions from §330.2 in proposed new §330.3: CFR; Class I industrial solid waste; industrial hazardous waste; man-made inert material; MSWLF; municipal solid waste site; navigable waters; new MSWLF unit; opposed case; other regulated medical waste; relevant point of compliance; shall; should; store; SWDA; TACB; Texas Civil Statutes; TWC; unconfined water; and unit. These terms are outdated, are no longer used in this chapter, or are unnecessary.

The commission proposes to delete the following definitions from §330.2 because these terms are defined in 30 TAC §3.2, Definitions: commission; EPA; executive director; permit; and person.

The commission proposes to exclude definitions for acid and lead in proposed new §330.3 because these words are in common and normal usage and need not be specifically defined within this chapter.

The commission proposes to repeal §330.4, Permit Required. The commission proposes to move the following requirements from this section to the following proposed new sections:
§330.4(a) and (b) to proposed new §330.7(a); §330.4(c) to proposed new §330.7(d); §330.4(d) to proposed new §330.9(b); §330.4(f)(1)(A) and (B), §330.4(j), the first three sentences of §330.4(r), and §330.4(aa) to proposed new §330.11(e); §330.4(f)(1)(D) to proposed new §330.13(g); §330.4(g) to proposed new §330.9(c); §330.4(h) to proposed new §330.9(d); §330.4(i) to proposed new §330.11(f); §330.4(j) to proposed new §330.11(e)(3); §330.4(k) to proposed new §330.9(e); §330.4(l) to proposed new §330.11(f); §330.4(m) to proposed new §330.73(a); §330.4(p) to proposed new §330.13(h); §330.4(q) to proposed new §330.9(f); §330.4(r) to proposed new §330.7(b); §330.4(s) to proposed new §330.9(g); §330.4(t) and §330.72(h) to proposed new §330.9(h); §330.4(u) to proposed new §330.9(i); §330.4(v) to proposed new §330.13(a); §330.4(w) to new §330.13(b); §330.4(x) to new §330.7(d); §330.4(y) to new §330.13(c); §330.4(z) to §330.7(e); and §330.4(aa) to §330.11(e). The commission proposes to delete §330.4(f)(2) since soil, dirt, rock, sand, or other natural or man-made inert materials used to fill the land to make the land suitable for construction of surface improvements is not a solid waste as defined in proposed new §330.3(148) and is therefore not subject to the requirements of Chapter 330.

Additionally, as a streamlining initiative for low-impact waste management activities, the commission proposes to replace the registration requirement of §330.4(n) for Type IX facilities that recover landfill gas for beneficial use with a registration by rule in proposed new §330.9(k).

The commission proposes to repeal §330.5, General Prohibitions, and move the requirements of this section to proposed new §330.15.

The commission proposes new §330.5, Classification of Municipal Solid Waste Facilities. The commission proposes to move the requirements from §330.5(h) and §330.41 to proposed new §330.5(a); from §330.3(e) and (g) to proposed new §330.5(b) and change “facility unit” to “facility” so that the waste acceptance rate applies to the entire facility for all waste types to be received at the facility; from §330.3(b) - (d) to proposed new §330.5(c) - (e); and from §330.3(i) to proposed new §330.5(b)(7). The commission proposes new §330.5(b)(1)(A) to implement House Bill 1609. 79th Legislature, by updating the description of the amount of waste that can be accepted by an arid exempt facility. New §330.5(b)(2) provides for the transition from the existing 20 tons per day disposal limit to the new 40-ton limit for Type IAE landfills.

The commission proposes to repeal §330.6, Technical Guidelines, and move the requirements of this section to proposed new §330.17.

The commission proposes to repeal §330.7, Deed Recordation, and move the requirements of this section to proposed new §330.19.

The commission proposes new §330.7, Permit Required, to specify only those MSW management activities that must be permitted by the commission. The commission proposes to move the requirements from §330.4(a) and (b) to proposed new §330.7(a), §330.4(r) to proposed new §330.7(b), and §330.4(x) to proposed new §330.7(d). In subsection (a), the commission proposes to add the term “generator” to the list of entities against which the executive director may take recourse if these rules are violated. The commission proposes the addition of the term “generator” to ensure that generators properly characterize their waste and send it to appropriately authorized facilities. Additionally, the commission proposes new §330.7(c) concerning permits by rule for persons that compact or transport waste in enclosed containers destined for a Type IV facility. The commission proposes to combine the separate special municipal route permits and transporter route special permits into an annual permit by rule for special collection routes. The commission proposes that a transporter need only claim a single permit by rule but pay a $100 per vehicle fee. The commission proposes to move the requirements from §330.25 and §330.32(f) to proposed new §330.7(c) and to modify the formatting and language in the proposed new subsection to meet current rule writing standards.

The commission proposes to move the permit by rule requirements of §330.4(z) and §330.75 for animal crematories to proposed new §330.7(e) with two changes. To remove inconsistencies between the solid waste and air permitting programs, the commission proposes to remove the feed limitation of 1,600 pounds per day specified in §330.75(b)(1) and instead have proposed new §330.7(e)(2) refer to the feed limitations specified for these types of incinerators in 30 TAC §106.494. Also, the commission proposes to remove the operating hours specified in §330.75(b)(1) and instead have proposed new §330.7(e)(12) refer to 30 TAC 111.149. These proposed changes will allow for greater flexibility in the operation of animal crematories.

The commission proposes solid waste permits by rule in new §330.7(f) for Type IV MSW landfills that qualify for the arid exemption allowed in proposed new §330.5(b), new §330.7(g) for dual-chamber incinerators if the owner or operator complies with 30 TAC §106.491, Dual-Chamber Incinerators, and new §330.7(h) for air curtain incinerators if the owner or operator complies with 30 TAC §106.496, Air Curtin Incinerators. The commission is proposing the Type IV landfill arid exemption by rule to streamline the authorization process for low-impact waste management activities. The commission is proposing new permits by rule for dual- chamber incinerators and air curtain incinerators to establish consistency with the current authorizations for these activities in Chapter 106. An MSW permit by rule for dual-chamber incinerators is currently authorized in §106.491(d)(2) and is proposed to be included in new §330.7(g). Air curtain incinerators are currently authorized in §106.496, but are currently required by §106.496(g)(4)(i) to have separate authorization from the executive director at landfills. As a streamlining initiative, the commission proposes new §330.7(h) to remove the ban on air curtain incinerators at MSW landfills and to eliminate the need for a separate authorization from the executive director at MSW facilities.

The commission also proposes an air permit by rule in new §330.7(i) for air emissions at MSW landfill facilities if the owner or operator complies with proposed new Subchapter U, Standard Air Permits for Municipal Solid Waste Landfill Facilities and Transfer Stations.

The commission proposes to repeal §330.8, Notification Requirements, and move the requirements of this section to proposed new §330.11, Notification Required.

The commission proposes new §330.9, Registration Required, to list all MSW management activities that are exempt from permitting requirements but that still require commission approval by registration. To promote communication and coordination with TCEQ’s regional offices, the commission proposes in new §330.9(a) to require a person to submit a claim for a registration by rule in duplicate with one copy sent directly to the TCEQ’s regional office. The commission proposes to move the
requirements from §330.73(b)(1) and (c)(1) to proposed new §330.9(a); §330.4(d) to proposed new §330.9(b); §330.4(g) to proposed new §330.9(c); §330.4(h) to proposed new §330.9(d); §330.4(k) to proposed new §330.9(e); §330.4(q) to proposed new §330.9(f); §330.4(s) to proposed new §330.9(g); §330.4(t) and §330.72(h) to proposed new §330.9(h); §330.4(u) to proposed new §330.9(i); and §330.402 to proposed new §330.9(j). The commission proposes new §330.9(h)(5) to state that transporters who only adjust septage pH during transportation are not subject to the registration requirement of §330.9(h), but must instead register under 312.142. The commission proposes this provision to provide clarity about which rules apply to transporters who adjust septage pH during transportation.

The commission proposes a solid waste registration by rule for Type IX facilities that recover landfill gas for beneficial use. New §330.9(k) replaces §330.4(n) and §330.70. Since owners or operators of such facilities must receive separate commission authorizations for air emissions from these facilities, the commission is proposing the Type IX facility registration by rule to streamline the authorization process for these low-impact waste management activities.

The commission proposes a solid waste registration by rule for transporters of untreated medical waste that are not the generator. The commission is proposing this solid waste registration by rule to streamline the authorization process for low-impact waste management activities. The commission proposes to replace §330.1005(b) with new §330.9(l). Drivers’ names and license numbers are proposed to no longer be required as part of the registration by rule. The commission proposes to delete this requirement since this information does not impact whether the vehicle meets the requirements in this chapter. Since the registrations expire on an annual basis, the commission intends to transition these authorizations from a registration to a registration by rule upon expiration of the registration.

The commission proposes a solid waste registration by rule for owners or operators of mobile treatment units conducting on-site treatment of medical waste that are not the generator. The commission proposes to replace §330.1010(b), (d), and (e) with new §330.9(m). The commission proposes the solid waste registration by rule to streamline the authorization process. The commission proposes to eliminate the requirement for drivers’ names and license numbers as part of the registration by rule since this information does not impact whether the mobile treatment unit meets the requirements in this chapter. The commission proposes new §330.9(m)(1)(E) – (H) to require owners or operators of mobile treatment units to provide the chemical preparations that will be used as part of the treatment process, evidence of competency, a description of the management and disposal of process waters generated during treatment events, and a written contingency plan to describe how waste will be managed in the event of equipment breakdown. This additional information is necessary to ensure that all waste and treatment residues will be properly treated. The commission proposes new §330.9(m)(1)(i) to require owners or operators of medical waste mobile treatment units to provide evidence of financial assurance using procedures specified in Subchapter L, of this chapter and 30 TAC Chapter 37, Subchapter R, Financial Assurance for Municipal Solid Waste Facilities, to ensure that money is available to provide for the removal of all waste and waste residues if the owner or operator abandons the medical waste mobile treatment unit. A cost estimate of the cost to remove and dispose of waste and disinfect the waste treatment equipment shall be submitted prior to initiating operation. The requirement to notify the executive director of changes to the registration is proposed in new §330.9(m)(5) to be extended from 15 days to 30 days to allow additional reporting flexibility. Since the registrations expire on an annual basis, the commission intends to transition these authorizations from a registration to a registration by rule upon expiration of the registration.

To reduce the level of agency approvals of low-impact waste management activities and to facilitate treatment of medical waste throughout Texas, the commission proposes new §330.9(n) to allow the registration of facilities that will store or process untreated medical waste that is received from off-site sources, as described in proposed §330.1205(b).

The commission proposes to require a solid waste registration for owners or operators of new liquid waste transfer facilities that receive 32,000 gallons per day or less or will be located on, or at, other commission authorized facilities. These facilities had been authorized through a notification, but the commission believes that these facilities are best evaluated through the registration process. All existing liquid waste transfer facilities will be allowed to continue operation as a notification to the commission. The commission proposes to replace §330.4(r) and §330.66(a)(1) with new §330.9(o) for new liquid waste transfer facilities that receive 32,000 gallons per day or less and new §330.11(e)(4) for existing facilities. The commission proposes to replace §330.66(a)(7) with new §330.9(p) for new liquid waste transfer facilities located on, or at, other commission authorized facilities and new §330.11(e)(7) for existing facilities.

The commission proposes to repeal §330.10, Closure, and move the requirements of this section to proposed new §330.21.

The commission proposes to repeal §330.11, Relationships with Other Governmental Entities. The commission proposes to move the requirements of §330.11(a) to proposed new Subchapter U and §330.11(b) - (i) to proposed new §330.23(a) - (h).

The commission proposes new §330.11, Notification Required, to clarify those persons that do not need commission approval for certain MSW management activities but who still must notify the commission before starting MSW management activity at a location or property. The notification is a one-time requirement for the type of initial waste management activity to occur at a location or property and does not need to be renewed or repeated. The person must notify the commission 90 days prior to conducting the initial waste management activity to allow the TCEQ staff time to provide compliance assistance, to investigate whether the activity is exempt from permitting and registration requirements, and to provide any appropriate technical recommendations regarding prudent management of the waste. Conversely, requiring notification 90 days prior to engaging in the initial waste management activity allows TCEQ staff to advise the notifier if the activity is subject to permitting or registration requirements and to prevent any unauthorized management of MSW. After the initial notification, persons have the continuing obligation to provide prompt notification of any changes or additional waste management activities at a location or property. These subsequent one-time notifications allow the TCEQ staff to provide technical recommendations or to evaluate if the activity is subject to permitting or registration. The commission seeks comment on whether the 90-day prior notification time is appropriate or whether a different time period would be suitable for the notification of initial waste management activity at a location or property. To promote communication and coordination with TCEQ's...
The commission proposes new §330.15, General Prohibitions. The commission proposes to move requirements from §330.5 to new §330.15; and §§330.66(e), 330.71(b), 330.72(h), 330.73(f), 330.75(a), 330.403(1) - (6), and 330.409(5) to proposed new §330.15(a). Proposed §330.15(d) removes the prohibition on air curtain incinerators, as proposed to be allowed by new §330.7(h), to establish consistency with the current authorizations for these activities in Chapter 106. The commission proposes §330.15(e)(4) to allow whole or scrapped tires to be disposed if processed in an approved, secure manner before disposal. As allowed by THSC, §361.112, the commission may grant an exception to the disposal ban of whole tires if the commission finds that circumstances warrant the exception. The commission proposes this provision to recognize that new technologies may be developed that would provide for whole tires to be securely disposed of in a landfill. The commission invites comment as well as any data or demonstrations regarding whole tire processing before disposal. Proposed §330.15(e)(5) modifies the requirements regarding items containing chlorinated fluorocarbon to conform this section to the changes made to proposed §330.147(c) in the site operating plan rules, which were effective December 2, 2004. The commission proposes to move requirements from §330.55(b)(1) and §330.403(1) - (6) to new §330.15(h). The commission invites comments as well as any data or demonstrations regarding any appropriate regulatory measures or programs, if any, relating to the disposal of electronic wastes, such as computers and televisions, in MSW facilities.

The commission proposes new §330.17, Technical Guidelines. The commission proposes to move the first sentence from §330.6 to this section and to specify that guidelines are suggestions only.

The commission proposes new §330.19, Deed Recordation. The commission proposes to move the requirements from §330.7 to this section. These requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes to repeal §330.21, Applicability, to avoid redundancy with §330.1.

The commission proposes new §330.21, Closure. The commission proposes to move the requirements from §330.10 to this section, to add a new subsection (a), and to modify subsection (b). Proposed §330.21(a) specifies that persons exempt from permitting, registration, and notification requirements are not subject to closure requirements. The commission proposes this provision to clarify that closure requirements are not applicable to exempt waste management activities. Additionally, this section allows a person to meet the closure requirements of this chapter by meeting the remedy standards in 30 TAC Chapter 350, Texas Risk Reduction Program, to provide additional flexibility regarding closure standards. The commission proposes to modify the requirement in §330.21(b) by requiring a person that is registered under §330.9 to follow the closure requirements of this section.

The commission proposes to repeal §330.22, Storage Requirements, and move the requirements of this section to proposed new §330.209. These requirements were moved without substantive changes.

The commission proposes §330.11(a) to require a person to submit a notification in duplicate with one copy sent directly to the TCEQ’s regional office. Requirements from §330.8(a) - (c) are proposed in new §330.11(a) - (c). The commission proposes to move requirements from §330.4(c) to new §330.11(d); §330.4(f)(1)(A) and (B), (j), the first three sentences of (r) and (aa), and §330.66(a)(5) and (7) and (c) to proposed new §330.11(e); §330.4(i) and (l) to proposed new §330.11(f); and §330.1005(p)(2) to proposed new §330.11(h). The commission proposes to add subsection (f) to state that generators conducting processing of medical waste on-site, as defined by proposed new §330.1205(b), need only notify the executive director of the activity. The commission proposes to add subsection (g) to authorize low volume transfer stations as a notification to the commission provided that all local county approvals are granted and the adjacent landowners have been notified of the activity.

The commission proposes to repeal §330.12, Relationship with County Licensing System, and to move the requirements of this section to proposed new §330.25.

The commission proposes to repeal §330.13, Severability, as part of the effort to repeal obsolete or unnecessary rule provisions and to conform the chapter with the TCEQ’s current rule writing guidelines. Although the commission previously included severability clauses in rule chapters, the commission no longer follows this practice.

The commission proposes new §330.13, Waste Management Activities Exempt from Permitting, Registration, or Notification, for those persons whose waste management activities are exempt from permitting, registration, and notification requirements of this chapter but who must still comply with certain requirements such as the prevention of nuisance conditions and deed recordation. The commission proposes to move requirements from §330.4(v) to new §330.13(a) and remove the deed recordation requirement for individuals who dispose up to 2,000 pounds per year of litter or waste on their own land for non-commercial, non-industrial purposes. The requirements of proposed §330.13(b) and (c) are from §330.4(w) and (y), respectively. Proposed §330.13(d) specifies that generators storing medical waste “on-site,” as proposed to be defined by new §330.1205(b), are not subject to permit, registration, or notification requirements. The commission believes that health care-related facilities have the necessary expertise to store waste appropriately and does not believe that requiring a permit, registration, or notification would serve a useful purpose. Based on §330.1009(p)(1), proposed §330.13(e) is added to specify that a permit, registration, notification, or other authorization is not required for generators who generate less than 50 pounds per month of medical waste and who transport their own untreated waste. The commission proposes to add §330.13(f) to state that, except as required by §330.7(c)(2) and (3) and §330.9(h), transporters of MSW do not require a permit, registration, or notification. The commission proposes to move the requirements of §330.4(f)(1)(D) to proposed new §330.13(g); and §330.4(p) to proposed new §330.13(h).

The commission proposes to repeal §330.14, Arid Exemption Process, and to move the requirements of this section to proposed new §330.63(d)(5) and (e)(6).

The commission proposes to repeal §330.15, Effective Date, and to move the requirements of this section to proposed new §330.1.
The commission proposes to repeal §330.23, Approved Containers, and move the requirements of this section to proposed new §330.211. These requirements were moved without substantive changes.

The commission proposes new §330.23, Relationships with Other Governmental Entities, and moves the requirements from §330.11(b) - (i) to this section. These requirements were moved without substantive changes; however, the statutory references were updated and the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes to repeal §330.24, Citizen’s Collection Stations, and to move the requirements of this section to proposed new §330.213. These requirements were moved without substantive changes.

The commission proposes to repeal §330.25, Requirements for Stationary Compactors, and move the requirements of §330.25 to proposed new §330.7(c)(1) and §330.215. As a streamlining initiative, the commission proposes to delete the requirement of §330.25(c)(3) for the transporter to provide the Type IV landfill operator with a trip ticket of a waste load from a stationary compactor. A generator of a stationary compactor must certify, in accordance with proposed new §330.7(c)(1)(A)(vii) that the contents of the compactor are free of putrescible, hazardous, infectious, and any other waste not allowed in an MSW Type IV landfill.

The commission proposes new §330.25, Relationship with County Licensing System. The commission proposes to move the requirements from §330.12 to this section, a new §330.25(b)(1)(A) applicable to MSW facilities subject to a permitting requirement, and a new §330.25(b)(1)(B) for all other MSW facilities. The commission intends that proposed new §330.25(b)(1)(B) will encourage more counties to authorize lower priority MSW facilities using local authority. The commission moved §330.12(b)(1)(B) - (E) to proposed new §330.25(b)(1)(C) - (F). The commission proposes a new §330.25(c) that more closely follows the statutory language of THSC, §361.154 regarding County Licensing Authority.

The commission proposes to repeal §330.26, Storage of Litter and Other Waste, and move this requirement to proposed new §330.209.

The commission proposes to repeal §330.31, Applicability, and move the requirements of this section to §330.101.

The commission proposes to repeal §330.32, Collection and Transportation Requirements, and move the requirements of §330.32(a) - (e) to proposed new §330.103; and §330.32(f) - (h) to proposed new §330.7(c)(2) and (3).

The commission proposes to repeal §330.33, Collection Vehicles and Equipment, and move the requirements of this section to proposed new §330.105.

The commission proposes to repeal §330.34, Collection Spillage, and move the requirements of this section to proposed new §330.107.

The commission proposes to repeal §330.41, Types of Municipal Solid Waste Sites, and move the requirements of this section to proposed new §330.5(b).

The commission proposes to add “and registration” after each instance that “permit” appears throughout proposed Subchapter B.

The commission proposes to repeal §330.50, Pre-application Review, and to move the requirements of this section to proposed new §330.53.

The commission proposes to repeal §330.51, Permit Application for Municipal Solid Waste Facilities. The commission proposes to move the requirements of §330.51(a) to proposed new §330.57(a) and §330.57(c); §330.51(b)(1) and (2) to proposed new §330.57(d); §330.51(b)(3) to proposed new §330.61(a); §330.51(b)(4) to proposed new §330.63(b)(2)(D); §330.51(b)(5) and (6)(A) to proposed new §330.61(k)(3) and (4); §330.51(b)(6)(B) and (C) to proposed new §330.61(i)(4) and (5); §330.51(b)(7) to proposed new §330.61(m)(2); §330.51(b)(8) to proposed new §330.61(n)(2); §330.51(b)(9) to proposed new §330.61(o); §330.51(b)(10) to proposed new §330.61(p); §330.51(c) - (f) to proposed new §330.57(e) - (h).

The commission proposes to repeal §330.52, Technical Requirements of Part I of the Application, and to move the requirements of §330.52(a)(1), (3), and (4) to proposed new §330.59(a); §330.52(a)(2) to proposed new §330.53(1); §330.52(b)(1) - (3) to proposed new §330.57(g); §330.52(b)(4)(A) to proposed new §330.61(c); §330.52(b)(4)(B) and (D) and §330.52(b)(5) to proposed new §330.59(c); §330.52(b)(4)(C) to proposed new §330.61(e); §330.52(b)(6) - (9) to proposed new §330.59(d) - (f); §330.52(b)(10)(A) to proposed new §330.59(g); and §330.52(b)(11) to proposed new §330.63(j). The commission proposes to delete the requirement for an applicant to appoint an engineer in §330.52(b)(10)(B); however, proposed §330.57(f) still requires that plans and specifications be signed and sealed by a currently licensed professional engineer.

The commission proposes to repeal §330.53, Technical Requirements of Part II of the Application. The commission proposes to move the requirements of §330.53(a) to proposed new §330.53(1) - (3) to new §330.57(g); §330.53(b)(4) to new §330.61(a); §330.53(b)(5) to new §330.61(c); §330.53(b)(6) - (11) to new §330.61(f) - (k); §330.53(b)(12) and §330.53(b)(13)(B) and (C) to new §330.61(m) and (n); and §330.53(b)(15)(A) to new §330.551(b).

The commission proposes new §330.53, Pre-application Review. The commission proposes to move the requirements from §330.50 to this section. These requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines. The commission proposes to move requirements from §330.52(a)(2) to new §330.53(c)(1). These requirements were moved without substantive changes.

The commission proposes to repeal §330.54, Technical Requirements of Part III of the Application, and to move the requirements of §330.54(1) and (2) to proposed new §330.57(g); §330.54(3) to proposed new §330.61(b); and §330.54(4) to proposed new §330.63.

The commission proposes to repeal §330.55, Site Development Plan. The commission proposes to move the requirements of §330.55(a)(1) to proposed new §330.63(d)(4)(B); §330.55(a)(2) to proposed new §330.153(a); §330.55(a)(3) to proposed new §330.63(b)(1); §330.55(a)(4) to proposed new §330.63(d)(4)(D); §330.55(b)(1) to proposed new §330.15(h); §330.55(b)(2) and...
(3) to proposed new §330.305(b) and (c); §330.55(b)(4) - (6) to proposed new §330.305(e) - (g); §330.55(b)(7) to proposed new §330.307(a) and (b); §330.55(b)(8) to proposed new §330.305(d); §330.55(b)(9) to proposed new §330.63(b)(5); and §330.55(b)(10) to proposed new §330.143(b).

The commission proposes new §330.55. Other Authorizations. This section states that other agency authorizations relating to air emissions and storm water and wastewater management may be necessary in addition to those requested in this chapter. Air requirements for MSW and industrial solid waste facilities are in proposed Subchapter U, Standard Air Permits for Municipal Solid Waste Landfill Facilities and Transfer Stations. The commission proposes to move requirements from §330.59(b)(4) to new §330.55(a); and from §330.59(b)(3) to new §330.55(b).

The commission proposes to repeal §330.56, Attachments to the Site Development Plan. The commission proposes to move the requirements of §330.56(a) to proposed new §330.61(d); §330.56(b) to proposed new §330.63(d)(4)(E) and (F); §330.56(d) to proposed new §330.63(e); §330.56(e)(3) and (8) to proposed new §330.63(f); §330.56(f) to proposed new §§§330.301 - 330.307; §330.56(g) to proposed new §330.457(e)(5); §330.56(h) to proposed new §330.63(j); §330.56(i) to proposed new §330.63(d)(3)(C) and §330.63(d)(4)(G); §330.56(k) to proposed new §330.63(f); §330.56(l) to proposed new §330.63(h); §330.56(m) to proposed new §330.63(i); §330.56(n) to proposed new §330.371; §330.56(o) to proposed new §§§330.65(c), 330.177, 330.207, and 330.333.

The commission proposes to repeal §330.57, Technical Requirements of Part IV of the Application, and move the requirements of this section to proposed new §330.65.

The commission proposes new §330.57, Permit and Registration Applications for Municipal Solid Waste Facilities. The commission proposes to move the requirements from §§330.71(e), 330.72(f), 330.73(d), and 330.956(d) - (g) to this section. These requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines. The commission proposes to move these requirements to eliminate redundancy in the rules and consolidate these requirements into one section. The commission proposes to move requirements from §330.51(a) and §330.61 to new §330.57(a); §330.60 and §330.65(d) to new §330.57(b); §330.51(a) and §330.53(a) to new §330.57(c); §330.51(b)(1) and (2) and §330.416(e) to proposed new §330.57(d); §330.51(d) and §330.416(h)(1) to new §330.57(f); §§330.51(e), 330.52(b), 330.53(b)(1)(3), 330.54(1) and (2), 330.64(b), 330.416(a) and (b), 330.416(h)(2), and 330.416(j) to new §330.57(g); and §§330.51(f), 330.415(c), and 330.416(i) to new §330.57(h).

These requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, to conform with Texas Register requirements and agency guidelines. The commission proposes to move these requirements to one section since the requirements are all related to the format of an application for a permit or a registration. Consolidating these requirements into one section will make it easier for the applicant to know how to format an application for a permit or a registration. The commission proposes to add §330.57(e)(2) to require that the owner or operator furnish Parts I and II of the application to the Regional Solid Waste Council of Government. This will help the council of government in its review of the application. In §330.57(f) the commission proposes to allow a professional geoscientist to sign and seal applicable portions of the application. Additionally, the commission proposes to add a reference to 30 TAC Chapter 281 in §330.57(c) to clarify that there are additional application requirements that an owner or operator must follow. The commission proposes new §330.57(i) to require the owner or operator of a permit, registration, amendment, or modification application to post a complete copy, including all revisions, to a publicly accessible Web site. The commission further proposes to provide the identity of all owners and operators filing an MSW application on the commission’s Web site with a link to the Web site where the application is posted.

The commission proposes to repeal §330.58, Technical Requirements of Part V of the Application. The commission proposes to move the requirement to maintain the approved application and as-built construction plans and specifications on site and available for inspection to proposed new §330.125(a) and §330.219(a). As a streamlining initiative, the commission proposes to remove the requirement that as-built construction plans and specifications be submitted to the executive director.

The commission proposes to repeal §330.59, Additional Technical Requirements of the Application for Solid Waste Processing and Experimental Sites (Types V and VI). The commission proposes to move the requirements from §330.59(b) and §330.59(d)(4) to proposed new §330.63(b); §330.59(d)(1) to new §330.203(a); §330.59(d)(2) to new §330.205(a); §330.59(d)(3) to new §330.65(d); and §330.59(d)(5) to new §§§330.201 - 330.247.

The commission proposes new §330.59, Contents of Part I of the Application. The commission proposes to move the requirements of §330.52(a)(1) to new §330.59(a)(1); §330.52(a)(3) and (4) to new §330.59(a)(2) and (3); §330.52(b)(4)(A) to new §330.59(c)(1); §330.52(b)(4)(B) to new §330.59(c)(2); §330.52(b)(4)(D) to new §330.59(c)(3)(A); §330.52(b)(5) to new §330.59(c)(3)(B); §330.52(b)(6) and (7) to new §330.59(d); §330.52(b)(8) to new §330.59(e); §330.52(b)(9) and §330.60(b)(2) to new §330.59(f); §330.52(b)(10)(A) to new §330.59(g); and §330.954(a)(7) to new §330.59(h)(2). The commission proposes new §330.59(c)(3)(B) to require the owner or operator to submit the adjacent and potentially affected landowners list and mineral interest owners list in electronic form, as allowed by 30 TAC §39.5(b), General Provisions. The commission proposes in new §330.59(c)(3)(A) and (B) to require that the owner or operator provide a list and map of all mineral interest owners under the facility in order for those owners to receive notice of applications. The commission invites comments concerning providing notice to mineral interest owners. The commission proposes to add a new §330.59(h)(1) to charge a $150 application fee for permits, registrations, amendments, modifications, and temporary authorizations as allowed by 30 TAC §305.53. The remainder of the requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes to repeal §330.60, Technical Requirements of an Application for Registration of Solid Waste Facilities.

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The commission proposes to move the requirements from §330.60(a) to new §330.57(b); §330.60(b)(1) to new §330.63(j); and §330.60(b)(2) to new §330.59(f).

The commission proposes to repeal §330.61. Land-Use Public Hearing, and move the requirements of this section to proposed new §330.57(a).

The commission proposes new §330.61. Contents of Part II of the Application. The commission proposes to move the requirements of §§330.51(b)(3), 330.53(b)(4), and 330.416(e)(3) to new §330.61(a); §§330.54(3), 330.65(d)(4)(C), 330.71(e)(4)(B), 330.72(f)(4)(B), and 330.73(d)(3)(B) to new §330.61(b); §330.52(b)(4)(A) and §330.53(b)(5) to new §330.61(c); §330.55(a) and §330.416(m)(1)(H) to new §330.61(d); §330.52(b)(4)(C) to new §330.61(e); §330.416(k) to new §330.61(h); §330.416(l) to new §330.61(i); §330.51(b)(6)(B) and (C) to proposed new §330.61(i)(4) and (5); §330.53(b)(6) - (11) to new §330.61(f) - (k); §330.51(b)(5) and (6)(A) to proposed new §330.61(k)(3) and (4), to include the requirements in §§330.131 to new §330.61(l), to move the requirements of §§330.53(b)(12) and 330.53.513(13)(B) and (C) to new §330.61(m) and (n); §330.51(b)(7) to proposed new §330.61(m)(2); §330.51(b)(8) to proposed new §330.61(n)(2); and §330.51(b)(9) and (10) to new §330.61(o) and (p). These requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines. The commission proposes to add a new requirement in §330.61(b)(1) that the waste acceptance plan required by proposed §330.203(a) be included in Part II of an application. The commission proposes to add a new requirement in §330.61(h)(4) that allows population density and proximity to residences and other uses to be considered in the assessment of compatibility. This will allow unincorporated areas to be considered during the assessment. The commission also proposes to add a new requirement in §330.61(h)(5) that well density may be considered for assessment of compatibility to specify the purpose for which the information on wells will be used. Proposed new §330.61(p) requires the owner or operator to document a request for the Regional Solid Waste Council of Government and any local government, as appropriate, to review the application for compliance with regional and local solid waste plans.

The commission proposes to repeal §330.62. Property Rights, and to move, with the exception relating to subsection (c), the requirements of this section to proposed new §330.67. The commission proposes to delete the requirement in subsection (c) that lease agreements must contain specific provisions delineating mineral rights attached to the property and the rights to any recoverable material that may be buried on the property or landfill gases that may be produced. The commission is deleting this requirement to conform the chapter with recent commission decisions regarding the commission's jurisdiction over mineral rights issues. The owner or operator is obligated to show only that all necessary surface rights, including surface access, have been acquired.

The commission proposes to repeal §330.63. Duration and Limits of Permits, and move the requirements of this section to proposed new §330.71. These conditions are also in Chapter 305, Consolidated Permits. The requirement of §330.63(a) is in §305.66 and §305.127(1)(B)(ii); §330.63(b) is in §305.63(a) and §305.127(1)(F); §330.63(c) is in §305.64; and §330.63(d) is in §305.45(b) and §305.64. The commission solicits comment on whether the duration of a permit should continue to be redundantly specified in Chapter 330, in addition to Chapter 305.

The commission proposes new §330.63. Contents of Part III of the Application. The commission proposes to move the surface water drainage requirements of §330.409(1) and §330.416(m)(1)(D) to proposed new §330.63(c); §330.55(b)(5)(C) and (D) and §330.56(l) to proposed new §330.63(c)(1); and §§330.51(b)(4), 330.408(1), and 330.409(1) to proposed new §330.63(c)(2)(D). The commission proposes that only applications for landfill and compost units include a surface water drainage report that includes all the analysis required by proposed new §330.63(c). The commission proposes to move the requirements of §330.56(d) to proposed new §330.63(e).

The commission proposes this application requirement to be applicable to landfills, compost facilities, and any other application the executive director determines should have a geologic characterization. Other MSW unit types having proper containment structures and waste management practices that would guard against subsurface contamination would generally not need a geologic characterization. The commission proposes to eliminate pre-approval of soil boring plans. Instead, the owner or operator shall be expected to adequately characterize the facility geology as part of the application. The commission proposes new §330.63(e)(4)(B) to expand the property size in Table of Borings from 100 to 600 acres and the corresponding number of borings necessary to properly characterize the property. The commission proposes to move the requirements of §§330.59(b), 330.59(d)(4), and 330.71(e)(5) to new §330.63(b); §330.55(a)(3) to §330.63(b)(1); §330.55(b)(9) to new §330.63(b)(5); §330.51(b)(e) to proposed new §330.63(d); §§330.55(a)(1) to new §330.63(d)(4)(B); §330.55(a)(4) to new §330.63(d)(4)(D); §330.55(d) to new §330.63(d)(4)(E) and (F); §330.56(l) to new §330.63(d)(6)(B); §330.416(m)(1)(E), (G)(i), and (l) to new §330.63(d)(7); §330.73(b)(2), (4), and (5), and (i) to new §330.63(d)(9); §330.56(d) and §330.416(m)(1)(F) to proposed §330.63(e); §330.3(f) and §330.14 to new §330.63(d)(5) and §330.63(e)(6); §330.56(e)(3) - (8) and §330.56(k) to new §330.63(f); §§330.52(b)(11), 330.56(h), and 330.60(b)(1) to new §330.63(j); §§330.56(j) to new §330.63(d)(3)(C) and (4)(G); §330.56(l) to new §330.63(h); and §330.56(m) to new §330.63(i). The commission proposes to move these provisions to the same section to consolidate the information for waste management unit design required in an application. In addition to consolidating waste management unit design information, the commission proposes §330.63(c)(1)(C) to state that sample calculations will be provided to verify that natural drainage patterns will not be "adversely altered," instead of "significantly altered" as required by current §330.55(b)(5)(D). The commission also proposes a new application requirement for information regarding incineration units in proposed new §330.63(d)(2). The commission also proposes to explicitly require information in the application regarding the maximum depth and maximum height of a landfill unit.

The commission proposes to repeal §330.48, Additional Standard Permit Conditions for Municipal Solid Waste Facilities, and move the requirements of this section to proposed new §330.57(g) and §330.73.

The commission proposes to repeal §330.65, Registration for Solid Waste Management Facilities. The commission proposes to move the requirements of §330.65(a) to proposed new §330.9(a); §330.65(b)(1) to proposed new §330.9(a);
§330.65(b)(2) to proposed new §330.71(g); §330.65(c) to proposed new §330.57(e); §330.65(d) to proposed new §330.57(b); §330.65(e) and (f) to proposed new §§330.201 - 330.247; and §330.65(g) to proposed new §330.69(d).

The commission proposes new §330.65, Contents of Part IV of the Application. The commission proposes to move the requirements of §330.56(o) to proposed new §330.65(c); and §330.57 and §330.416(m)(2) to §330.65(a). These requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines. The commission proposes to add a new exemption in §330.65(b) to exempt a facility from having a site operating plan if the facility has an environmental management system approved by the executive director as described in 30 TAC §90.36.

The commission proposes to repeal §330.66, Liquid Waste Transfer Facility Design and Operation, and to move the requirements of §330.66(a)(5) and (7) and §330.66(c) to new §330.11(e); §330.66(b) to new §330.13; §330.66(c) to new §330.9(a) and (p) and §330.11(e)(4) - (7); §330.66(d) to new §330.43; and §330.66(e) to new §330.15.

The commission proposes new §330.67, Property Rights, and to move the requirements from §330.62, with the exception of the provision in §330.62(c), relating to mineral rights, to this section. The remaining requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.69, Public Notice for Registrations, and to move the requirements from §330.62 to this section. The commission proposes to move the requirements of §330.72(j) to proposed new §330.69(a); §§330.65(d)(3)(C), 330.70(d), 330.71(d)(2), 330.73(c)(2), and 330.407(b) to proposed new §330.69(b); §§330.65(g), 330.71(j), 330.71(h), and 330.407(d) to proposed new §330.69(c); §§330.65(g), 330.71(i), and 330.407(e) to proposed new §330.69(d). These requirements were moved with changes to implement House Bill 1609, 79th Legislature, to make public meetings discretionary. The rule provides for the transition from mandatory public meetings for all registrations to the new requirement to provide notice of the opportunity to request a public meeting for these applications. New §330.69 requires applicants for registrations to post signs providing notice of the proposed facility. The formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes to repeal §330.70, Registration of Facilities That Recover Gas for Beneficial Use. As a streamlining initiative, the commission proposes a solid waste registration by rule for Type IX facilities that recover landfill gas for beneficial use. The commission proposes to replace §330.70 with proposed new §330.9(k). The commission proposes to move the requirements of §330.70(d) to proposed new §330.69(b).

The commission proposes to repeal §330.71, Registration for Municipal Solid Waste Facilities That Process Grease Trap Waste, Grit Trap Waste, or Septage. The commission proposes to move the requirements of §330.71(a)(1) to proposed new §330.9(g); §330.71(b) to proposed new §330.15(a); §330.71(c)(1) to proposed new §330.9(a); §330.71(c)(2) to proposed new §330.205(b); §330.71(c)(3) to proposed new §330.207(f); §330.71(c)(4) to proposed new §330.207(d); §330.71(d)(1) to proposed new §330.9(a); §330.71(d)(2) to proposed new §330.69(b); §330.71(d)(3) to proposed new §330.71(e) and (f), §330.71(d)(5) to proposed new §330.71(g); §330.71(d)(7) to proposed new §330.71(a); §330.71(e) to proposed new §330.57; §330.71(e)(4)(A) and (B) to new §§330.203(a) and (b); §330.71(f) to proposed new §§330.201 - 330.247; §330.71(h) and (i) to proposed new §§330.671 - 330.675; and §330.71(j) to proposed new §330.69(d).

The commission proposes new §330.71, Duration and Limits of Registrations and Permits. The commission proposes to move the requirements of §330.407(c) to proposed new §330.71(a); §330.63 to proposed new §330.71(b) - (e); §§330.73(b)(3) to proposed new §330.71(f); §§330.65(b)(2), 330.71(d)(6), and 330.73(c)(6) to proposed new §330.71(g); §330.1005(f) to §330.71(i); and §§330.1010(f)(2) to §330.71(j). The commission also proposes to incorporate into subsection (a) language from Chapter 305 regarding the executive director’s approval or denial of an application. Additionally, the commission proposes to incorporate language in subsection (i) from §305.66 regarding involuntary registration revocations. Further, the commission proposes to change the opportunity for a public hearing regarding involuntary revocation or denial of a registration for a medical waste mobile treatment unit in current §330.1010(f)(2) to a motion to overturn in §330.71(j). The commission proposes §330.71(k) to allow owners or operators to request voluntary registration revocation. Subsection (k) is based on §305.67(a) and (b) regarding permit voluntary revocations. The commission proposes these revisions to delineate which procedural actions are applicable to registrations.

The commission proposes to repeal §330.72, Registration for Mobil Liquid Waste Processing Units. The commission proposes to move the requirements of §330.72(a) to new §330.9(h); §330.72(b) to new §330.9(h); §330.72(c)(1) to new §330.207(g); §330.72(c)(2) to new §330.205(d); §330.72(c)(3) to new §330.207(f); §330.72(c)(4) to new §330.63(d)(6)(B); §330.72(d)(2) and (4) and (e) to new §330.217(a); §330.72(f) to new §330.57; §330.72(h)(1)(C) to new §330.207(g); §330.72(h) to proposed new §330.15(a); and §330.72(i) to proposed new §330.69(a).

The commission proposes to repeal §330.73, Registration of Demonstration Projects for Liquid Waste Processing Facilities. The commission proposes to move the requirements of §330.73(a) to proposed new §330.9(i), §330.73(b)(1) to proposed new §330.9(a), §330.73(b)(2) to proposed new §330.63(d)(9)(A); §330.73(b)(3) to proposed new §330.71(f); §330.73(b)(4) and (5) to proposed new §330.63(d)(9)(B); §330.73(c)(1) to proposed new §330.9(a); §330.73(c)(2) to proposed new §330.63(b); §330.73(c)(3) to proposed new §330.217(b); §330.73(c)(6) to proposed new §330.71(g); §330.73(d) to proposed new §330.57; §330.73(e) to proposed new §§330.201 - 330.247; §330.73(f) to proposed new §§330.15(a); §330.73(h) to proposed new §330.69(d); and §330.73(i) to new §330.63(d)(9)(C).

The commission proposes new §330.73, Additional Standard Permit and Registration Conditions for Municipal Solid Waste Facilities. The commission proposes to move the requirements of §330.64(a) to proposed new §330.73(a); §330.64(b) to proposed...
new §330.73(b); and §330.64(c) to proposed new §330.73(c). Proposed §330.73(c) applies only to landfills. The commission proposes to change subsection (c) to require that the preconstruction conference be held 90 days before initial excavation or construction rather than the current requirement to hold the conference within 90 days after issuance of the permit. The commission proposes this change to address the fact that construction may not begin immediately after the permit is issued. The commission proposes new §330.73(d) to require an owner or operator to submit a certification by a currently licensed professional engineer that a MSW facility has been constructed in accordance with an issued registration or permit and constructed in general compliance with the regulations. The commission proposes that this certification be submitted before initial operation and that the owner or operator maintain the certification on site for inspection. The commission proposes to move the requirements of §330.64(e) to proposed new §330.73(f) and expand subsection (f) to include registrations and the acceptance of waste, rather than placement. The commission proposes these provisions because these requirements apply to storage and processing waste management units in addition to landfills.

The commission proposes to repeal §330.75, Animal Crematory Facility Design and Operational Requirements for Permitting by Rule. The commission proposes to move the requirements of §330.75 to §330.37(e) with two changes. To remove inconsistencies between the solid waste and air permitting programs, the commission proposes to remove the feed limitation of 1,600 pounds per day specified in §330.75(b)(1) and instead have proposed new §330.37(e)(2) to refer to the feed limitations specified for these types of incinerators in §106.494. Also, the commission proposes to remove the operating hours specified in §330.75(b)(11) and instead have proposed new §330.7(e)(12) to refer to §111.149. These proposed changes will allow for greater flexibility in the operation of animal crematories.

The commission proposes new §330.101, Applicability. The commission proposes to move the requirements of §330.31 to this new section. This requirement was moved without changes.

The commission proposes new §330.103, Collection and Transportation Requirements. The commission proposes to move the requirements of §330.32(a) - (e) to this new section. As a streamlining initiative, the commission proposes to remove the requirement in §330.32(d) that the transporter delivering waste to a solid waste management facility provide documentation that the transporter has arranged the collection routes to eliminate nonallowable wastes from loads transported to that facility. The commission believes that the transporter has the option of not collecting and transporting nonallowable wastes and that a transporter would have difficulty demonstrating compliance with this requirement. The remaining requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines. The commission proposes new §330.103(f) to refer transporters of untreated medical waste to the requirements of §330.1211, Transporters of Untreated Medical Waste. By stating that the transporter standards apply to untreated medical waste, the commission also proposes that transporters of treated medical waste need no special registration from the TCEQ.

The commission proposes new §330.105, Collection Vehicles and Equipment, and proposes to move the requirements of §330.33 to this new section. These requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.107, Collection Spillage, and proposes to move the requirements of §330.34 to this new section. These requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes to repeal §330.111, General, and move the requirements of this section to proposed new §330.121.

The commission proposes to repeal §330.112, Pre-Operation Notice, and move the requirements of this section to proposed new §330.123.

The commission proposes to repeal §330.113, Recordkeeping Requirements, and move the requirements of this section to proposed new §330.125.

The commission proposes to repeal §330.114, Site Operating Plan, and move the requirements of this section to proposed new §330.127.

The commission proposes to repeal §330.115, Fire Protection, and move the requirements of this section to proposed new §330.129.

The commission proposes to repeal §330.116, Access Control, and move the requirements of this section to proposed new §330.131.

The commission proposes to repeal §330.117, Unloading of Waste, and move the requirements of this section to proposed new §330.133.

The commission proposes to repeal §330.118, Facility Operating Hours, and move the requirements of this section to proposed new §330.135.

The commission proposes to repeal §330.119, Site Sign, and move the requirements of this section to proposed new §330.137.

The commission proposes to repeal §330.120, Control of Windblown Solid Waste and Litter, and move the requirements of this section to proposed new §330.139.

The commission proposes to repeal §330.121, Easements and Buffer Zones, and move the requirements of this section to proposed new §330.141 with changes.

The commission proposes new §330.121, General, and to move the requirements of §330.111 to this new section. The commission proposes new §330.121(b) to specify the applicability requirements for Subchapter D for existing facilities and applications that were pending on December 2, 2004. The commission proposes new §330.121(c) to state that authorizations, other than permits and registrations, must comply with the 2006 Revisions in accordance with §330.1(a)(3) and (4).

The commission proposes to repeal §330.122, Landfill Markers and Benchmark, and move the requirements of this section to proposed new §330.143(a).
The commission proposes to repeal §330.123, Materials Along the Route to the Site, and proposes to move the requirements of this section to proposed new §330.145.

The commission proposes new §330.123, Pre-Operation Notice, and to move the requirements of §330.112 to this new section.

The commission proposes to repeal §330.124, Disposal of Large Items, and proposes to move the requirements of this section to proposed new §330.147.

The commission proposes to repeal §330.125, Air Criteria, and proposes to move the requirements of §330.125(b) to proposed new §330.149.

The commission proposes new §330.125, Recordkeeping Requirements, and to move the requirements of §330.113 to this new section.

The commission proposes to repeal §330.126, Disease Vector Control, and move the requirements of this section to proposed new §330.151.

The commission proposes to repeal §330.127, Site Access Roads, and move the requirements of this section to proposed new §330.153.

The commission proposes new §330.127, Site Operating Plan, and to move the requirements of §330.114 to this new section.

The commission proposes to repeal §330.128, Salvaging and Scavenging, and move the requirements of this section to proposed new §330.155.

The commission proposes to repeal §330.129, Endangered Species Protection, and proposes to move the requirements of this section to proposed new §330.157.

The commission proposes new §330.129, Fire Protection, and to move the requirements of §330.115 to this new section.

The commission proposes to repeal §330.130, Landfill Gas Control, and move the requirements of this section to proposed new §330.159.

The commission proposes to repeal §330.131, Oil, Gas, and Water Wells, and move the requirements of this section to proposed new §330.161 with changes.

The commission proposes new §330.131, Access Control. The commission proposes to move the requirements of §330.116 and §330.409(4) to proposed new §330.131.

The commission proposes to repeal §330.132, Compaction, and move the requirements of this section to proposed new §330.163.

The commission proposes to repeal §330.133, Landfill Cover, and move the requirements of this section to proposed new §330.165 with changes.

The commission proposes new §330.133, Unloading of Waste, and to move the requirements of §330.117 to this new section.

The commission proposes to repeal §330.134, Ponded Water, and move the requirements of this section to proposed new §330.167.

The commission proposes to repeal §330.135, Waste in Enclosed Containers or Enclosed Vehicles Accepted at Type IV Landfills, and move the requirements of this section to proposed new §330.169.

The commission proposes new §330.135, Facility Operating Hours, and to move the requirements of §330.118 to this new section.

The commission proposes to repeal §330.136, Disposal of Special Waste, and move the requirements of this section to proposed new §330.171 with changes.

The commission proposes to repeal §330.137, Disposal of Industrial Waste, and move the requirements of this section to proposed new §330.173.

The commission proposes new §330.137, Site Sign. The commission proposes to move §330.119 and §330.409(7) to proposed new §330.137.

The commission proposes to repeal §330.138, Visual Screening of Deposited Waste, and move the requirements of this section to proposed new §330.175.

The commission proposes new §330.139, Control of Windblown Solid Waste and Litter, and to move the requirements of §330.120 to this new section.

The commission proposes new §330.141, Easements and Buffer Zones, and to move the requirements of §330.121 to this new section.

The commission proposes new §330.143, Landfill Markers and Benchmark. The commission proposes to move the requirements of §330.122 to proposed new §330.143(a) and move §330.55(b)(10) to proposed new §330.143(b). As a flexibility initiative, the commission proposes to remove the requirement of §330.55(b)(10)(F) for lettered and numbered markers since any consistent grid coordinate system will suffice.

The commission proposes new §330.145, Materials Along the Route to the Site, and to move the requirements of §330.123 to this new section.

The commission proposes new §330.147, Disposal of Large Items, and to move the requirements of §330.124 to this new section.

The commission proposes new §330.149, Odor Management Plan, and to move the requirements of §330.125 to this new section.

The commission proposes to repeal §330.150, General, to no longer apply landfill operating standards to MSW storage and processing units through cross-references. The commission proposes to specify all storage and processing unit operating standards in new Subchapter E.

The commission proposes to repeal §330.151, Overloading and Breakdown. The commission proposes to move the requirements of §330.151 to proposed new §330.241 with changes.

The commission proposes new §330.151, Disease Vector Control, and to move the requirements of §330.126 to this new section.

The commission proposes to repeal §330.152, Sanitation. The commission proposes to move the requirements of §330.152 to proposed new §330.243.

The commission proposes to repeal §330.153, Water Pollution Control. The commission proposes to move the requirements of §330.153(a) to proposed new §330.303(b); §330.153(c) to proposed new §330.207(e); and §330.153(d) to proposed new §330.401(b).

The commission proposes to repeal §330.154, Ventilation and Air Pollution Control, because the language within this section is outdated. The commission proposes to replace this section with new §330.245, Ventilation and Air Pollution Control, which contains current requirements.

The commission proposes to repeal §330.155, Litter Control. The commission proposes to move the requirements of §330.155(a) to proposed new §330.233(b). The commission proposes to delete the twice weekly litter pickup requirement of §330.155(b) for storage and processing facilities and adopt the same daily litter pickup requirement of §330.120(2) that is required of landfill facilities.

The commission proposes new §330.155, Salvaging and Scavenging, and to move the requirements of §330.128 to this new section.

The commission proposes to repeal §330.156, Safety. MSW facilities are more appropriately subject to other applicable federal, state, and local worker health and safety requirements.

The commission proposes to repeal §330.157, Fire Protection. The commission proposes to move the requirements of this section to proposed new §330.221.

The commission proposes new §330.157, Endangered Species Protection, and to move the requirements of §330.129 to this new section.

The commission proposes to repeal §330.158, Employee Sanitation Facilities. The commission proposes to move the requirements of this section to proposed new §330.249.

The commission proposes to repeal §330.159, Facility Completion and Closure Procedures. The commission proposes closure and post-closure requirements for MSW storage and processing units in proposed new Subchapter K, Closure and Post-Closure.

The commission proposes new §330.159, Landfill Gas Control, and to move the requirements of §330.130 to this new section.

The commission proposes new §330.161, Oil, Gas, and Water Wells, and to move the requirements of §330.131 to this new section with changes.

The commission proposes new §330.163, Compaction, and to move the requirements of §330.132 to this new section.

The commission proposes new §330.165, Landfill Cover, and to move the requirements of §330.133 to this new section with changes. The commission proposes new §330.165(d)(4) to limit alternative material used as daily cover to not contain constituents of concern exceeding the concentrations listed in Table 1 of §335.521(a)(1), polychlorinated biphenyl wastes, total petroleum hydrocarbons in concentrations greater than 1,500 milligrams per kilogram (mg/kg), or exceed constituent limitations imposed on authorized wastes to be landfilled at the facility. The commission proposes these limits to ensure that composition of the alternative daily cover is appropriate to the wastes being covered within the landfill unit.

The commission proposes new §330.167, Ponded Water, and to move the requirements of §330.134 to this new section.

The commission proposes new §330.169, Waste in Enclosed Containers or Enclosed Vehicles Accepted at Type IV Landfills, and to move the requirements of §330.135 to this new section.

The commission proposes to repeal §330.171, Recordkeeping Requirements Applicable to Owners or Operators of Type V Processing Facilities. The commission proposes to move the requirements of this section to proposed new §330.219(h).

The commission proposes new §330.171, Disposal of Special Wastes, and to move the requirements of §330.136 to this new section with changes. The commission proposes new §330.171(a) to state that Type IV and Type IVAE landfills that have commission issued permits may dispose of special waste that is consistent with brush, construction or demolition waste, or rubbish that is free of putrescible wastes and free of household wastes as established in §330.5(a)(2) and is consistent with the waste acceptance plan required by §330.61(b). Type IVAE landfills authorized by the permit by rule under §330.7(f) may dispose of nonregulated asbestos-containing materials, but may not dispose of any other special waste since these facilities would not have a commission-approved waste acceptance plan. To receive special waste, the owner and operator of a Type IVAE landfill would have to apply for and receive a permit that would include a commission-approved waste acceptance plan.

The commission proposes new §330.171(b)(2)(B) to reference the hazardous waste determination requirement of §335.6(c) for generators intending to send Class 1 industrial solid waste to an MSW landfill. The commission proposes new §330.171(b)(4) to require that soils contaminated by petroleum products, crude oils, or chemicals in concentrations of greater than 1,500 mg/kg total petroleum hydrocarbons; or contaminated by constituents of concern that exceed the concentrations listed in Table 1 of §335.521(a)(1) be disposed in dedicated cells that meet the requirements of §330.331(e).

The commission proposes new §330.171(c)(2) to require that treated medical waste that still has a special characteristic or property after the treatment process be managed as special waste and must be accompanied by a waste shipping document. This shipping document is intended to give landfill operators notice of an incoming load of treated medical waste. The commission proposes new §330.171(c)(5) to state that Type IV and Type IVAE landfills, in addition to Type I and Type IAE landfills, may accept for disposal nonregulated asbestos-containing materials since these wastes are consistent with construction or demolition waste.

The commission proposes new §330.173, Disposal of Industrial Wastes, and moves the requirements of §330.137(a) - (c) and (e) - (j) to this new section with changes. The commission proposes new §330.173(a) to state that, except for wastes that are Class 1 industrial solid waste only because of asbestos content, Type IAE landfills may not dispose of Class 1 industrial solid waste since these facilities would not have a liner meeting the requirements of proposed new §330.331(e). The above-grade disposal limitation of Class 1 industrial solid waste in §330.137(d) is proposed for repeal. The commission proposes to allow the above-grade disposal of Class 1 industrial solid waste to harmonize the Class 1 industrial solid waste management requirements in this chapter with Chapter 335, Subchapter T, Permitting Standards for Owners and Operators of Commercial Industrial Nonhazardous Waste Landfill Facilities. The commission proposes new §330.173(i) to state that Type IV and Type IVAE landfills that have commission issued permits may dispose of Class
2 industrial solid waste that is consistent with brush, construction or demolition waste, or rubbish that is free of putrescible wastes as established in §330.5(a)(2) and is consistent with the waste acceptance plan required by §330.61(b). Type IVAE landfills authorized by the permit by rule of §330.7(f) may not dispose of Class 2 industrial solid waste since these facilities would not have a commission-approved waste acceptance plan. To receive Class 2 industrial solid waste, the owner and operator of a Type IVAE landfill would have to apply for and receive a permit that would include a commission-approved waste acceptance plan.

The commission proposes new §330.175, Visual Screening of Deposited Waste, and move the requirements of §330.138 to this new section.

The commission proposes new §330.177, Leachate and Gas Condensate Recirculation. The commission proposes to move the requirements of §330.5(e)(6)(A)(ii) and §330.56(e)(2) to proposed new §330.177 with changes. The commission proposes to now allow Type I landfills with an alternative liner design and a leachate collection system to recirculate leachate. The commission believes that the leachate collection system will provide the added protection necessary for leachate recirculation.

The commission proposes new §330.179, Operational Standards for Class 1 Industrial Solid Waste Management at a Municipal Solid Waste Type I or Type IAE Landfill Facility, in order to harmonize the Chapter 330 operational requirements for MSW landfills that dispose of Class 1 industrial solid waste with the requirements for commercial industrial nonhazardous waste landfills in Chapter 335, Subchapter T.

The commission proposes to repeal §330.200, Design Criteria. The commission proposes to move the requirements of §330.200(a) - (c) and (d)(3) - (8) to proposed new §330.331(a) - (c); §330.200(e)(1) and (2) to proposed new §330.331(d)(1) and (2); §330.200(f)(1) and (2) to proposed new §330.331(e)(1) and (2); §330.200(f)(4) to proposed new §330.403; and §330.200(f)(5) to proposed new §330.457(b).

The commission proposes to repeal §330.201, Leachate Collection System, and to move the requirements of this section to proposed new §330.333.

The commission proposes new §330.201, Applicability. The commission proposes new §330.201(b) to specify the applicability requirements for Subchapter E. The commission proposes that permitted and registered storage and processing units are under an obligation to apply for a modification within 180 days, unless approved otherwise by the executive director, to incorporate the 2006 Revisions.

The commission proposes to repeal §330.202, Alternate Design, and to move the requirements of this section to proposed new §330.335.

The commission proposes to repeal §330.203, Special Conditions (Liner Design Constraints). The commission proposes to move the requirements of §330.203(a) - (e) to proposed new §330.337(b) - (f); §330.203(l) to proposed new §330.337(l); §330.203(g) to proposed new §330.337(g); §330.203(h) to proposed new §330.337(h); and §330.203(i) and (j) to proposed new §330.337(h) and (i).

The commission proposes new §330.203, Waste Acceptance and Analysis. The commission proposes to move the requirements of §330.59(d)(1) and §330.71(e)(4)(A) to new §330.203(a); §330.71(e)(4)(B) to new §330.203(b); and §§330.71(f)(11), 330.72(f)(7) and (11)(G), and 330.73(e)(11) to new §330.203(c). The commission proposes to explicitly state in subsection (a) that MSW facilities may not receive regulated hazardous waste unless authorized by Chapter 335 to emphasize that receiving facilities must have separate authority as allowed by Chapter 335 to manage regulated hazardous waste. The commission further proposes to have the owner or operator assess or analyze waste constituent concentrations and characteristics to be managed by the storage and processing units that may impact or influence the design or operation of the facility. The proposed subsection (a) provides several examples of waste characteristics such as pH, fats, oil and grease concentrations, total suspended solids, chemical oxygen demand, biochemical oxygen demand, organic and metal constituent concentrations, and water content, which could be limiting parameters regarding the overall design and operation of the facility.

The commission proposes to repeal §330.204, Geotechnical Faults, and to move the requirements of this section to proposed new §330.555.

The commission proposes to repeal §330.205, Soils and Liner Quality Control Plan, and to move the requirements of this section to proposed new §330.339.

The commission proposes new §330.205, Facility-Generated Wastes. The commission proposes to move the requirements of §§330.59(d)(2), 330.71(e)(4)(C), 330.72(f)(4)(C), and 330.73(d)(3)(C) to proposed new §330.205(a); §330.71(c)(2) to proposed new §330.205(b); and §§330.71(f)(12), 330.72(f)(11)(H), and 330.73(e)(12) to proposed new §330.205(d). These requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes to repeal §330.206, Soils and Liner Evaluation Report (SLER) and Flexible Membrane Liner Evaluation Report (FMLER). The commission proposes to move the requirements of §330.206(a) - (c) to proposed new §330.341(a) - (c); §330.206(d) to proposed new §330.143(b)(6); and §330.206(e) to proposed new §330.341(d).

The commission proposes new §330.207, Contaminated Water Management. The commission proposes to move the requirements of §§330.59(b)(3), 330.65(e)(4), 330.72(f)(11)(C), and 330.73(e)(4) to proposed new §330.207(a); §§330.409(1), 330.416(m)(1)(C), and 332.45(1) to proposed new §330.207(b); §§330.409(1) and 330.416(m)(1)(C) to proposed new §330.207(c); and §§330.409(1) and 332.45(1) to proposed new §330.207(d). The commission proposes to add "contaminated water" to §330.207(b) to specify that the design standards applies to both leachate and contaminated water. The commission proposes to move the requirements of §§330.71(c)(4), 330.72(f)(11)(C), and 330.73(e)(4) to proposed new §330.207(e); §330.153(c) to proposed new §330.207(f); §330.71(c)(3) and §330.72(c)(3) to proposed new §330.207(g); §§330.71(f)(4), 330.72(c)(1), and 330.73(e)(4) to new §330.207(h). Owners or operators may send wastewater off-site to an authorized facility, discharge to a public sewer system, or treat the wastewater on-site prior to an authorized discharge. These requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004.
and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.209, Storage Requirements. The commission proposes to move the requirements of §330.22 and §330.26 to this section: §§330.65(e)(6), 330.71(f)(6), and 330.72(f)(11)(E) to proposed new §330.209(b); and §§330.71(f)(6)(B), 330.72(f)(11)(E), and 330.73(e)(6) to proposed new §330.209(c). These requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.211, Approved Containers. The commission proposes to move the requirements of §330.23 to this section. These requirements were moved without changes.

The commission proposes new §330.213, Citizen’s Collection Stations. The commission proposes to move the requirements of §330.24 to proposed new §330.213(a). These requirements were moved without changes. The commission proposes to add new §330.213(b) to allow a citizen’s collection station to accept sharps from single- or multi-family dwellings, hotels, motels, or other establishments that provide lodging and related services for the public. In such instances, the citizen’s collection station will be considered the generator of the sharps.

The commission proposes new §330.215, Requirements for Stationary Compactors. The commission proposes to move the requirements of §330.25(c)(1) and (2) to this section. These requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.217, Pre-Operation Notice. The commission proposes to move the requirements of §330.72(d)(2) and (4), and (e) to new §330.217(a); and §330.73(c)(3) to proposed new §330.217(b).

The commission proposes new §330.219, Recordkeeping and Reporting Requirements, that are specific to MSW storage and processing facilities. The commission proposes to move the requirement to maintain the approved application on-site and for inspection from §330.58 to proposed new §330.219(a); and §330.113(b) to proposed new §330.219(b). The commission proposes new §330.219(c), concerning signatories to reports, that is comparable to the recordkeeping requirements of §305.128, Signatories to Reports. This new rule is necessary to ensure that reports submitted to the TCEQ are provided by authorized persons who are responsible for the operation and compliance of a facility with MSW requirements. The proposed new rule will apply to all MSW facility owners and operators, since §305.128 applies only to permitted facilities. The commission proposes to move the requirements of §330.412 to proposed new §330.219(d); §330.113(c) and §330.960(h)(2) to proposed new §330.219(e); §330.113(d) to proposed new §330.219(f); §330.113(g) to proposed new §330.219(g); and §330.171 to proposed new §330.219(h).

The commission proposes new §330.221, Fire Protection. The commission proposes to move the requirements of §330.157 to §330.221(a), (b), and the first sentence of (c). The commission proposes to move the requirements of §§330.65(e)(7), 330.71(f)(7), 330.72(f)(11)(F), and 330.73(e)(7) to the remaining portion of proposed new §330.221(c). These requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.223, Access Control. Rather than incorporate by reference, the commission proposes to apply the requirements of existing §330.116, Access Control, to proposed new §330.223(a). The commission proposes to move the requirements of §§330.65(e)(1) and (2), 330.71(f)(1) and (2), and 330.73(e)(1) and (2) to proposed new §330.223(b) and (c). These requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.225, Unloading of Waste. Rather than move the requirements of §330.117(a) - (c), the commission proposes to copy these requirements to proposed new §330.225(a) - (c). These requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.227, Spill Prevention and Control, to specify a performance-based standard for storage and processing areas to control and contain spills and contaminated water from leaving the facility. This will help to protect the quality of surface water and groundwater in the state.

The commission proposes new §330.229, Hours of Operation. Rather than incorporate by reference, the commission proposes to copy the requirements of §330.118, proposed as §330.135 in this rulemaking, to proposed new §330.229 and modify the requirements to fit storage and processing waste management units. The commission proposes this change to make the requirements easier to understand and apply.

The commission proposes to repeal §330.230, Applicability, and move the requirements of §330.230 to proposed new §330.401.

The commission proposes to repeal §330.231, Groundwater Monitoring Systems. The commission proposes to move the requirements of §330.231(b) and (c), and (e) to proposed new §330.403(b) and (c), and (e); §330.231(a)(1) to proposed new §330.405(d); §330.231(a)(2) to proposed new §330.403(a)(1); §330.231(d) to proposed new §330.421(a); §330.231(d)(1) to proposed new §330.421(e); and §330.231(d)(2) to proposed new §330.403(d).

The commission proposes new §330.231, Facility Sign. Rather than incorporate by reference, the commission proposes to copy the requirements of §330.119, as well as the requirements of §§330.65(e)(2), 330.71(f)(2), and 330.73(e)(2) to proposed new §330.231 and modify the requirements to fit storage and processing waste management units. The commission proposes this change to make the requirements easier to understand and apply.
The commission proposes to repeal §330.233, Groundwater Sampling and Analysis Requirements. The commission proposes to move the requirements of §330.233(a) - (c) to proposed new §330.405(a) - (c), and the later portion of §330.233(b)(3) to proposed new §330.405(b)(3)(A), applicable to Type I landfills. The commission proposes to move the requirements of §330.233(e) to proposed new §330.405(d); §330.233(f) to proposed new §330.405(e); and §330.233(g) to proposed new §330.405(f).

The commission proposes new §330.233, Control of Windblown Material and Litter. Rather than incorporate by reference, the commission proposes to apply the requirements of §330.120 as well as the requirements of §330.155(a) to proposed new §330.233(b) and modify the requirements to fit storage and processing waste management units. The commission proposes this change to make the requirements easier to understand and apply.

The commission proposes to repeal §330.234, Detection Monitoring Program. The commission proposes to move the requirements of §330.234(a)(1) to proposed new §330.419(b); §330.234(a)(2) to proposed new §330.419(c); §330.234(b) to proposed new §330.407(a); and §330.234(d) to proposed new §330.407(b), with portions of the requirements of §330.234(d)(2) moving to proposed new §330.407(b)(3).

The commission proposes to repeal §330.235, Assessment Monitoring Program. The commission proposes to move the requirements of §330.235(a) - (j) to proposed new §330.409(a) - (j) with changes.

The commission proposes new §330.235, Materials Along the Route to the Facility. Rather than incorporate by reference, the commission proposes to copy the requirements of §330.123 to proposed new §330.235 and modify the requirements to fit storage and processing waste management units. The commission proposes this change to make the requirements easier to understand and apply.

The commission proposes to repeal §330.236, Assessment of Corrective Measures. The commission proposes to move the requirements of §330.236(a) - (d) to proposed new §330.411(a) - (d) with revisions to §330.411(a) to replace "a reasonable amount of time approved by the executive director" with "180 days" to clearly state what the commission believes is a reasonable time and to reduce confusion or uncertainty with this reporting requirement.

The commission proposes to repeal §330.237, Selection of Remedy, and move the requirements of §330.237 to proposed new §330.413.

The commission proposes new §330.237, Facility Access Roads. Rather than incorporate by reference, the commission proposes to apply the requirements of §330.127 to proposed new §330.237 and modify the requirements to fit storage and processing waste management units. The commission proposes this change to make the requirements easier to understand and apply.

The commission proposes to repeal §330.238, Implementation of the Corrective Action Program. The commission proposes to move the requirements of §330.238(a) - (d) to proposed new §330.415(a) - (d); and §330.238(e) - (g) to proposed new §330.415(f) - (h).

The commission proposes to repeal §330.239, Groundwater Monitoring at Type IV Landfills. The commission proposes to move the requirements of §330.239 to proposed new §330.417.
The commission proposes new §330.247, Health and Safety, to specify that the facility will comply with applicable federal, state, and local worker health and safety requirements.

The commission proposes new §330.249, Employee Sanitation Facilities. The commission proposes to move the requirements of §330.158 to this proposed new section. These requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes to repeal §330.250, Applicability, and move the requirements of this section to proposed new §330.451. The commission proposes to repeal the requirement for the owner or operator to submit a certification of compliance with the requirements of §§330.300, 330.301, and 330.305, since the effective date of this requirement has passed.

The commission proposes to repeal §330.251, Closure Requirements for MSWLF Units That Stop Receiving Waste Prior to October 9, 1991, and MSW Sites, and to move the requirements of this section to proposed new §330.453.

The commission proposes to repeal §330.252, Closure Requirements for MSWLF Units That Receive Waste on or after October 9, 1991, But Stop Receiving Waste Prior to October 9, 1993 and move the requirements of this section to proposed new §330.455.

The commission proposes to repeal §330.253, Closure Requirements for MSWLF Units That Receive Waste on or after October 9, 1993, and MSW Sites, and move the requirements of §§330.253(b) - (d), (e)(1), (2), (4) - (6), and (10), and (f) to new §330.457; §330.253(e)(3) to new §330.461(a); §330.253(e)(7) to new §330.461(b); §330.253(e)(8) to new §330.461(c); and §330.253(e)(9) to new §330.461(d).

The commission proposes to repeal §330.254, Post-Closure Care Maintenance Requirements, and move the requirements of this section to proposed new §330.463.

The commission proposes to repeal §330.255, Post-Closure Land Use. The commission proposes to move §330.255(c)(4) and (5) to proposed new §330.955(d) and (e); §330.255(e) to proposed new §330.955(b); and §330.255(f)(4) - (6) to proposed new §330.957(j)(1)(D) - (F).

The commission proposes to repeal §330.256, Completion of Post-Closure Care, and move the requirements to the new §330.465, Certification of Completion of Post-Closure Care.

The requirements in proposed Subchapter F are all new and have not previously been in Chapter 330. These requirements are based on the most up-to-date US EPA “Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods,” SW846. Activities governed by this subchapter must also meet the requirements in 30 TAC Chapter 25, Environmental Testing Laboratory Accreditation and Certification. The commission proposes these requirements to ensure that the data required to be submitted to the agency under these proposed rules meets national quality assurance (QA) and quality control (QC) standards.

The commission proposes new §330.261, Applicability and Purpose, to apply to MSW facilities submitting laboratory data and analyses relating to permits or other authorizations, compliance matters, enforcement actions, or corrective actions to the commission. The commission also proposes in §330.261 to specify the applicability requirements for Subchapter F. The commission proposes that owners and operators of MSW facilities shall operate in compliance with this subchapter within 120 days of the 2006 Revisions becoming effective. The commission proposes that the 2006 Revisions to this subchapter will supersede any inconsistent provisions contained in existing permits or registrations and that permittees and registrants submit a modification request (without public notice) to remove any inconsistent provisions.

The commission proposes new §330.263, Laboratory Analyses, to require the owner or operator to identify the laboratory analyses to be performed on the samples collected for analysis and to describe the practical quantitation limits (PQLs) for the constituents of concern, which must be below the maximum contaminant level (MCL) values or as low as practicably feasible.

The commission proposes new §330.265, Reporting Requirements, to require that analytical results be reported to the commission in a data package that contains, at a minimum, the analytical test reports documenting the analytical results and methods. The test reports will include the method-required QC information needed to validate the analytical results.

The commission proposes new §330.267, Records Control, to establish and maintain procedures for identification, collection indexing, access, filing, storage, and maintenance and disposal of QA records and technical records. QA records will include reports from internal audits and management reviews, as well as records of corrective and preventative actions.

The commission proposes new §330.269, Matrix Spikes and Matrix Spike Duplicates, to require environmental samples to which analyses of concern are added by the laboratory in known concentrations and analyzed to assess the effects of the sample matrix on the analytical results. Matrix spikes and matrix spike duplicates will be required to represent sample recovery percentages and relative percent differences for each matrix and analyte will be included in all data packages submitted to the Municipal Solid Waste Section.

The commission proposes new §330.271, Method Blanks, to assess sample contamination and its source.

The commission proposes new §330.273, Laboratory Control Samples and Laboratory Control Sample Duplicates, to require a laboratory sample matrix that is free from analyses of interest and spiked with known amounts of analyte(s) or material(s) containing known and verified amounts of analyses. The laboratory control samples and laboratory control sample duplicates are used to establish intra-laboratory or analyst-specific precision and accuracy of certain parts of the analytical methodology.

The commission proposes new §330.275, Surrogates, in order to establish the measurement of compounds that mimic the analyte of interest that must be added to all samples, standards, and blanks for all organic chromatography methods except when the matrix precludes use of a surrogate or when a surrogate is not available. The commission believes that poor surrogate recovery may indicate a problem with the sample composition.

The commission proposes new §330.277, Data Reduction, Evaluation, and Review, in order to require the laboratory to consider the project data quality objectives and to determine if the sample test results meet the project needs with regard to completeness, representativeness, and accuracy (bias and precision).

The commission proposes new §330.279, Matrix Interferences and Sample Dilutions, so that a laboratory will document and report problems and anomalies observed during analyses that
might have an impact on the quality of the data. The laboratory will be required to document any evidence of matrix interference or any situation where the analysis is out of control (QC results outside of limits), as well as the measures taken by the laboratory to eliminate or reduce the interference or corrective action to bring the analysis back into control.

The commission proposes to repeal §330.280, Applicability, and move the requirements of this section to proposed new §330.501.

The commission proposes to repeal §330.281, Closure for Landfills, and move the requirements of this section to proposed new §330.503.

The commission proposes new §330.281, Chain of Custody, to require that forms be used to document the custody of samples during collection in the field and during transport to the laboratory. The commission proposes that these forms may also be used by the laboratory to document the movement and analysis of samples within the laboratory.

The commission proposes to repeal §330.282, Closure for Process Facilities. The commission proposes to move the requirements of §330.282(a) to proposed new §330.505(a); §330.282(b)(1) to proposed new §330.505(b)(1); and §330.282(b)(2) to proposed new §330.501. Section 330.282(b)(2) required any MSW processing facility to establish financial assurance for closure. The commission proposes to delete this requirement and replace it with the requirement in §330.501 that only those facilities required to have financial assurance are subject to Subchapter L. The commission proposes this change because it is unnecessary for facilities that are not required to have financial assurance to provide a closure cost estimate. The commission proposes to move §330.282(b)(3) to proposed new §330.505(b)(2). The commission proposes to move §330.282(c) to proposed new §330.459(d) to better organize the rule by incorporating all the closure requirements into one section. The commission proposes to delete §330.282(d) because the language is unnecessary.

The commission proposes to repeal §330.283, Post-Closure Care for Landfills, and move the requirements of this section to proposed new §330.507.

The commission proposes new §330.283, Sample Collection and Preparation, to require the owner or operator to collect proper sample volumes that will be representative of the waste or medium and be preserved and analyzed within the appropriate holding times.

The commission proposes to repeal §330.284, Corrective Action for Landfills, and move the requirements of this section to proposed new §330.509.

The commission proposes new §330.285, Analytical Method Detection Limits and Method Performance, in order to assess whether a reported method detection limit is appropriate and relevant for the intended use of the data and how the analytical laboratory established procedures between detection limits and the quantitation limits.

The commission proposes new §330.287, Instrument and Equipment Calibration and Frequency, to require that support laboratory operations and measurements be calibrated or verified as often as the manufacturer recommends using National Institute of Standards and Technology traceable references, when available, over the entire range of use.

The commission proposes new §330.289, Laboratory Case Narrative, to require the reporting of QC results within the laboratory case narrative that explain each failed precision and accuracy measurement determined to be outside of the laboratory and/or method control limits, and the effect of the failure on the results.

The commission proposes to repeal §330.300, Airport Safety, and move the requirements of this section to §330.545 with changes.

The commission proposes to repeal §330.301, Floodplains, and move the requirements of this section to §330.547 with changes.

The commission proposes new §330.301, Applicability, to require a permittee or registrant to apply to modify existing inconsistent provisions within 180 days after the effective date of this chapter. Owners or operators of permitted or registered facilities are required to review their surface water drainage plans for compliance and may need to provide revisions to approved drainage plans as a modification in accordance with §305.70(j), to incorporate the revised requirements.

The commission proposes to repeal §330.302, Wetlands, and move the requirements of this section to proposed new §330.553.

The commission proposes to repeal §330.303, Fault Areas, and move the requirements of this section to proposed new §330.555.

The commission proposes new §330.303, Surface Water Drainage for Municipal Solid Waste Facilities. The commission proposes to move the requirements of §330.409(1) and §330.416(m)(1)(A) and (B) to proposed new §330.303(a); and §330.153(a) to proposed new §330.303(b). The remaining requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes to repeal §330.304, Seismic Impact Zones, and move the requirements of this section to proposed new §330.557 with changes.

The commission proposes to repeal §330.305, Unstable Areas, and move the requirements of this section to proposed new §330.559 with changes.

The commission proposes new §330.305, Surface Water Drainage for Landfills. The commission proposes to move the requirements of §330.56(f)(2) and §330.408(2) to proposed new §330.305(a); §330.55(b)(2) and (3) to proposed new §330.305(b) and (c); §330.55(b)(8) to proposed new §330.305(d); and §330.55(b)(4) - (6) to proposed new §330.305(e) - (g). The commission proposes these requirements under the section titled “Surface Water Drainage for Landfills” to make it clear that only owners or operators of landfills need to perform the calculations included in this section. The commission proposes §330.305(d) to have long-term erosional stability for the landfill unit during all phases of unit operation, closure, and post- closure care from the current requirement in §330.55(b)(8), which only provides these requirements for the final cover design. In §330.305(f) the commission proposes to update the calculation methods to current drainage models. The remaining requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004,
and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.307, Flood Protection for Landfills. The commission proposes to move the requirements of §330.55(b)(7) to proposed new §330.307(a) and (b). The commission proposes these requirements under the section titled "Flood Protection for Landfills" to make it clear that these flood protection requirements only apply to landfills. The requirements were moved without changes.

Throughout proposed Subchapter H, the commission proposes to refer to a "geomembrane liner" rather than a "flexible membrane liner" to be consistent with common and accepted usage of the term.

The commission proposes new §330.331, Design Criteria. The commission proposes to move the requirements of §330.200(a) - (c) and (d)(3) - (8) to proposed new §330.331(a) - (c); §330.200(e)(1) and (2) to proposed new §330.331(d)(1) and (2); and §330.200(f)(1) and (2) to proposed new §330.331(e)(1) and (2). The commission proposes new §330.331(a) to require that vertical expansions of Type I landfills over landfills that do not meet the liner design requirements of this subchapter will satisfy the liner requirements of this subchapter for the vertically expanded portions of the landfills. Also, the commission proposes that this subsection will apply to existing Type IAE landfills that subsequently no longer satisfy the conditions for the arid exemption specified in §330.5(b)(1). The commission proposes to add §330.331(d)(3) to reference the allowance for an alternative liner design in §330.335 for Type IV landfills. Current regulations do not allow alternative liner designs for Type IV landfills. The commission proposes this section to provide owners and operators of Type IV landfills flexibility for landfill liner designs. The commission proposes to add §330.331(e)(5) to reference the design requirements of §335.584(b)(1) and (2) for MSW Type I landfill facilities managing Class 1 industrial solid waste that are located over relatively permeable soil strata or regional aquifers.

The commission proposes new §330.333, Leachate Collection System. The commission proposes to move the requirements of §330.56(a) and §330.201 to proposed new §330.333.

The commission proposes new §330.335, Alternative Liner Design, and to move the requirements of §330.202 to this section. The commission proposes to allow alternative liner designs for Type I and Type IV landfills. Current regulations do not allow alternative liner designs for Type IV landfills. The commission proposes this section to provide owners and operators of Type IV landfills flexibility for landfill liner designs. Type I landfill alternative liner designs must include a leachate management system. The commission believes that leachate management is a necessary component of alternative liner designs for Type I landfills. The commission proposes to allow the use of appropriate and current computer modeling software by removing the specific examples of the "HELP" and "Multi-Media" modeling software requirements. This will allow owners and operators to use the most up-to-date design models when demonstrating the effectiveness of alternative liner designs.

The commission proposes new §330.337, Special Liner Design Constraints. The commission proposes to move the requirements of §330.203(h) to proposed new §330.337(a); §330.203(a) - (e) to proposed new §330.337(b) - (f); §330.203(g) to proposed new §330.337(g); §330.203(i) and (j) to proposed new §330.337(i) and (j); and §330.203(f) to proposed new §330.337(j). The commission proposes that the ballast evaluation report be submitted in duplicate instead of the currently required triplicate. As a streamlining initiative, the commission proposes to remove the requirement for executive director approval of ballast evaluation reports. The commission proposes that if the executive director provides no response within 14 days of the date of receipt of the ballast evaluation report, the owner or operator may discontinue dewatering or ballasting operations. The remaining requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.339, Soil Liner Evaluation Report and Geomembrane Liner Evaluation Report, and to move the requirements of §330.206 and §330.411 to this section. As a streamlining initiative, the commission proposes to remove the requirement for executive director approval of soil and liner evaluation reports and geomembrane liner evaluation reports. The commission proposes that if the executive director provides no response within 14 days of the date of receipt of the soil and liner evaluation report, the owner or operator may continue facility construction or operation. The commission proposes to remove the recommendation to cover a constructed soil liner with waste within six months of construction and instead recommend that the soil liner be covered or otherwise protected. The remaining requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.341, Soil Liner Evaluation Report and Geomembrane Liner Evaluation Report, and to move the requirements of §330.206 and §330.411 to this section. As a streamlining initiative, the commission proposes to remove the requirement for executive director approval of soil and liner evaluation reports and geomembrane liner evaluation reports. The commission proposes that if the executive director provides no response within 14 days of the date of receipt of the soil and liner evaluation report, the owner or operator may continue facility construction or operation. The commission proposes to remove the recommendation to cover a constructed soil liner with waste within six months of construction and instead recommend that the soil liner be covered or otherwise protected. The remaining requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

Throughout proposed Subchapter I, the commission has changed "in air" to "percent by volume" when describing the compliance level for subsurface methane gas migration. The commission proposes this change in order to have a more clearly enforceable standard regarding the subsurface monitoring of methane migration.

The commission proposes new §330.371, Landfill Gas Management. The commission proposes to move the requirements of

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§330.56(n) to this section. The commission proposes to change “in air” to “percent by volume.” In §330.371(l), the commission proposes that these proposed revisions to Subchapter J supersede any conflicting provisions contained in any existing permits upon the effective date of this subchapter.

The commission proposes to repeal §330.401, Definitions, and move this section to proposed new §330.3. The commission proposes to delete the definition for “Closed Municipal Solid Waste Landfill (CMSWLF)” from §330.401 because this term is unnecessary.

The commission proposes a new §330.401, Applicability. The commission proposes in §330.401 to specify the applicability requirements for Subchapter J. New §330.401(a) states the applicability requirements under Subchapter J for landfill units that stopped receiving waste before the effective date of the 2006 Revisions. New §330.401(b) states the applicability requirements under Subchapter J for landfill units that did not stop accepting waste before the effective date of the 2006 Revisions. The commission proposes to move the requirements of §330.240 and §330.416(m)(1)(G)(ii) to proposed new §330.401(a) and also proposes to move §330.230(b) - (d) to proposed new §330.401(d) - (f). The requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines. The commission proposes new §330.401(c) to refer to the groundwater monitoring requirements of §332.47(6)(C)(ii) for composting operations that must be permitted.

Under the general applicability of §330.1(a)(2), the commission is proposing that owners or operators of facilities having permit applications and major amendment applications to permitted facilities that are administratively complete after the effective date of the chapter will be subject to the new well spacing requirements of §330.403(a)(2).

The commission proposes to repeal §330.402, Applicability, and move the requirements of this section to proposed new §330.9(j).

The commission proposes to repeal §330.403, General Requirements. The requirements of §330.403(1) - (6) are proposed in new §330.15(a) and (i). The requirement of §330.403(b) to manage hazardous constituents at an authorized facility is redundant with proposed new §§330.7, 330.9, 330.11, and 330.15. The commission believes that the requirement for a mandatory preapplication meeting, as required by §330.403(10), is unnecessary and proposes to delete this requirement. The commission proposes to move the requirements of §330.403(7) to proposed §330.601(1); and §330.403(9) to proposed §330.601(2).

The commission proposes new §330.403, Groundwater Monitoring Systems. The commission proposes to move the requirements of §330.231(a) - (c) and (e) to proposed new §330.403(a) - (c) and (e); and §330.231(d)(2) to proposed new §330.403(d). The commission is proposing new §330.403(a)(2) to require owners or operators of facilities to provide point of compliance well system having a well spacing no greater than 300 feet or a demonstration for other well spacings using an applicable multi-dimensional fate and transport numerical flow model. The commission also proposes to state that groundwater monitoring wells must be installed at the point of compliance. Since the point of compliance can be anywhere from the waste management unit boundary to no more than 500 feet from the unit boundary, proposed new §330.403(a)(2) further states that the placement of wells establishes the vertical plane at which owners or operators must determine whether releases from the waste management unit have occurred. The commission proposes to refer to a “point of compliance” monitoring system rather than a “downgradient” monitoring system. Some locations may have complex hydrogeologic characteristics or variable groundwater gradients that may render a simple downgradient determination unfeasible. The requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes to repeal §330.404, Variances, and move this section to proposed new §330.603.

The commission proposes to repeal §330.405, Relationship with Operating Landfills, and move this section to proposed new §330.605.

The commission proposes new §330.405, Groundwater Sampling and Analysis Requirements. The commission proposes to move the requirements of §330.233(a) and (b) to proposed new §330.405(a) and (b). The commission proposes to move the latter portion of §330.233(b)(3) to proposed new §330.405(b)(3)(A) and revise the language to be specific to Type I landfills. The commission proposes new §330.405(b)(3)(B) to be specific to Type IV landfills and new §330.405(b)(3)(C) to be specific to other waste management units. The commission proposes to move the requirements of §330.233(c) to proposed new §330.405(c), except that the commission proposes to no longer allow field-filtering of groundwater samples prior to laboratory analysis. The commission believes field-filtered groundwater samples would not represent constituents released in colloidal form from a landfill or other monitored unit. In order to truly monitor whether a waste management unit has contaminated the groundwater, the commission believes that the owner or operator should compare unfiltered groundwater samples collected from point of compliance wells to unfiltered groundwater samples collected from background wells. The commission proposes to repeal §330.233(d); move the requirements of §330.233(e) and §330.231(a)(1) to proposed new §330.405(d); move the requirements of §330.233(f) to proposed §330.405(e); and move the requirements of §330.233(g) to proposed §330.405(f). The requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes to repeal §330.406, relating to Air Quality Requirements, and move this section to proposed new §330.607.

The commission proposes to repeal §330.407, Registration Application Processing. The commission proposes to move the requirements of §330.407(b) to proposed new §330.69(b); §330.407(c) to proposed new §330.71(a); §330.407(d) to proposed new §330.69(c); and §330.407(e) to proposed new §330.69(d). The commission proposes to repeal §330.407(a) regarding the assignment of an identification number to a registration application because an administrative review is no longer a separate review for registration applications. As a streamlining initiative to expedite registration application
processing, administrative and technical reviews are now a combined review.

The commission proposes new §330.407, Detection Monitoring Program for Type I Landfills. The commission proposes to add "Type I Landfills" to the title to make clear that this program only applies to Type I landfills. The detection monitoring program requirements for Type IV landfills are covered in proposed new §330.417. The commission proposes to move the requirements of §330.234(b) to proposed new §330.407(a); and §330.234(d) to proposed new §330.407(b) with portions of the requirements of §330.234(d)(2) moving to proposed new §330.407(b)(3). The commission proposes new sections §330.407(b)(2)(A) - (E) and (c). In §330.407(b) the commission proposes to reduce the reporting requirement from two separate reports after each sampling event to requiring that the owner or operator make a determination of whether there has been a significant change in the quality of the groundwater. The commission intends for the owner or operator to make this determination after each sampling event when in detection monitoring and believes that 60 days provides adequate time for sample analysis and data computation and analysis. If there has been a significant change in the quality of the groundwater, then the owner or operator is required to notify the executive director. In addition, the commission proposes that if the owner or operator wants to demonstrate that the contamination came from a source other than the monitored landfill unit, the owner or operator must not filter the groundwater samples to be used in the demonstration before laboratory analysis. The commission proposes this requirement to ensure that any contamination that exists in the groundwater samples is not filtered out before the analysis. Also, the commission proposes to add that the executive director may require the owner or operator to provide an analysis of the landfill leachate. The commission proposes this requirement to allow the executive director to compare the groundwater sample to the leachate sample. The commission proposes to copy requirements from §335.164(7)(F) to §330.407(b)(2) to allow the owner or operator 90 days after determining a significant change in groundwater quality to prepare and submit a report demonstrating that a source other than the monitored waste management unit has caused the change in groundwater quality. Finally, the commission proposes to add that within 90 days the owner or operator must submit to the executive director a permit amendment or modification if changes to the detection monitoring program are necessary. The commission proposes this requirement to ensure that the background groundwater concentration values established in the permit are representative of the groundwater that is unaffected by the landfill.

Additionally, based on the reduction in reporting in §330.407(b), the commission proposes new subsection (c) to establish an annual detection monitoring report. This report will summarize all groundwater monitoring events and results for the previous year and will assist the executive director in evaluating the groundwater data submitted by the owner or operator.

The commission proposes to repeal §330.408, Location Standards. The commission proposes to move the requirements of §330.408(1) to proposed new §§330.63(c)(2)(D), 330.207(b) - (d), and 330.303(a); §330.409(2) to proposed new §§330.609(1); §330.409(3) to proposed new §§330.609(2); §330.409(4) to proposed new §§330.131; §330.409(5) to proposed new §§330.15(a); §330.409(6) to proposed new §§330.609(3); §330.409(7) to proposed new §§330.137; §330.409(8) to proposed new §§330.153; and §§330.409(9) - (16) to proposed new §§330.609(4) - (11).

The commission proposes new §330.409, Assessment Monitoring Program. The commission proposes to move the requirements of §§330.235(a) to proposed new §§330.409(a); and §§330.235(b) to proposed new §§330.409(b). The commission proposes to require the owner or operator to establish background concentrations in only background wells for any additional 40 CFR Part 258 Appendix II hazardous constituents detected in point of compliance wells. The commission believes it is inappropriate to also use point of compliance wells to establish background concentrations of Appendix II hazardous constituents that may be releasing from a landfill or compost unit. The commission proposes to move the requirements of §330.235(c) to proposed new §§330.409(c) and remove the annual limitation on the alternative frequency for the complete analysis of 40 CFR Part 258 Appendix II hazardous inorganic and organic constituents to be consistent with the applicable federal regulations. The commission proposes to move the requirements of §§330.235(d) to proposed new §§330.409(d) with a revised time frame for reporting from 45 to 60 days to allow more time to prepare the report and to be consistent with the time frame allotted in proposed new §§330.407(b) for the owner or operator to make a determination during detection monitoring; §§330.235(e) to proposed new §§330.409(e); §§330.235(f) to proposed new §§330.409(f); §§330.235(g)(1)(A) - (D) to proposed new §§330.409(g)(1)(A) - (D), respectively; §§330.235(g)(2) to proposed new §§330.409(g)(2) and (3); §§330.235(h) to proposed new §§330.409(h); §§330.235(i) to proposed new §§330.409(i); and §§330.235(j) to proposed new §§330.409(j). The commission proposes new §§330.409(g)(1)(B) to require the owner or operator to install at least one additional monitoring well between a monitoring well having a statistically significant concentration above the groundwater protection standard and the next adjacent wells along the point of compliance before the next sampling event in order to better characterize the contaminant plume. The commission proposes new §§330.409(g)(2)(A) - (D) to specify specific time frames for submitting alternative source demonstrations for apparent statistically significant changes in groundwater quality and proposes new §§330.409(k) to require an annual assessment monitoring report. The commission proposes §§330.409(k) to assist the executive director in evaluating the groundwater data submitted by the owner or operator.

The commission proposes to repeal §§330.410, Soils and Liner Quality Control Plan, and move the requirements of this section to proposed new §§330.339 and 330.609(1).

The commission proposes to repeal §§330.411, Soils and Liner Evaluation Report (SLER) and Flexible Membrane Liner Evaluation Report (FMLER), and move the requirements of this section to proposed new §§330.341 and §§330.609(1)(D).

The commission proposes new §§330.411, Assessment of Corrective Measures. The commission proposes to move the requirements of §§330.236(a) - (d) to proposed new §§330.411(a) - (d) with revisions to §§330.411(a) to replace "a reasonable amount of time approved by the executive director" with a more
specific “180 days.” The requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes to repeal §330.412, Records Requirements, and move the requirements of this section to proposed new §330.219(d).

The commission proposes to repeal §330.413, Certification by Engineer, Ownership or Control of Land, and Inspection. The commission proposes to move the requirements of §330.413(a) to proposed new §330.73(d); §330.413(b) to proposed new §330.57(d); and §330.413(c) to proposed new §330.73(e).

The commission proposes new §330.413, Selection of Remedy. The commission proposes to move the requirements of §330.237(a) - (l) to proposed new §330.413(a) - (l). The requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes to repeal §330.414, Required Forms, Applications, and Reports. The commission proposes to move §330.414(2) and (3) to proposed new §330.611(1) and (2).

The commission proposes to repeal §330.415, Additional Requirements for Municipal Solid Waste Mining Facilities. The commission proposes to move the requirements of §330.415(b) - (d) to proposed new §330.73(a) - (c); and §330.415(e) and (f) to proposed §330.73(e) and (f).

The commission proposes new §330.415, Implementation of the Corrective Action Program. The commission proposes to move the requirements of §330.238(a) - (d) to proposed new §330.415(a) - (d); and the requirements of §330.238(e) - (g) to proposed new §330.415(f) - (h). The commission proposes to add a new annual corrective action report in §330.415(e). This report will summarize the corrective action activities and effectiveness of the activities for the previous year and will assist the executive director in evaluating the corrective action data submitted by the owner or operator. The remaining requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes to repeal §330.416, Registration Application Preparation. The commission proposes to move the requirements of §330.416(a) and (b) to proposed new §330.57(g)(2) and (3); §330.416(d) to proposed new §330.219(a); §330.416(e) to proposed new §330.57(d); §330.416(e)(3) to proposed new §330.61(a); §330.416(g) to proposed new §330.143(b)(8); §330.416(h)(1) to proposed new §330.57(f); §330.416(h)(2) and (j) to proposed new §330.57(g); §330.416(i) to proposed new §330.57(h); §330.416(k) to proposed new §330.61(h); §330.416(l) to proposed new §330.61(i); §330.416(m)(1)(A) and (B) to proposed new §330.303(a); §330.416(m)(1)(C) to proposed new §330.207(b) and (c); §330.416(m)(1)(D) to proposed new §330.63(c) and §330.305; §330.416(m)(1)(E) to proposed new §330.63(d)(7); §330.416(m)(1)(F) to proposed new §330.63(e); §330.416(m)(1)(G) to proposed new §330.401; §330.416(m)(1)(H) to proposed new §330.61(d); §330.416(m)(1)(I) to proposed new §330.63(d)(7)(B); and §330.416(m)(2) to proposed new §330.65.

The commission proposes to repeal §330.417, Groundwater Monitoring at Type IV Landfills. The commission proposes to move the requirements of §330.239(a) and (b) to proposed §330.417(a) and (b). The commission proposes new §330.417(b)(5) to require that the owner or operator determine whether there has been a release within 60 days of the sampling event. The commission intends for the owner or operator to make this determination after each sampling event when in detection monitoring and believes that 60 days provides adequate time for sample analysis and data computation and analysis. The remaining requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes to repeal §330.418, Final Soil Product by Grade, and move the requirements of this section to proposed new §330.615.

The commission proposes to repeal §330.419, Allowable Uses of Final Soil Product by Grade, and move the requirements of this section to proposed §330.615.

The commission proposes new §330.419, Constituents for Detection Monitoring. The commission proposes to move the requirements of §330.234(a)(1) to proposed new §330.419(b); §330.234(a)(2) to proposed new §330.419(c); the requirements of §330.241 to proposed new §330.419(a); and the requirements of §330.234(a)(1) and (2) to proposed new §330.419(b) and (c). The remaining requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.421, Monitor Well Construction Specifications. The commission proposes to move the requirements of §330.231(d) and §330.242(a) to proposed new §330.421(a); and §330.242(b) - (g) to proposed new §330.421(b) - (g). The commission proposes new §330.421(a)(1)(D) to allow a licensed professional geoscientist or engineer to supervise the preparation of groundwater monitoring well boring logs, instead of requiring direct observation and boring log preparation by the professional. The commission believes current requirement for a licensed professional geoscientist or engineer to observe the monitor well installation and prepare the boring log creates an unnecessary burden and that the duty can be performed by others with professional supervision. All other requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.451, Applicability, and proposes to move the requirements of §330.250 to this section with
changes. The commission proposes new §330.451(d) to subject closed facilities to revised monitoring well spacing requirements if a release is detected. In §330.451(d), the commission proposes to specify the applicability requirements for Subchapter K. The commission proposes that permits that existed before the 2006 Revisions are effective remain valid subject to the requirements of §330.401(a). The formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.453, Closure Requirements for Municipal Solid Waste Landfill Units that Stop Receiving Waste Prior to October 9, 1991, Type IV Landfills, and Municipal Solid Waste Sites, and proposes to move the requirements of §330.251 to this section. In §330.453(e), the commission proposes to change "the effective date of this title" to "October 9, 1993." The commission proposes this change to ensure that the requirement for final cover placement is not inadvertently changed. If the commission did not make this proposed change it would alter the requirement for final cover placement by allowing until the effective date of this proposed rule for the final cover to be completed. In the current rule the closure requirements for Type IV landfills are specified in Subchapter D, which cross-references Subchapter J. In this rule, the commission proposes to consolidate the Type IV landfill closure requirements into this section. Therefore, the commission also proposes to add "Type IV" to the title to accurately reflect the contents of this section. The requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.455, Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1991, but Stop Receiving Waste Prior to October 9, 1993, and to move the requirements of §330.252 to this section. In proposed §330.455(b), the commission proposes to change "within 180 days of the last receipt of wastes or by the effective date of this title, whichever is later" to "October 9, 1994." The latest date for the final cover to be completed was October 9, 1994. The commission proposes this change to ensure that the requirement for final cover placement is not inadvertently changed. If the commission did not make this proposed change it would alter the requirement for final cover placement by allowing until the effective date of this proposed rule for the final cover to be completed. The remainder of the requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.457, Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1993. The commission proposes to move the requirements of §330.253(b) - (d), (e)(1), (2), (4) - (6), and (10), and (f) to §330.457(a) and (c) - (f). In proposed §330.457(a)(2), the commission proposes to change "infiltration layer" to "clay rich soil cover layer" to ensure that appropriate soil will be used to prevent infiltration when covering MSW landfill units having no bottom liner. The commission proposes to move the requirement for final cover for a Class 1 industrial solid waste trench from §330.200(f)(5) to proposed §330.457(b). The commission proposes to remove the requirement for an infiltration layer and an erosion layer from an alternative final cover design in proposed §330.457(d) to allow greater flexibility for designs such as evapotranspiration final cover systems. The commission proposes to move the requirement from §330.253(e)(8) to proposed §330.457(g). Additionally, the commission proposes to delete the words "and MSW sites" from the title of this section. This change will mean that all MSW sites will be subject to the post closure requirements in §330.463(a), which requires five years of post-closure care. Under §330.253 MSW sites are subject to 30 years of post-closure care. The commission proposes to remove this inconsistency.

The commission proposes new §330.459, Closure Requirements for Municipal Solid Waste Storage and Processing Units. The commission proposes new subsection (a) to incorporate specific closure language for the removal of waste at storage and processing units. In the current rule there is only closure language for leaving waste in place at landfills. Therefore, to provide clarity to the owners and operators of waste storage and processing units on how to close the units at their facilities, the commission proposes new subsection (a). The commission copied the requirement in §332.47(9) to §330.459(b) to ensure that all the permitting requirements for an MSW facility would be in one chapter to help improve the organization and clarity of this proposed rule. The commission proposes to allow in new §330.459(c) that if there is evidence of a release from a MSW unit, the executive director may require an investigation into the nature and extent of the release and an assessment of measures necessary to correct an impact to groundwater for situations where it may be impractical to remove all waste and waste residues. The commission moved the closure requirement in §330.282(c) to proposed §330.459(d) to gather all the closure requirements into one section.

The commission proposes new §330.461, Certification of Final Facility Closure. The commission proposes to move the requirements of §330.253(e)(3) to proposed new §330.461(a); §330.253(e)(7) to proposed new §330.461(b); §330.253(e)(8) to proposed new §330.461(c); and §330.253(e)(9) to proposed new §330.461(d). In §330.461(c)(2), the commission proposes a new requirement to have an independent professional engineer certify that the final facility closure has been completed in accordance with the approved closure plan. The commission proposes this requirement to ensure that the owner or operator closes the facility following the plan and to provide a date certain for when the executive director considers the facility closed. The commission proposes to add §330.461(c)(3) to have the owner or operator of a facility that does not require post-closure care submit a voluntary revocation request under §305.67 for a permit or under §330.71 for a registration with the closure completion certification. MSW registrations and permits are typically valid until the registration or permit is cancelled or revoked. Therefore, to ensure that the commission does not continue to have an inactive registration or permit for a facility that has been closed the commission proposes this requirement. The remainder of the requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.
The commission proposes new §330.463, Post-Closure Care Requirements, and to move the requirements of §330.254 to this section. Throughout this section the commission proposes to change the term “landfill” to “waste management unit” subject to post closure to encompass other solid waste management units. The commission proposes this change to clarify the scope of MSW facilities that are subject to post-closure care. In §330.463(b)(1) the commission proposes to change “immediately upon completion of final closure . . .” to “After P.E. certification of the completion of closure . . .” to provide a date certain for when post-closure care begins. The remainder of the requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.465, Certification of Completion of Post-Closure Care, and to move the requirements of §330.256 to this section. The commission proposes to add §330.467(b) to have the facility owner and operator submit a voluntary revocation request under §305.67 for a permit or under §330.71 for a registration with the post-closure care completion certification. MSW registrations and permits are typically valid until the registration or permit is cancelled or revoked. Therefore, to ensure that the commission does not continue to have an inactive registration or permit for a facility that has completed post-closure care, the commission proposes this requirement. The remainder of the requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

Throughout Subchapter L the commission proposes to add the phrase "cost estimate" to the titles of §§330.503 - 330.509 and to the language in §330.501 to reflect the subject matter contained in the subchapter and to distinguish Subchapter L from Subchapter K.

The commission proposes new §330.501, Applicability. The commission proposes to move the requirements of §330.280 to this section. The commission proposes to modify this section to apply only to those facilities that are required to have financial assurance. Only facilities required to acquire and maintain financial assurance are required to use cost estimates, therefore, the commission proposes this change to clarify the scope of who is subject to Subchapter L. Section 330.282(b)(2) required any MSW processing facility to establish financial assurance for closure. The commission proposes to delete this requirement and replace it with the requirement in §330.501 that only those facilities required to have financial assurance are subject to Subchapter L. The commission proposes this change because it is unnecessary for facilities that are not required to have financial assurance to provide a closure cost estimate.

The commission proposes new §330.507, Post-Closure Care Cost Estimates for Landfills. The commission proposes to move the requirements of §330.283 to this section. In §330.507(a)(3), the commission proposes to delete language related to the time frame for submitting revised financial assurance documents that reflect reductions in closure cost estimates. This requirement is deleted because it is unnecessary. The remainder of the requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.507, Corrective Action Cost Estimate for Landfills. The commission proposes to move the requirements of §330.284 to this section. In §330.509(a)(2), the commission proposes to delete language related to the time frame for submitting revised financial assurance documents that reflect reductions in closure cost estimates. This requirement is deleted because it is unnecessary. The remainder of the requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.541, Applicability, to specify the applicability requirements of Subchapter M. The commission proposes that this subchapter applies in accordance with the conditions specified in §330.1.

The commission proposes new §330.543, Easements and Buffer Zones. The commission proposes to copy the requirements of §330.121, Easements and Buffer Zones, to new §330.543(a) to establish that easement protection applies to all MSW facilities. This landfill requirement is currently applied to storage and processing facilities through reference. The commission proposes subsection (a) to clarify that the requirement for easement protection applies to all MSW facilities and copies the requirement
for easements into Subchapter M to better organize the chapter by having the easement requirements in one section. The commission proposes to move the requirement in §330.408(4) and the requirement in §330.121(b) to proposed new §330.543(b)(1) without changes. The TCEQ’s Municipal Solid Waste Permits Section held a series of public outreach meetings to gather comments to identify aspects of the MSW program that the general public and the solid waste industry viewed as needing attention. The commission received widespread input from the public that the current 50-foot buffer zone requirement for landfills was inadequate. As a result of this input, the commission proposes new §330.543(b)(2) to establish a 125-foot buffer zone around all new Type I and Type IV MSW landfills, vertical or lateral expansions of existing Type I and Type IV landfills, and existing Type IAE and Type IVAE landfills that subsequently no longer qualify for the arid exemption based on the conditions specified in proposed §330.5(b)(1). The increased landfill buffer zone requirement is intended to afford ready access for emergency response, maintenance, and monitoring activities; greater protection from windblown waste and odors; and provide better control of site drainage and sediment transport within an overall facility boundary. The proposed new buffer zone will not apply to Type IAE or Type IVAE landfills. The commission seeks comment on the adequacy of this minimum buffer zone requirement. The commission proposes to add a new requirement in §330.543(b)(3) to allow an alternative buffer zone if the buffer zone required by subsection (b)(2) is not feasible. The commission proposes this provision to provide flexibility to the owners or operators who must comply with this section.

The commission proposes new §330.545, Airport Safety. The commission proposes to move the requirements of §330.300 to this section; and §330.408(6) to new §330.545(a). In §330.300(c) the commission deleted the requirement to show the distance from an airport as part of a permit transfer because a permit transfer does not change the operations of the facility. The commission proposes to revise the notification and evaluation distance requirement of landfills from airports in §330.545(b) and (d) from five to six miles to reflect current requirements.

The commission proposes new §330.547, Floodplains. The commission proposes to move the requirements of §330.56(f)(4)(B)(iii) to new §330.547(a). Section 330.56(f)(4)(B)(iii) does not allow disposal and treatment facilities to be located in a floodplain. However, the commission proposes to revise this provision to only apply to disposal operations because §330.66(d)(6) allows liquid waste processing facilities to be located in a 100-year floodplain if the owner or operator can demonstrate that the facility can prevent washout of contaminants. Additionally, the commission proposes to move the requirement in §330.66(d)(6) to §330.547(c) and expand it to include all MSW storage and processing facilities. The commission proposes to move §330.301 and §330.408(1) to proposed new §330.547(b) and to move the requirement to submit a demonstration that the unit will not restrict the flow of a 100-year flood, reducing the temporary storage water capacity of the floodplain or resulting in the washout of solid waste, to the application requirements of §330.63(c). The commission proposes to move the requirement in §330.51(b)(4)(C) to new §330.547(c) without changes.

The commission proposes new §330.549, Groundwater. The commission proposes to move the requirements of §330.408(5) to proposed new §330.549(a) and to change “landfill mining operations” to “municipal solid waste facility.” The commission proposes this requirement to make it clear that MSW facilities must comply with Chapter 213, Edwards Aquifer. The commission proposes to add §330.549(b) to reference the requirements of §335.584(b)(1) and (2) for MSW Type I landfill facilities managing Class 1 industrial solid waste that are located over relatively permeable soil strata or regional aquifers.

The commission proposes new §330.551, Endangered or Threatened Species. The commission proposes to copy the requirements of §330.129, Endangered Species Protection, to new §330.551(a) to establish that endangered or threatened species protection applies to all MSW facilities. The commission proposes to move the requirements of §330.53(b)(13)(B) and §330.408(3)(B)(iii) to new §330.551(a); and §330.53(b)(13)(A) to new §330.551(b).

The commission proposes new §330.553, Wetlands. The commission seeks comment on proposed new §330.553(a) that will prohibit MSW storage or processing facilities from being located in wetlands and on whether the owner or operator of a storage or processing facility may provide a demonstration that would allow the facility to be located in wetlands, as is currently allowed for landfills and landfill mining operations. A prohibition exists in §332.44(3) for composting facilities requiring a permit. The commission proposes to move the requirements of §330.302 and §330.408(3) to proposed new §330.553(b). The commission proposes to add "a permit major amendment or a registration" to subsection (b). The commission proposes to add "a permit major amendment" to this subsection to ensure that the owner or operator of a proposed facility expansion into wetlands performs the demonstrations in §330.553(b)(1) - (5). Additionally, the commission added "registration" to subsection (b) to provide flexibility for owners and operators of registered facilities proposing to locate in wetlands.

The commission proposes new §330.555, Fault Areas, and to move the requirements of §330.204 and §330.303 to this section without change except in subsection (a). In §330.555(a) the commission proposes to delete the requirement to submit an alternative setback demonstration as part of a permit transfer request because a permit transfer does not change the geology of the facility.

The commission proposes new §330.557, Seismic Impact Zones, and to move the requirements of §330.304 to this section with changes. In §330.575 the commission proposes to delete the requirement to submit a demonstration that the facility is designed to resist the maximum horizontal acceleration in liquefied earth material for the site as part of a permit transfer because a permit transfer does not change the geology of a facility.

The commission proposes new §330.559, Unstable Areas, and to move the requirements of §330.305 to this section with changes. In §330.559 the commission proposes to delete the requirement to submit a demonstration regarding unstable areas for the site as part of a permit transfer because a permit transfer does not change the geology of a facility. The remaining requirements were moved without changes.

The commission proposes to repeal §330.561, Purpose and Scope, and to move the requirements of this section to proposed new §330.631.

The commission proposes new §330.561, Coastal Areas, to refer to the requirements of §335.584(b)(3) and (4) that prohibit MSW
The commission proposes new §330.563, Type I and Type IV Landfill Permit Issuance Prohibited, to incorporate the requirements of THSC, § 361.122, Denial of Certain Landfill Permits, as established by the 77th Legislature, 2001. This statutory change took effect September 1, 2001. The commission proposes new §330.563 to implement House Bill 1053, 79th Legislature.

The commission proposes to repeal §330.564, Coordination with Other Programs, and to move the requirements of this section to proposed new §330.637.

The commission proposes to repeal §330.565, Public Participation Requirements for Solid Waste Plans, and to move the requirements of this section to proposed new §330.643.

The commission proposes to move section 330.604, Composting Requirements, and to move the requirements of this section to proposed new §330.645.

The commission proposes to move §330.566, Procedures for Regional and Local Plan Submission, Approval, and Distribution, and to move the requirements of this section to proposed new §330.641.

The commission proposes to move §330.567, Financial Assistance for Regional and Local Plans, and to move the requirements of this section to proposed new §330.645.

The commission proposes to move §330.568, Approved State, Regional, and Local Solid Waste Management Plans, and to move the requirements of this section to proposed new §330.647.

The commission proposes to move §330.569, Regional Solid Waste Grants Program, and to move the requirements of this section to proposed new §330.649.

The commission proposes to move §330.601, Purpose and Applicability, and to move the requirements of this section to §330.671.

The commission solicits comment for whether proposed Subchapter N should be expanded beyond mining activities to include any type of waste removal and relocation. The commission anticipates that there may be a future desire to remove and re-inter waste in order to redevelop a property that includes an old landfill.

The commission proposes new §330.601, General Requirements. The commission proposes to move the requirements of §330.403(7) to proposed §330.601(1); and §330.403(9) to §330.601(2). The requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes to repeal §330.602, Fees, and to move the requirements of this section to §330.673.

The commission proposes to repeal §330.603, Reports, and to move the requirements of this section to §330.675.

The commission proposes new §330.603, Variances. The commission proposes to move the requirements of §330.404 to this section without substantive changes.

The commission proposes to repeal §330.604, Composting Requirement, and to move the requirements of this section to §330.677.

The commission proposes new §330.605, Relationship with Operating Landfills. The commission proposes to move the requirements of §330.405 to this section. The requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.606, Relationship with Air Quality Requirements. The commission proposes to move the requirements of §330.406 to this section. The requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.609, Operational Requirements and Design Criteria. The commission proposes to move §§330.409(2) and §330.410(a) to proposed new §§330.609(1); §330.409(3) to proposed new §§330.609(2); §330.409(6) to proposed new §§330.609(3); and §§330.409(9) - (16) to proposed new §§330.609(4) - (11). The commission proposes to move the requirement of §330.411 to §§330.609(1)(D) to require an owner or operator of a landfill mining operation to submit liner construction certifications required by proposed new §§330.341. The requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.610, Relationship with Other Requirements. The commission proposes to move section §330.414(2) and (3) to proposed new §§330.611(1) and (2). The requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.613, Sampling and Analysis Requirements for Final Soil Product. The commission proposes to move the requirements of §§330.417 to this section.

The commission proposes new §330.615, Final Soil Product Grades and Allowable Uses. The commission proposes to move the requirements of §§330.418 and §§330.419 to this section. In §§330.615(b), the commission proposes to change the requirement that test results be conducted according to the agency’s current quality assurance program plan or the

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The commission proposes new §330.631, Purpose and Scope. The commission proposes to move §330.561(a) to proposed new §330.631(b); and §330.561(b)(1) and (2) to proposed new §330.631(c)(2) and (3).

The commission proposes new §330.633, Definitions of Terms and Abbreviations. The commission proposes to move the requirements from §330.562 to this section. The commission proposes to delete the definitions for commission, commissioners, and executive director because these words are defined in 30 TAC Chapter 3. The commission proposes to delete definitions for implementation, planning, provide for, and variance from §330.562 as these words are in common and normal usage and need not be specifically defined within this chapter.

The commission proposes new §330.635, Regional and Local Solid Waste Management Plan Requirements. The commission proposes to amend the required contents of regional and local solid waste management plans to more closely match the requirements of THSC, Chapter 363, Subchapter D. Throughout this subchapter, the commission proposes to change "planning commission" to "councils of government" to follow the definition used in THSC, Chapter 363, Subchapter D.

The commission proposes new §330.637, Coordination with Other Programs. The commission proposes to move the requirements from §330.564 to this section. The requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.639, Public Participation Requirements for Solid Waste Plans. The commission proposes to move the requirements from §330.565 to this section. The requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes to repeal §330.641, Purpose and Applicability. The requirements of this section are proposed to be within the registration by rule requirements of proposed new §330.9(l) and (m).
The commission proposes new §330.673, Fees, and to move the requirements of §330.71(h) and §330.602 to this section. The commission proposes adding an enclosed structure to proposed new §330.673(a)(7)(B) regarding charging federal facilities tipping fees only for the amount necessary to reimburse TCEQ MSW regulatory activities. Federal facilities are required by Resource Conservation and Recovery Act (RCRA), §6001, to pay reasonable service charges required for the implementation of state RCRA programs. Federal facilities are exempt from the payment of state taxes. Tipping fees charged federal facilities for disposal in landfills owned and operated by the federal facility must be based on services provided and may not include state taxes.

The commission proposes new §330.675, Reports, and to move the requirements of §330.603 to this section. The requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.677, Composting Refund, and to move the requirements of §330.71(h) and (i) and §330.604 to this section. The requirements were moved without substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines. The commission seeks comment on whether the conversion factors for compaction proposed in §330.675(a)(2)(B) are appropriate.

The commission proposes to repeal Subchapter R (§§330.825 - 330.830) in its entirety. This subchapter established procedures for managing the Waste Tire Recycling Fund. The statutory authority for this program was repealed in 1997 and the commission no longer has reimbursement program. Therefore, the provisions of Subchapter R are no longer needed.

The commission proposes amendments to Subchapter S, §§330.890 - 330.897. The changes are not substantive; however, the commission does propose to change the formatting and modify the rule language to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes to move the requirements of §330.255, Post-Closure Land Use, for permitted landfills in post-closure care to Subchapter T to promote consistency and clarify the requirements for the use of land adjacent to or over closed MSW landfills or dumping areas. The commission proposes to change the term “public hearing” to “public meeting” throughout Subchapter T to implement House Bill 1609, 79th Legislature.

The commission proposes to amend §330.951, Definitions, by deleting the following definitions from: garbage, hazardous waste, industrial solid waste, municipal solid waste, and rubbish. These terms are defined in new §330.3.

The commission proposes to add the following definitions to §330.951: authorization, dumping area, post-closure care, post-closure care landfills, and registration.

The commission proposes to revise the following definitions in §330.951: alteration and closed municipal solid waste landfill.

The commission proposes to amend §330.952, Applicability and Exemptions, by deleting local government officials and licensed professional engineers from the list of persons affected by these rules. Subchapter T applies to persons owning, leasing, or developing property having a closed MSW landfill except as noted in §330.952(b). No other substantive changes were made except to modify the rule language to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes to amend §330.953, Soil Test Required before Development. There are no substantive changes to the requirements; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform to Texas Register requirements and agency guidelines.

The commission proposes to amend §330.954, Development Permit and Registration Requirements, Procedures, and Processing, by changing the title to Development Permit, Development Authorization, and Registration Requirements, Procedures, and Processing. The commission proposes to amend §330.954(a)(1) to apply to a dumping area as defined in §330.951 to more fully describe when a development permit would be required. The commission proposes to delete §330.954(a)(1)(B), which exempts enclosed structures that are adjacent but not built over a waste disposal area. The commission proposes new §330.954(a)(2) and (3) to further describe scenarios when an owner would need to submit a development permit for construction of an enclosed structure over a closed landfill or dumping area based on whether the owner has determined the waste boundaries within the property. The commission proposes to move §330.954(a)(2) - (6) to §330.954(a)(4) - (8). The commission proposes moving the application fee requirement of §330.954(a)(7) to §330.59(h)(2); and the requirement of §330.954(a)(8) for owners and operators of permitted MSW facilities to submit a permit amendment when adding an enclosed structure to proposed new §330.954(c). The commission proposes new §330.954(c) to describe scenarios when an owner would need to submit a development permit modification or amendment application for construction of an enclosed structure over a permitted, closed landfill. The commission proposes to reletter §330.954(c) to §330.954(d).

The commission proposes to move §330.955(a) and (b) to proposed new §330.954(e)(1) and (2); and §330.954(a)(1)(A) to proposed new §330.954(e)(3). The commission proposes new §330.954(e)(4) to require that requests to disturb the final cover of closed landfills or dumping areas be submitted at least 30 days prior to the proposed activity to allow commission staff time to review the requests. Changes were made to §330.954(b) to implement House Bill 1609, 79th Legislature, to change the term “public hearing” to “public meeting,” and to make public meetings discretionary.

The commission proposes to amend §330.955, Prohibitions, by moving subsections (a) and (b) to proposed new §330.954(e)(1) and (2). The commission proposes to reletter §330.955(d) to proposed new §330.955(a); and move §330.255(e) to
The commission proposes to move the requirements of §330.956(c) to proposed new §330.956(b)(2); and §330.956(d)(g) to proposed new §330.956(e) - (h). The commission proposes these moves for better organization and readability by grouping similar requirements together. The commission proposes to add new §330.956(c) to instruct an owner to submit a permit application following the format specified in proposed new §330.57(e)(h). This will eliminate the redundancy of repeating the application format in both §330.57 and §330.956.

The commission proposes to amend §330.957, Technical Requirements of Part A of the Application, by changing the title to Contents of the Development Permit and Workplan Application, to clearly describe the items that must be part of a permit application for development over a closed MSW landfill. The commission proposes to move the requirements of §330.957(a)(1) and (2) to proposed new §330.57(g); §330.957(a)(3) to proposed new §330.957(b)(1); §330.255(b) to proposed new §330.957(b)(2)(A) - (C); §330.255(d) to proposed new §330.957(b)(2)(D); §330.957(a)(4) to proposed new §330.957(c); §330.957(b) to proposed new §330.957(d); §330.957(f) - (h) to proposed new §330.957(e) - (g); §330.957(i)(t) to proposed new §330.957(h) - (i); and §330.255(f)(4) - (6) to proposed new §330.957(j)(1)(D) - (F). The commission proposes to remove the requirement of §330.957(i) to submit an aerial photograph as part of an application for development over a closed MSW landfill. The aerial photograph is not necessary for the executive director to conduct an application review. The commission proposes to amend §330.957(g)(1)(A) to require a development permit for an on-site, permanent, enclosed structure that is located over a closed MSW landfill or a dumping area with determined boundaries.

The commission proposes to amend §330.958, Technical Requirements of Part B of the Application, by changing the title to Construction Plans and Specifications, to more accurately reflect the contents of the section. To reduce reporting requirements the commission proposes to remove the requirement that as-built construction plans and specifications be submitted to the executive director. These plans must still be maintained at the permitted development and be available for inspection.

The commission proposes to amend §330.959, Requirements for Registration of an Existing Structure Built Over a Closed Municipal Solid Waste Landfill Unit, by changing the title to Contents of Registration Application for an Existing Structure Built Over a Closed Municipal Solid Waste Landfill Unit. The commission proposes new §330.959(a) to refer to the requirements of §330.956, to move the requirements of §330.959(2) and (3) to §330.959(b)(1) and (2); proposes new §330.959(b)(3) to refer to the requirements of §330.957(f), (g), and (k)(3); and proposes to move the requirements of §330.959(4) - (6) to §330.959(b)(4) - (6).

The commission proposes to repeal §330.960, Operational Requirements for an Enclosed Structure Over a Closed Municipal Solid Waste Landfill Unit, and move the requirements of this section to proposed new §330.961.

The commission proposes new §330.960, Contents of Authorization Request to Disturb Final Cover Over a Closed Municipal Solid Waste Landfill for Non-enclosed Structures.

The commission proposes the repeal of §330.961, Notice to Real Property Records and to move the requirements of this section to proposed new §330.962.

The commission proposes new §330.961, Operational Requirements for an Enclosed Structure Over a Closed Municipal Solid Waste Landfill Unit, a Dumping Area, or a Municipal Solid Waste Landfill in Post-Closure Care. The commission proposes to add the new requirement in §330.961(b)(2)(A) that the owner or operator shall notify the executive director and take action in accordance with §330.371(3) whenever methane gas levels exceeding the limits specified in §330.961(b)(1) are detected. The formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes the repeal of §330.962, Notice to Buyers, Lessees, and Occupants, and proposes to move the requirements of this section to proposed new §330.963.

The commission proposes new §330.962, Notice to Real Property Records. The commission proposes to move the requirements of §330.961 to this section.

The commission proposes the repeal of §330.963, Lease Restrictions, and proposes to move the requirements of this section to proposed new §330.964.

The commission proposes new §330.963, Notice to Buyers, Lessees, and Occupants and to move the requirements of §330.962 to this section.

The commission proposes new §330.964, Lease Restrictions and to move the requirements of §330.963 to this section.

The commission proposes a new Subchapter U. The commission proposes a new standard permit to authorize air emissions at MSW landfill sites and transfer stations based on statutory requirements of THSC, Chapter 382, and a comprehensive evaluation of air quality emissions and their potential effects. This standard permit is intended to provide a streamlined authorization process and will qualify as the new source review (NSR) air authorization needed for most landfill sites and transfer stations, and it will include air permitting requirements for the landfill, common support equipment, and associated facilities located at the site. This new standard permit will be placed into a new Subchapter U in this chapter, replacing the current standard permit for MSW landfills in 30 TAC §116.621, Municipal Solid Waste Landfills.

The proposed standard permit will enable landfill owners and operators to use a single authorization and certify federally enforceable emission limits and parameters for the facilities typically found at an MSW landfill site or transfer station. Currently,
an MSW landfill site authorized by §116.621 may need to obtain multiple permits by rule (PBR), standard permits, or other NSR air authorizations for all activities occurring on the site.

The following facilities are typically found at MSW landfill sites and are authorized by PBR and standard permits: 30 TAC §106.181, Used-Oil Combustion Units; §106.183, Boilers, Heaters, and Other Combustion Devices; various miscellaneous sources and recycling equipment that meet the requirements of §106.261 Facilities (Emission Limitations) or §106.262, Facilities (Emissions and Distance Limitations); §106.433, Surface Coast Facility; §106.436, Auto Body Refinishing Facility; §106.451, Wet Blast Cleaning; §106.452, Dry Abrasive Cleaning; §106.454, Degreasing Units; §106.472, Organic and Inorganic Liquid Loading and Unloading; §106.496, Air Curtain Incinerators; §106.512, Stationary Engines and Turbines; §116.617, Standard Permits for Pollution Control Projects; Standard Permit for Temporary Rock Crushers; and Air Quality Standard Permits for Electric Generating Units. Certification under the standard permit in this chapter will enable the landfill owner/operator to construct and operate facilities covered under these and any other PBRs and standard permits.

Sites that are subject to 40 CFR Part 60, Subpart WWW, Standards of Performance for Municipal Solid Waste Landfills, 30 TAC Chapter 113, Subchapter D, Division 1, Municipal Solid Waste Landfills, or 40 CFR Part 63, Subpart AAAAA, National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills, Subpart AAAAA, are also subject to the Title V federal operating permits major source program. These sites are required to obtain a site operating permit or a general operating permit (GOP). To address EPA concerns about inclusion of case-by-case NSR authorizations in GOPs, the GOP qualification criteria has been changed to only allow sites authorized by PBRs and/or standard permits to operate under the GOPs. This standard permit will allow more sites to be authorized by a standard permit authorization and maintain their GOP eligibility.

The commission proposes new §330.981, Applicability, to state that the requirements of the new standard permit will be applied 180 days after the effective date of the rules. This will allow time for existing landfills to be certified before the conditions of the standard permit will be enforced.

The commission proposes new §330.983, Definitions, to include terms that are typically used in the rules of the commission that regulate emissions of air contaminants. Because new Subchapter U is an authorization to emit air contaminants, and it is incorporated into Chapter 330 it is necessary and appropriate that most of these terms be defined as they are in the air rules. Some of the terms may also have definitions in §330.3, Definitions, so it is necessary to add the definitions that will apply to air emissions in Subchapter U.

In paragraph (1) the term bioreactor was not previously defined in the air or waste rules, so it was necessary to propose this definition. The definition is similar to what is found on the EPA MSW Web site under “bioreactors,” except for the addition of leachate and landfill gas condensate as acceptable liquids that can be added to the landfill mass.

Proposed definitions in paragraphs (3) - (5) classify MSW landfills into three categories for purposes of this standard permit. An MSW landfill qualifies for Category 1 if it has a design capacity less than 2.5 million megagrams (MMg) or 2.5 million cubic meters (m$^3$). A Category 2 MSW landfill has a design capacity greater than 2.5 MMg and 2.5 million m$^3$. These larger MSW landfills will continue to qualify for the Category 2 classification until the uncontrolled non-methane organic compound (NMOC) emission rate exceeds 50 megagrams per year (Mg/yr). The largest MSW landfill that may be authorized by the standard permit is classified as Category 3, which has a design capacity greater than 2.5 MMg and 2.5 million m$^3$, and a calculated uncontrolled NMOC emission rate greater than or equal to 50 Mg/yr. These categories were determined based on possible applicability and control requirements of 40 CFR Part 60, Subpart WWW and 40 CFR Part 63, Subpart AAAAA. Type IV and Type IVAE landfills do not accept household wastes, so these landfills would not be subject to Subpart WWW by definition; however, these sites could use this Subchapter U authorization, if there were other operations present that could not qualify under §106.534, Municipal Solid Waste Landfills and Transfer Stations.

In paragraph (7) the definition of the term facility under Chapter 330 refers to the entire MSW landfill site, but as the term applies to air emissions, it is defined in THSC, §382.002(6) as a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not a facility. Because Chapter 330 has the same definition for “site” and “facility,” and in the commission’s air rules a site may contain many facilities, it is necessary to define in paragraph (13), “site,” so that it is understood that it could contain additional sources of emissions than just the landfill mass itself, as defined in paragraph (14). Also, because of the possible conflict in the use of the term process or processing between the two chapters, as defined in paragraph (10), it was necessary to define that term as it applies to air emissions and not landfill operations.

Subpart WWW contains definitions specific to landfill operations and air emissions, so a definition of modification is proposed in paragraph (8). In paragraphs (6), (9), (11), (12), (14), (15), and (16), the terms: construction; modification of existing facility; project; receptor; source; waste solidification; and waste stabilization were not previously defined in the Chapter 330 rules and have unique meanings when applied to air emissions.

The commission proposes new §330.985, Applicability and Exceptions, which would authorize air emission sources and facilities typically found at MSW landfill sites and transfer stations that are not able to meet the requirements of §106.534. Subsection (a) would authorize air emissions from landfills and transfer stations and is intended to authorize not only the facilities associated with waste handling and disposal, but all ancillary equipment that may emit air contaminants and may be co-located at the same site.

Subsection (b) requires owners and operators to comply with all applicable laws and rules of the federal and state governments, and any applicable commission rules.

Subsection (c) specifies that an owner or operator may claim this standard permit for the operation, construction, or modification of an MSW landfill including Type I (MSW), Type IAE. Type IV, and Type IVAE facilities as defined in §330.5, Classification of Municipal Solid Waste Facilities, except as specified in subsection (d) of this section.

Subsection (d)(1) requires that a case-by-case air permit under Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, be obtained for any new sources or modifications that exceed the major source thresholds under
federal new source review regulations for prevention of significant deterioration (PSD) review or nonattainment (NA) review. PSD review at a typical MSW landfill is triggered when there are emissions of carbon monoxide, sulfur dioxide, nitrogen oxides, or volatile organic compounds from all point sources at the MSW landfill site that exceed 250 tons per year.

The commission seeks comments on whether and how to authorize landfill gas projects that have collateral emissions that would be considered major modifications or major sources for PSD or NA review.

The executive director had considered a Federal Pollution Control Project standard permit (FPCP) as a method to authorize collateral emissions that would otherwise qualify as major sources or modifications. The FPCP was part of the NSR reform program adopted by the EPA. A June 24, 2005 decision by the federal Court of Appeals for the District of Columbia vacated that portion of the EPA rules that authorized the FPCP. As a result of this ruling, the commission is not able to propose the FPCP as a method that excludes NA or PSD review without a modification of the court of appeals' decision upon rehearing or appeal.

The NA thresholds that trigger review vary based on the location (county) in which the MSW landfill site is located. The following table contains the current one-hour and eight-hour nonattainment thresholds.

Figure: 30 TAC Chapter 330 - Preamble

If these thresholds are exceeded for any new project, a NA review is required. A project is considered the construction or the modification of a facility under the same authorization. If by triggering PSD or NA review, the MSW landfill site would be inelligible for this standard permit and must obtain authorization under Chapter 116, Subchapter B, New Source Review Permits.

Subsection (d)(2) contains activities that would not be authorized by this standard permit. These activities are incineration (other than flares or control of landfill gas), composting, rock crushers that are not used exclusively as temporary installations for landfill cell construction, similar construction plants, and MSW landfill sites that are authorized to accept 51% or more by weight or volume of Class I industrial nonhazardous waste. Composting can be authorized under Chapter 332. Composting, and needs to be separately registered since additional review is required by the TCEQ's Waste Permits Division. Rock crushers not used exclusively for cell construction, concrete batch plants, asphalt concrete plants, and similar construction plants, must obtain a separate air authorization via PBR, standard permit, or case-by-case permit.

The primary air contaminant of concern for these facilities is particulate matter (PM) or volatile organic compounds, similar to those emissions expected from a typical MSW landfill site. The emission contributions of these activities were not considered during the protectiveness review for an MSW landfill because a survey of MSW landfill sites did not indicate that these types of facilities are typically located at MSW landfill sites.

Landfill records indicate that there are existing landfills permitted under the MSW state rules that are authorized to accept in excess of 20% Class I industrial nonhazardous waste. In order to allow these landfills to qualify for this standard permit, a landfill gas collection and control system (GCCS) will be required. However, a landfill that contains 51% or more Class I industrial nonhazardous waste by weight or volume no longer has a majority of MSW derived from households. In these cases, landfill air emissions require authorization under Chapter 116, Subchapter B.

The commission proposes new §330.987, Certification Requirements, which contains general requirements of this standard permit. Submitting a certification has a benefit in that it removes the need for the site owner or operator to submit the standard permit registration paperwork, fees, and waiting for permit review and approval before construction can start. Subsection (a) exempts Type IV landfills from the certification requirements of this section. Since Type IV landfills are not permitted to accept household wastes, they do not meet the definition of an MSW landfill as provided in Subpart WWW and are not subject to PSD or NA review. As a result, their NMOC emissions will be insignificant, and certification is unnecessary.

Subsection (b) includes an acknowledgment and agreement that the permit holder will comply with all rules, regulations, and orders of the commission issued in conformity with the Texas Clean Air Act (TCAA) and the conditions precedent to the claiming of the standard permit. Acceptance includes consent to the entrance of commission employees and designated representatives of any air pollution control program having jurisdiction over the site into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the standard permit.

Subsection (c) states that certifications under this standard permit will be valid for a period of ten years. This provides a reasonable time period to accommodate the growth of a landfill without triggering federal requirements earlier than appropriate, and is consistent with air permit renewal schedules throughout Chapter 116. The landfill owner or operator has the option to submit information at the original certification that indicates the landfill will not trigger federal requirements for a period longer than ten years. While the certification will expire after ten years, the owner or operator may renew the certification for an additional ten years by submitting a notice that the landfill conditions are consistent with information submitted at the original certification. No additional fees or technical data is required. Such a letter will not only renew the certification but will attest that the conditions relating to the triggering of federal review have not changed.

When submitting landfill information covering a longer period than the ten years, if the landfill would require a GCCS under 40 CFR Subpart WWW some time after the initial ten years, it will be necessary for the owner or operator to submit the GCCS design plan for approval with the initial certification. A landfill that triggers the 40 CFR Subpart WWW GCCS requirement during the initial ten-year certification would also be required to submit the design plan with the initial certification. To ensure that certifications are updated for growth of MSW landfills, renewal notifications will be sent by the agency to the MSW landfill site owner and/or operator at least 180 days prior to expiration. The TCEQ's Air Permits Division will log all MSW landfill site certifications into a database and send this notification using the same process as all current permit renewal notifications.

Subsection (d) requires that two copies of the certification be submitted to the Waste Permits Division in Austin (one for the Waste Permits Division and one for the Air Permits Division), one copy to the regional office, and a copy to any local air pollution control program with jurisdiction. The commission will require documentation in the certification demonstrating compliance with the conditions of the standard permit. The commission will create a guidance document to assist the landfill owner or operators in determining the emission estimates for the various activities at the landfill. This guidance document includes information on the basis of emission estimates, quantification of
emissions, description of equipment, and how all conditions of the standard permit will be met. Subsection (e) requires existing landfill owners or operators to submit a certification within 180 days of the effective date of these rules. The 180-day period is allowed because the current §116.621 will be repealed with the adoption of Chapter 330, Subchapter U. Existing permit holders will not be required to submit an entire application, only the new certification requirements. Owner or operators of new landfills are required to submit a certification at least 120 days prior to construction. Modifications to existing landfills that change the category and associated federal requirements must be submitted within 60 days after the change. Subsection (f) provides numerous mechanisms for the construction of any new facility that may emit air contaminants, or changes to any existing facility. If the changes do not make the MSW landfill site ineligible for authorization under the standard permit, the owner or operator may independently claim a PBR or a standard permit. Under the requirements of Chapter 116, Subchapter B, these independently claimed PBRs and standard permits outside of the Subchapter U authorization must be incorporated at the next certification renewal, amendment, or modification of this Subchapter U authorization. The PBR and standard permit emissions are incorporated by adding their emissions to the current Subchapter U authorization. The new total emissions are now required to meet all the conditions of this standard permit. Once incorporated into the Subchapter U authorization, the PBR and standard permit will be voided. The commission will require all forms, fees, and review requirements of Chapter 106, Permits by Rule, or Chapter 116 if a PBR or standard permit is independently claimed. However, if a PBR or standard permit is not independently claimed and is to be included in the certification under this subchapter, no fees or additional forms are required. If the changes are less than five tons per year (tpy) and the site is located in a nonattainment area (consistent with the federal NA netting requirements for major sources as defined in §116.12, Nonattainment Review Definitions, or 25 tpy if the site is located in an attainment area consistent with the PSD significance threshold, the Chapter 330, Subchapter U permit certification may be updated on the next certification anniversary date.

If the MSW landfill site is not considered an existing major site under PSD or NA thresholds, and the changes are greater than or equal to five tpy (when located in a nonattainment area), or 25 tpy (when located in an attainment area), the standard permit certification may be updated within 30 days of the change. If the MSW landfill site is an existing major site under PSD or NA thresholds, and the changes are greater than or equal to five tpy (when located in a nonattainment area), or 25 tpy (when located in an attainment area), the standard permit certification may be updated 30 days prior to the change. This preconstruction certification update must also include any appropriate netting demonstrations to show that a major modification review under NA or PSD is not triggered.

The commission proposes new §330.989, General Requirements, which contains requirements for all standard permits that appear in Chapter 116 in subsection (a). This subsection also requires facility construction or modification to comply with provisions of the Federal Clean Air Act relating to new stationary sources, hazardous air pollutants, the mass emissions cap and trade program in Chapter 101, Subchapter H, Emissions Banking and Trading, if applicable, and the applicable rules and regulations adopted under the TCAA and with the intent of the TCAA. Subsection (b) requires that all representations with regard to construction plans, operating procedures, and emission rates become conditions upon which the MSW landfill site is constructed and operated. The landfill certification must be updated if there are changes at the site. Any MSW landfill facility or change authorized under Subchapter U shall begin construction before any amendment to this section that would disqualify the project to use this subchapter. This means that authorization under this standard permit remains valid even if the standard permit has been amended in such a way as to disqualify the authorized project provided that construction on the project has begun prior to the effective date of the permit amendment. This prevents a retroactive application of an amendment.

The commission proposes new §330.991, Technical and Operational Requirements for all Municipal Solid Waste Landfill Sites. The commission evaluated several common facilities and their associated activities located at MSW landfill sites, and would authorize air emissions from these facilities in the proposed subsection (a). These facilities and activities include recycling, such as crushing glass, shredding or crushing aluminum, and light bulb crushing or wood chipping or mulching. Composting activities performed at landfills must meet the requirements of §330.7, Permit Required, and are not authorized under Chapter 330, Subchapter U. Transfer station activities at an MSW landfill site operating in compliance with the Texas Solid Waste Disposal Act, or if independently located, are required to have a buffer distance of 165 feet if the transfer station has a capacity over 40 cubic yards. Conversely, transfer stations 40 cubic yards or less do not have to comply with the 165-foot distance requirement. The 40 cubic yard cut-off point was used because this is the size of roll-off containers that are used by businesses and municipalities that are not regulated for distance requirements. For the independently located transfer station over 40 cubic yards, the 165-foot distance buffer requirement is derived from air dispersion modeling of fugitive landfill emissions. The commission has no specific information on the characteristics or quantities of emissions from transfer stations, and continues to seek information from stakeholders regarding these facilities.

Waste solidification/stabilization is authorized with restriction to control PM and visible emissions. Waste solidification/stabilization emissions, based on limited data from recent permit applications, predicted high short-term emissions for PM using emission factors for fine PM materials from EPA publication AP-42, Compilation of Air Pollutant Emission Factors. Using fine powdery materials (e.g., fly ash, cement kiln dust, hydrated lime, and fine sawdust) for mixing in waste solidification/stabilization operations at a landfill produced PM exceedances of the national ambient air quality standard. As a result, when handling these materials during loading/unloading, transporting, and mixing, they must be controlled so that no visible emissions are present. This is to ensure that the landfill will meet the PM limits of 30 TAC Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter, and the national ambient air quality standard. To prevent the potential of adverse off-property PM impacts, control methods appropriate to fine PM control must be used to prevent dust from becoming airborne. These controls may include loading and storing in enclosed containers, and mixing and unloading under conditions where the materials cannot become airborne. This control is necessary in reducing the potential health hazard when these materials become airborne.
Under subsection (a)(4) all facilities directly related to landfill cell construction, operation, and closures, including landfill gas emissions and associated capture and control equipment are authorized. Subsection (a)(5) authorizes the use of spray mist systems for odor control at landfills. These systems are used to spray liquid chemicals that contain activated enzymes, odor neutralizers, or masking agents, in a vapor or fog form that may or may not react and neutralize airborne emissions from landfill waste. The commission proposes to control the use of these airborne emissions to the emission and distance limitations of §106.261 and §106.262, until more definitive information regarding these chemicals is made available to the commission.

The construction and operation of a bioreactor located within an MSW landfill is proposed in subsection (a)(6). Each MSW landfill bioreactor cell must comply with the listed performance standards before the bioreactor is operated under this standard permit. Each bioreactor cell must meet the following requirements: the bioreactor shall not accept or process Class I nonhazardous waste; the bioreactor cell shall have a GCCS approved by the executive director prior to the introduction of air or liquids into the cell; the owner or operator must submit a GCCS design plan prepared by a licensed professional engineer who is currently registered in the State of Texas, for approval by the Air Permits Division, before the construction of the bioreactor cell; the GCCS shall be dedicated only to the approved bioreactor cell, and it shall have separate controls and not be a segment of any other GCCS for the MSW landfill; and the GCCS shall be designed with a safety factor based on good engineering practice to control the maximum expected gas flow from the entire bioreactor cell over the intended useful life of the gas control or treatment system.

The maximum expected gas flow is to be determined by the latest version of the EPA LandGEN model using Lo=170 m³/Mg and k=0.25/yr as default values, unless a specific bioreactor cell methane generation rate determined by EPA Method 2E, Appendix A of 40 CFR Part 60 has been approved by the Air Permits Division. A GSSC design plan shall have supporting pipe sizing and network flow calculations to demonstrate that the requirements of 40 CFR §60.752(b)(2)(i)(A)(1), (3), and (4) are satisfied. The GCCS design plan shall include any alternates to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping, or reporting provisions of 40 CFR §§60.753 - 60.758 proposed by the owner or operator. A GCCS design plan shall have startup, shutdown, and malfunction procedures that satisfy the provisions of 40 CFR §63.6(e). A GCCS shall operate according to the provisions of 40 CFR §60.753, Operational Standards for Collection and Control Systems. Landfill gas from the bioreactor must be routed to a control system or device that complies with subsection (a)(12) of this section, and the bioreactor cell shall have a maximum of 100,000 gallons per day of leachate and landfill gas condensate applied to the open waste surface. The leachate and landfill gas condensate must be applied in a manner not to create nuisance odor complaints, and the landfill owner or operator shall keep daily records of the source, type, and quantity, in gallons, of liquids added to each bioreactor cell at the MSW landfill. The leachate and landfill gas condensate additions to the bioreactor cell are not limited provided they are not applied to the open waste surface and injected below the waste surface in a manner as not to cause damage to the cell liners, or cause an overload condition of the GCCS or create nuisance odors.

Any other facility that meets a PBR under Chapter 106 or a standard permit under Chapter 116, Subchapter F, may be included in the MSW landfill site certification as these facilities are insignificant, and even when added to the specific MSW landfill that was evaluated, there is not expected to be any adverse effects on human health and the environment. It should be noted that the use of a flare under §106.492, Flares, for the control of landfill gas will not satisfy the control requirements of new source performance standards Subpart WWW, because that subpart requires that the conditions of 40 CFR §60.18 be met.

Subsection (a)(8) specifies the requirements for leachate and landfill gas condensate handling activities. Leachate and landfill gas condensate may be recirculated back onto the landfill; however, the recirculation rate shall not exceed 100,000 gallons per day (gal/day). In addition, the recirculation of leachate and gas condensate should be performed in accordance with the requirements stated in §330.177, Leachate and Gas Condensate Recirculation. Air contaminant potential emissions resulting from leachate and landfill gas condensate recirculation were evaluated during the standard permit review process. Emissions for 1,2-dichloroethane, benzopyrene, benzene, chloroform, chlorophenol, dichloromethane, ethylbenzene, phenol, toluene, and vinyl chloride, were estimated using the emission factors in Table 8: Uncontrolled Default Concentrations of Substances in Leachate from "Municipal Solid Waste Landfills in National Pollutant Inventory" (referred from White, P.R., Franke, M. and Hindle, P. 1995. Integrated Solid Waste Management: A Lifecycle Inventory). The worst-case scenario assumed that 100% of air contaminants are emitted to the air through leachate/gas condensate sprayed on the landfill. Accordingly, leachate/gas condensate recirculation does not have routing emissions except for fugitives. An air quality modeling analysis was performed to evaluate the potential effect of all emissions from a landfill. A leachate/gas condensate recirculation rate of 100,000 gal/day was used as a conservative input to the refined air dispersion model since the rates at most landfills are well under this figure. The model results indicated that the emissions from recirculation at this rate, along with the other emissions from the landfill, will not jeopardize human health and the environment. The commission believes that all MSW landfill sites should be able to comply with this recirculation rate since this is considered the worst-case scenario with high rainfall amounts. In addition, owners/operators have concurred that a leachate/gas condensate recirculation rate of 100,000 gal/day is a reasonable limit for a landfill. Leachate and gas condensate may also be stored in tanks with no restrictions. In addition, the MSW landfill site may dispose of leachate and gas condensate in evaporation ponds in accordance with Chapter 330, and the emissions are expected to be less than those for recirculation via spraying.

Subsection (a)(9) authorizes fuel tanks at the MSW landfill site. Most vehicles and engines at MSW landfill sites operate with diesel fuel, and kerosene may be occasionally used. Storage tanks and the dispensing of fuel are authorized. Minimal emissions are expected from diesel or kerosene storage and handling. Gasoline is also used in limited amounts at MSW landfill sites. This standard permit requires permanent gasoline storage tanks to be located at least 500 feet from any receptor. To minimize emissions, vapor balancing must be used when total annual throughput of gasoline for all tanks exceeds 20,000 gallons per year (gal/yr). A loading rate of 5,000 gallons per hour was reviewed because this represented the maximum typical pumping rate used by the tank trucks delivering fuel from bulk fuel...
distribution centers. Modeling of the loading losses from the filling of a bulk gasoline fixed roof storage tank venting to the atmosphere predicted that the gasoline vapor concentrations at a typical landfill property line would exceed the effects screening level (ESL) for gasoline. However, it is not expected that MSW landfill sites will use gasoline in these quantities since most of the landfill construction equipment was found to be diesel powered. This would represent the worst-case situation for modeling purposes due to the presence of benzene in gasoline. The fixed roof is typically used for storage tanks with capacities less than 25,000 gallons and is the worst case emissions scenario. The commission determined that these predicted exceedances would be acceptable if they did not occur more than four times per year. Based on the modeling assumptions and filling scenarios, the 20,000 gal/yr throughput limit gives the MSW landfill site owner/operator the flexibility to fill the tanks as needed. No restriction on loading rate or frequency would be necessary if the vapors displaced from the gasoline storage tank being loaded were vented into the vapor space of the tank truck as loading occurs. Records indicating annual gasoline throughput must be kept on site.

Subsection (a)(10) authorizes the shredding of a maximum of 11 tons of tires per hour based on the maximum amount of PM that may be emitted simultaneously to steady-state landfill operations, and still not cause or contribute to a condition of air pollution.

Subsection (a)(11) requires that a bioremediation pad be located at least 165 feet away from any off-property receptor. Modeling conducted as part of the protectiveness review using this setback, and emissions data from historical bioremediation activity, predicted that total petroleum hydrocarbon (TPH) concentrations at 165 feet from the receptor would not be expected to adversely affect human health and the environment. No published information was located regarding the expected air emissions from this process, after a literature search and an internet subject search. Limited data from two dozen PBR applications at landfill sites indicate a TPH contamination range from 0.1% to 6% weight. However, there is no measured data that indicates what percentage of the contamination is actually emitted to the atmosphere during the process. The worst case permit application was for 45,000 cubic yards of TPH contamination up to 60,000 parts per million by weight, where the company used Chemdata 8 to calculate TPH at five pounds per hour or 22 tons per year based on using a limited capture carbon adsorption system. Almost all of the approximately two dozen other PBR landfill claims have been based on estimates only. Therefore, as a conservative approach, the commission used emission rates of 3.4 pounds per hour (lbs/hr) for small landfills, 5.95 lbs/hr for medium landfills, 9.95 lbs/hr for large landfills, and 14.9 lbs/hr for large landfills, to model TPH for each size landfill to show protectiveness.

Subsection (a)(12) requires the total collected emissions from the landfill GCCS to be routed to listed control devices or methods when the MSW landfill site has triggered the requirement for a GCCS under §60.752(b)(2); classified as a Category 3 under §330.983(d)(3). MSW landfills that are regulated under Categories 1 and 2 are not required to install a GCCS under Subchapter U or Subpart WWW, but may do so on a voluntary basis in order to control odor at the site. In these cases, the GCCS system is not required to meet the standards specified in Subpart WWW, but it is highly recommended that these standards be considered in designing and constructing their systems in order to prevent future modifications or changes that may be necessary if the MSW landfill site expands or increases its acceptance rate. If a flare is used for a Category 1 and 2 GCCS to burn the methane and NMOCS, it could be authorized under §106.492, and not be subject to 40 CFR §60.18.

Under subsection (a)(12) the control devices and methods must meet the following requirements: flare units that comply with 40 CFR Part 60 Subpart WWW, which must meet the conditions specified in 40 CFR §60.18; landfill gas-fired stationary internal combustion engines or turbines not used to generate electricity must satisfy the requirements of §106.4, Requirements for Permitting by Rule and §106.512, Stationary Engines and Turbines; landfill gas-fired electric generating units that meet all of the requirements of Chapter 116, Subchapter F, and the Air Quality Standard Permit for Electric Generating Units; landfill gas-fired boiler, heater, or other combustion units, not including stationary, reciprocating internal combustion engines or turbines, that satisfy the maximum heat input and nitrous oxide requirements of §106.4(a)(1) and §106.183, and applicable sections of Chapter 117, Control of Air Pollution from Nitrogen Compounds; pollution control projects that satisfy all the requirements of §116.617, Standard Permits for Pollution Control Projects; and a gas treatment system that processes the collected landfill gas to produce a saleable product or by-product for subsequent sale or use, where emissions from any atmospheric vent from the gas treatment system shall be subject to the requirements of 40 CFR §60.752(b)(2)(ii)(A) or (B).

Subsection (a)(13) requires a temporary rock crusher that is used exclusively for cell construction to satisfy all the requirements of the Standard Permit for Temporary Rock Crushers.

Subsection (b) would require that the appropriate regional office or local program be contacted to obtain proper data forms and procedures prior to any required stack or process vent sampling as mandated under applicable federal regulations. All sampling and testing procedures must be approved by the executive director. The permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

Subsection (c) would require that emission sources covered by this standard permit may not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly, which means that all equipment must function at least equal to the manufacturer’s specifications, during normal facility operations. Notification for emissions events and scheduled maintenance shall be made in accordance with §101.201, Emissions Event Reporting and Recordkeeping Requirements, and §101.211, Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements.

Subsection (d) specifies the monitoring and control requirements for PM for the MSW landfill sites. The MSW landfill is also subject to the visible emission standards of Chapter 111. Visible emissions generated at the site and crossing the property line shall not exceed 30 seconds over a six-minute period as determined by EPA Test Method 22. The commission selected Method 22 for simplicity, rather than specifying an opacity limit that must use Method 9, which in turn requires a trained certified observer for compliance.

Subsection (d)(2) requires that dust emissions from road and traffic areas directly associated with the operation of an MSW landfill site be minimized by treating them with dust-suppressant, chemicals, watering, or paving. In addition, the roads and other areas should be kept clean of debris. Similarly, subsection (d)(3)
requires that landfill cells be watered or treated with dust-sus-
pressant chemicals when needed to minimize emissions during
evacuation.

Subsection (e) prevents tire shredding, outdoor dry abrasive
blasting, the operation of a temporary rock crusher used exclu-
sively for cell construction, or waste solidification/stabilization
when fine materials are used in the process from occurring at
the same time in order to limit the PM effects. Air dispersion
modeling for landfill PM had exceedances in ESLs, so it was
necessary for the commission to limit the activities under
this subsection in order to protect the public health and the
environment.

Subsection (f) requires an MSW landfill cell that contains Class
I industrial non-hazardous waste greater than 20% by weight or
volume to have a GCCS associated with the location of the Class
1 waste, and that GCCS is subject to the provisions of §330.993,
Additional Requirements for Owners or Operators of Category 3
Municipal Solid Waste Landfills.

The commission proposes new §330.993, Additional Require-
ments for Owners or Operators of Category 3 Municipal Solid
Waste Landfills. Subsection (a) specifies that the owner and/or
operator shall comply with the applicable provisions of 40 CFR
Part 60, Subpart WWW. The GCCS must be designed to route
the total collected NMOC gas emissions to at least one of the
control devices listed in §330.991(f), to ensure the protective-
ness of human health and the environment. Any other control
device (e.g., enclosed flare) used is required to reduce the total
collected NMOC gas emissions by 98%, or to less than 20 parts
per million by volume (ppmv), as hexane. These design require-
ments were used to model emissions from a typical landfill flare
or any other control device during the protective review con-
ducted for this proposed standard permit.

The landfill gas may also be treated and used or sold, as de-
scribed in 40 CFR §60.752(b)(2)(iii)(C). Landfill gas may also be
used as fuel for stationary internal combustion engines, sta-
tionary electric generating units or boilers, or heaters or other
combustion units as described in §330.991(f), so long as they
meet the specified requirements of the referenced PBR or stan-
dard permit, except the registration and fee requirements. The
NMOC gas emissions may also be routed to a control device
that satisfies the requirements of §116.617. The GCCS may be
capped and removed when the MSW landfill is permanently closed
in accordance with Chapter 330, as indicated in §330.993(a)(1),
provided a closure report has been submitted to the TCEQ Air
Permits Division in accordance with 40 CFR §60.757(d).

Subsection (b) requires the owner/operator to monitor the
methane concentration at the surface of the MSW landfill
cellularly, as specified in 40 CFR §60.755(c). Subsection (c)
requires the owner/operator to monitor the GCCS in accordance
with 40 CFR §60.756.

The commission proposes new §330.995, Recordkeeping and
Reporting Requirements for all Municipal Solid Waste Landfill
Sites, to establish recordkeeping requirements for MSW land-
fill sites authorized under this standard permit. Subsection (a)
would require that a copy of Subchapter U, along with a list of
any claimed PBRs and applicable general conditions of Chapter
105, Subchapter A, General Requirements, and standard per-
mits be maintained at the MSW landfill site.

Subsection (b) would require that the owner/operator maintain
records for any claimed PBR or standard permit. The operator
will keep records containing sufficient information to demonstrate
compliance with all applicable general requirements and all ap-
plicable PBR or standard permit conditions.

Subsection (c) would require that the owner or operator main-
tain records specified in 40 CFR Part 60, Subpart WWW, if ap-
licable, including that operating records be maintained in ac-
cordance with §330.125, Recordkeeping Requirements, an In-
tial Design Capacity Report required by 40 CFR §60.757(a)(2),
Reporting Requirements, or Amended Design Capacity Report
required by 40 CFR §60.757(a)(3). Subsection (c) contains a
reminder to the owner/operator to maintain all records in accor-
dance with the provisions of 40 CFR §60.758, Recordkeeping
Requirements. Subsection (c) also requires that the owner or
operator submit a semiannual compliance report to the TCEQ’s
Office of Compliance and Enforcement, in accordance with the

Subsection (d) requires the maintenance of records at the site,
and that the records shall be made available at the request of
representatives of the executive director, the EPA, or any air pol-
lution control program having jurisdiction over the site. Subsec-
tion (e) requires the retention of records for at least 60 months.

Protectiveness Review

Based on analysis of existing landfills, the commission con-
cluded that the PBRs and standard permits listed in this
preamble discussion of Subchapter U cover the majority of air
contaminant emitting activities at a landfill. Landfill activities
were examined for their potential effect on human health, and
the commission concluded that the restrictions imposed by the
PBRs and standard permits are protective of human health.
The commission further concluded that additional activities
at landfills that would be regulated under other PBRs do not
occur with a frequency or magnitude that would affect human
health and has not placed a restriction on additional PBR use.
The commission does not have a restriction on the number of
PBRs that may be used at a landfill and believes that such
a restriction is unnecessary because of the limited amount of
activity occurring under each PBR. The commission per-
formed a protectiveness review to confirm this and developed
a worst-case scenario.

Emissions from all pollutants, except PM, TPHs, and manganese
(associated with welding), were modeled assuming a small land-
fill of 50 acres, with all activities occurring at the site at the same
time. This is a conservative approach because it is not expected
that all activities will occur simultaneously. In addition, the emis-
sions rates used in the modeling were representative, worst-case
emissions based on activities at a large landfill of 300 acres.
In other words, emission rates generated by activities occur-
ing at a 300-acre landfill were assumed to be emitted within
the area of a 50-acre landfill. PM, TPH, and manganese emis-
sions were modeled separately assuming a 50-acre, 100-acre
(medium size landfill), and 300-acre landfill because larger land-
fills typically generate more of these pollutants. Pollutants eval-
uated were PM, sulfur dioxide, nitrogen dioxide, carbon mono-
oxide, manganese, TPH, gasoline, benzene (in gasoline), and a
number of other volatile organic compounds and hazardous air
pollutants.

The uncontrolled speciated organic concentrations from AP-42’s
Table 2.4-1 (default values), were used for modeling purposes to
predict concentrations in order to determine protective review for
ESL’s. It was assumed that all these compounds are emitted
as fugitives from a small landfill at the highest rate allowed, 50
Mg/yr, before capture and control is required.

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As discussed in Chapter 4.0 of the AP-42, background document for Table 2.4-1, these defaults based on volume fractions of total landfill flow, were derived from co-disposal of MSW and commercial/industrial waste sites, non-co-disposal (pure MSW), and unknown co-disposal. In this chapter it states that these default values can be used for estimating speciated emissions from landfills when site-specific data are not available. Since this type of data was unavailable from Texas landfills and the cost prohibitive nature for speciating and quantifying over 46 compounds in landfill gas, the commission selected the EPA’s default concentration values for uncontrolled emissions for these pollutants to evaluate the potential effects. As the EPA discussed in the background document, which derived the default concentrations, the data indicated that benzene and toluene had higher concentrations when there was co-disposal of industrial/commercial and household wastes. Table 2.4.2 shows the higher default concentrations for these compounds. Therefore, these higher values were used as a conservative approach in modeling, assuming co-disposal of household and industrial nonhazardous waste. The EPA default values of speciated organics contain hazardous air pollutants, but based on the conservative modeling approach, the hazardous air pollutants emissions will not be expected to adversely affect human health and the environment.

Section 330.173(f), Disposal of Industrial Wastes, allows up to 20% non-residential commercial/industrial waste in an MSW landfill, so the default values in Table 2.4.2, in addition to the default values of Table 2.4.1, were used for modeling to determine protectiveness of human health. A consultation with EPA indicated that California data regarding the amounts of co-disposal of MSW and commercial/industrial was consistent with what was reported from the national survey of 35 to 45% reported commercial waste. Since California started controlling what was placed in landfills earlier than most states, the Texas limit of 20% commercial waste probably offsets the 35 to 45% which was placed in landfills earlier than most states, the Texas limit of 20% commercial waste. Since California started controlling what was placed in landfills earlier than most states, the Texas limit of 20% commercial waste probably offsets the 35 to 45% reported considering that California was more stringent on what commercial wastes were placed in MSW landfills. Based on what the EPA reported as co-disposal, and the TCEQ’s allowable of 20% co-disposal, the commission believes it is reasonable to use the EPA speciated default values. TCEQ was not able to obtain information on the characteristic or quantities of expected air emissions from the MSW stakeholders. For existing MSW landfills that have reported Class 1 waste in excess of 20%, the only way these sites could pass the protective review was to control the emissions by having that area of the landfill where the Class 1 was located, be controlled with a GCCS.

A large amount of data used to derive speciated default values are from compliance reports from California’s South Coast Air Quality Management District. EPA believes that the detail of these data references outweigh their geographic bias. Based on EPA’s endorsement, the commission made the assumption to use the AP-42 Tables 2.4.1 and 2.4.2 default values for uncontrolled speciated air emission modeling, and found that these values produced no modeled adverse impacts. The commission notes that for the uncontrolled emission air dispersion modeling (i.e., fugitive emissions) from a small landfill at three times the rate (i.e., 150 Mg/yr versus the trigger of 50 Mg/yr where a GCCS is required), the ESLs showed no expected adverse impacts. Actual NMOC measurements submitted to the TCEQ from 69 Texas landfills new source performance standards Subpart WWW compliance reports further supports the California data. From these 69 reports, only six reported NMOC values in excess of the 595 ppmv standard set by EPA for no co-disposal.

None of the reported six excesses were close (1,164 ppmv highest value) to the EPA’s suggested default NMOC concentration of 2,420 ppmv for landfill gas from co-disposal sites.

Of the pollutants modeled in the preliminary analysis, only TPH, manganese, gasoline, benzene, and PM had exceedances of ESLs. This information led to either emission restrictions in the standard permit to meet applicable standards or guidelines or additional review of operations. The restrictions included in this standard permit include: TPH emissions are limited by restrictions on bioremediation pads; and gasoline and benzene emissions from the gasoline are limited by restrictions on annual throughput and required vapor balancing of tanks. PM emissions are limited by requiring additional authorizations for facilities with PM emissions, and restricting simultaneous operations of tire shredding and abrasive blasting. PM emissions are also limited by placing limits on visible emissions at MSW landfill site property lines. This requirement helps ensure that the cumulative PM emissions of 15.64 lbs/hr of PM for the small landfill, 24.02 lbs/hr for the medium size, and 41.33 lbs/hr for the large landfill, are unlikely to result in any adverse off-property effects or exceed the standards of Chapter 111 or the 24-hour or annual national ambient air quality standards for PM. PM was evaluated from landfill cell activities and other expected operations at the site for compliance with total suspended particulate standards. Results showed, with reasonable restrictions as required by the proposed standard permit, that if operated in compliance with the standard permit, no dust nuisance conditions should occur. Additional review was performed for inhalable PM compliance with the national ambient air quality standards daily and annual concentration limits. The results showed that expected MSW landfill and related emissions would be approximately 53% of the standard. Although not represented in this analysis due to low factor rating and modeling reliability, truck traffic contributions are not expected to result in exceedances of any standards and are ensured by the best management practices required for any traffic area to minimize PM generation. Manganese emissions are a result of welding operations that were further evaluated. Typical operations and material usage rates were reviewed and determined to be inherently limited; therefore, no additional restrictions are proposed in this standard permit. Based on these restrictions and review, the commission believes that the proposed standard permit will be protective of human health and the environment. A complete report of modeling results is available by request to the commission.

The inclusion of spray mist systems into the air standard permit was requested by landfill owner/operators. These systems are used at landfills to control odor. The mist systems spray proprietary compounds that neutralize odors. The commission has requested from the stakeholders information regarding the speciated chemicals and expected emission rates for the mist systems, and to date has not received any definitive information that can be used for evaluation concerning the protection of human health and the environment. Consequently, to ensure protective ness of these mist systems, the commission takes the position that these mist systems are subject to the emission limits and distance requirements of §106.4 and §106.261 and/or §106.262 as applicable, until definitive information is available for further evaluation.

MSW landfill site owner/operators also requested that bioreactors be included in the standard permit although none have been permitted in Texas. The commission has received comments from the EPA regarding concerns about the quantities,
The commission proposes to repeal §330.1205 and move the requirements of this section to proposed new §330.1201. As a streamlining initiative, the commission proposes to move the requirements of §330.1205(a) to proposed new §330.1211(c); §330.1005(f) to proposed new §330.1211(d) - (l); §330.1005(p)(1) to proposed new §330.13(e); §330.1005(p)(2) to proposed new §330.11(h); and §330.1005(q) and (r) to proposed new §330.1211(m) and (n).

The commission proposes to repeal §330.1006, Transfer of Shipment of Medical Waste, and to move the requirements of this section to proposed new §330.1213.

The commission proposes to repeal §330.1007, Interstate Transportation, and to move the requirements of this section to proposed new §330.1215.

The commission proposes to repeal §330.1008, Medical Waste Collection Station. The commission proposes to move the requirements of §330.1008(c) to proposed new §330.1217(a) - (e).

The commission proposes to repeal §330.1009, Storage of Medical Waste. The commission proposes to move §330.1009(a) to proposed new §330.1209(a); §330.1009(b) to proposed new §330.9(n) and §330.13(d); and §330.1009(d) to proposed new §330.1209(b) and §330.1111(d)(2)(F).

The commission proposes to repeal §330.1010, On-Site Treatment Services on Mobile Vehicles. The commission proposes to move §330.1010(a) to proposed new §330.1221(a); §330.1010(b), (d), and (e) to proposed new §330.9(m); §330.1010(c) to proposed new §330.1221(b); and §330.1010(g) - (p) to proposed new §330.1221(c) - (l). The commission proposes to change the registration requirement for owners or operators of mobile units conducting on-site treatment of medical waste that are not the generator to a registration by rule. The commission proposes to eliminate the requirement for drivers' names and license numbers as part of the registration by rule to reduce reporting requirements.

The commission proposes new §330.1203, Applicability, and proposes to move the requirements of §330.1001 to this section. These requirements were moved with no substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.1203, Applicability, and proposes to move the requirements of §330.1002 to this section. These requirements were moved with no substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines. In §330.1203(a), the commission proposes that the requirements of Subchapter Y take effect 120 days after the effective date of the 2006 Revisions.

The commission proposes new §330.1205, Definitions. The commission proposes to move the requirements of §330.1003 to new §330.1205(a). As a streamlining initiative, the commission proposes to reduce the level of agency approvals of low impact waste management activities and to promote authorized medical waste management facilities across Texas by proposing new §330.1205(b) to expand the definition of "On-site." For the purposes of Subchapter Y only, the commission proposes that medical waste that is managed on property owned or effectively controlled by one entity that is within 75 miles of the point of generation is considered to be managed "on-site." Medical waste managed on property owned or effectively controlled by
one entity that is greater than 75 miles of the point of generation will be considered to be from an "off-site" source. Any solid waste generated on properties owned or effectively controlled by an entity, regardless of distance, will be considered to be from an "off-site" source if managed by a different entity.

The remaining requirements were moved with no substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.1207, Generators of Medical Waste. The commission proposes to move the requirements of §330.1004(b) to proposed new §330.1207(a); §330.1004(h)(2) - (6) to proposed new §330.1207(b) and acknowledge that medical waste may be transported by the United States Postal Service by First Class or Priority Mail in accordance with the Domestic Mail Manual, incorporated by reference in 39 CFR Part 111 (relating to General Information on Postal Service); and §330.1004(i) and (j) to proposed new §330.1207(c) and (d).

The commission proposes to establish in new §330.1207(a) that any solid waste from a health care-related facility that is not within the definition of medical waste, as defined in §330.3, is MSW. The remaining requirements were moved with no substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines.

The commission proposes new §330.1209, Storage of Medical Waste. The commission proposes to move the requirements of §330.1009(a) to proposed new §330.1209(a). Current regulations require all medical waste to be refrigerated after specified time frames. The commission proposes new §330.1209(b) to require all persons who are not the generator or treatment facility to refrigerate to 45 degrees Fahrenheit only putrescible, biohazardous, or untreated medical waste that will be stored for longer than 72 hours after receipt from the generator. The commission proposes to allow treatment facilities to store putrescible or biohazardous untreated medical waste for up to 36 hours after receipt before having to refrigerate the waste. Refrigeration helps to slow the biological degradation of the waste that can help to reduce the creation of a health hazard or nuisance condition. The commission seeks comment on these time frames and whether to also require pathological, infectious, potentially infectious, or other types of medical waste to be refrigerated within these time frames.

The commission proposes new §330.1211, Transports of Untreated Medical Waste. The commission proposes to add the word "untreated" to the title of the section to establish that this section applies only to untreated medical waste. Currently, the commission has no specific transporter requirements for treated medical waste. The commission proposes to move the requirements of §330.1005(a) to proposed new §330.1211(a); §330.1004(h)(6) to proposed new §330.1211(b); §330.1005(e) to proposed new §330.1211(c); §330.1005(g) - (o) to proposed new §330.1211(d) - (I); and §330.1005(q) and (r) to proposed new §330.1211(m) and (n). In §330.1211(d) and (e) the commission proposes to change the term "vehicle" to "transportation unit." Transportation unit is defined in §330.3. This change will clarify the types of transportation units subject to Subchapter Y. The commission proposes new §330.1211(d)(2)(C) to allow transportation units to be locked or secured to acknowledge that there are other methods besides locks to prevent tampering with waste shipments. The commission proposes new §330.1211(f) to allow co-transportation of untreated medical waste, containerized Animal and Plant Health Inspection Services (APHIS) waste, and nonhazardous pharmaceutical waste provided the entire shipment is delivered to the same treatment facility. In §330.1211(k) the commission proposes to change "permitted facility" to "authorized facility" to allow flexibility for the management of medical waste.

The remaining requirements were moved with no substantive changes; however, the formatting and the rule language have been modified to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register requirements and agency guidelines. The commission proposes new §330.1213, Transfer of Shipments of Medical Waste, and proposes to move the requirements of §330.1006 to this section. The commission proposes to change "vehicle" or "transport vehicle" to "transportation unit" to consistently use the term "transportation unit" throughout Subchapter Y. The commission proposes to establish that this section applies only to untreated medical waste by changing "medical waste" to "untreated medical waste." A facility that is authorized by the commission and is following the provisions of its authorization is considered to be operating in a manner that is protective of the environment. The commission also proposes to change "permitted facility" to "authorized facility" to encourage the proper transfer, storage, and collection of medical waste. This change will allow for more options to comply with the commission’s rules and may encourage medical waste processors to establish fixed facilities to provide service to areas outside of the major metropolitan areas of Texas.

The commission proposes new §330.1215, Interstate Transportation, and proposes to move the requirements of §330.1007 to this section. The commission proposes to establish that this section applies only to untreated medical waste by changing "medical waste" to "untreated medical waste."

The commission proposes new §330.1217, Medical Waste Collection Stations. The commission proposes to move the requirements of §330.1008(c) to proposed new §330.1217(a) - (e). The commission proposes to change "permitted" to "authorized" to encourage the proper treatment of medical waste. A facility that is authorized by the commission and is following the provisions of its authorization is considered to be operating in a manner that is protective of the environment. This change will allow for more options to comply with the commission’s rules and may encourage medical waste processors to establish fixed facilities to provide service to areas outside of the major metropolitan areas of Texas.

The commission proposes new §330.1219, Treatment and Disposal of Medical Waste. The commission proposes to move the requirements of §330.1004(c) - (e) to proposed new §330.1219(a) - (c). The commission proposes in new
§330.1219(a)(3)(E)(ii) the requirement for operators to record operating parameters of medical waste treatment processes and reagent strength, if applicable, and maintain those records for three years. The commission proposes to no longer allow treated sharps to be discarded with routine MSW. Treated sharps are proposed to be managed as a special waste when taken to a Type 1 or Type 1AE MSW landfill. Also, the commission removed the ban on compacting treated, unencapsulated medical waste sharps in proposed new §330.1219(b)(4)(B) to conform to current commercial medical waste treatment practices. The commission proposes in new §330.1219(c) to allow unused hypodermic needles, syringes with attached needles, and scalpel blades to be ground or shredded and then disposed in a Type I or Type IAE MSW landfill if the sharps have been made unrecognizable and significantly reduced in ability to cause puncture wounds in accordance with §330.1219(b)(4)(D) as another treatment option in addition to encapsulation as allowed in §330.1219(b)(4)(B) or (C). The commission proposes new §330.1219(d) to require operators of medical waste treatment equipment to use backflow preventers on any potable water connections to prevent contamination of potable water supplies. The commission proposes new §330.1219(e) to require that treated medical waste be managed as a special waste unless the executive director provides written concurrence that the treatment process removes all characteristics or properties from the medical waste which would cause the waste to be considered a special waste.

The commission proposes new §330.1221, On-Site Treatment Services on Mobile Treatment Units. The commission proposes to change "vehicle" to "treatment unit" throughout this section to clarify that it is the treatment unit to which the requirements apply. The commission proposes to move the requirements of §330.1010(a) to proposed new §330.1221(a); §330.1010(c) to proposed new §330.1221(b); §330.1010(g) - (n) to proposed new §330.1221(c) - (j); and §330.1010(o) and (p) to proposed new §330.1221(m) and (n). In §330.1221(b) the commission proposes to change the authorization from a registration to a registration by rule. The commission also proposes to delete the requirements for the appeal of a revocation or denial of a registration since the authorization is proposed to be changed from a registration to a registration by rule. The commission proposes new §330.1221(g)(7) to require that owners or operators of mobile treatment units providing on-site treatment of medical waste to keep records of all waste treatment regarding identification of performance test failures including date of occurrence, corrective action procedures, and retest dates to ensure that all wastes are fully treated. The commission proposes new §330.1221(k) to have owners or operators maintain equipment to prevent the creation of nuisance conditions.

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 that the proposed rules are in effect, positive fiscal implications are anticipated for the agency's revenue as a result of administration or enforcement of the proposed rules. Fiscal implications, some of which may be significant, may be anticipated by federal agencies, local governments, and businesses owning or operating MSW facilities due to the proposed revisions and updates in Chapter 330. Some owners and operators of MSW facilities may see an increase in some costs while other owners and operators may see an overall cost savings.

The proposed rules would revise current MSW regulations. The proposed rules would: make the MSW rules more understandable; streamline and group similar types of requirements; reduce levels of approval for low impact waste management activities; and correct and standardize statutory citations and cross-references. The licensing and management of certain MSW activities and Type IX beneficial gas recovery facilities would be clarified, streamlined, and authorized under a new permit or registration by rule. The proposed rules would streamline regional solid waste management plan preparation, leading to easier adoption and flexibility in implementing those plans. Regulatory requirements for small rural transfer stations and medical waste management would decrease. Landfill buffer zone requirements would be increased, and a fee increase for the transportation of enclosed containers to Type IV landfills is proposed. Groundwater monitoring requirements for MSW facilities would increase under the proposed rules. However, increased groundwater monitoring would not impact closed landfills, and the new requirements would be phased in over a period of years for active landfills. While groundwater monitoring requirements would increase, the reporting requirements of monitoring would decrease. The proposed rules would also eliminate agency approval for ballot evaluation reports, liner evaluation reports, and soil boring plans in order to simplify and streamline unnecessary reporting requirements.

Impact to Agency Revenue

The rules propose to charge a $150 application fee for all permits, registrations, amendments, modifications, and temporary authorizations as allowed by §305.53 to encourage the consolidation of requests and thus streamline the processing and review of applications. Due to the anticipated consolidation of authorization requests, it is estimated that 327 applications will be received annually, increasing agency revenue in the Waste Management Account by approximately $49,000 per year. In addition, the rules propose to increase the annual fee to transporters for a special collection route by $50 per vehicle. It is estimated that 56 vehicles per year will need permits, increasing agency revenue in the Waste Management Account by approximately $3,000 per year. The maximum annual revenue increase in the Waste Management Account is estimated to be $52,000. Over a five-year period, revenue would increase approximately $260,000 if the proposed rules are implemented.

Impacts to Federal Agencies and Local Governments Applications

Federal agencies and local governments owning or operating MSW facilities should see their costs for preparing an application decrease under the proposed rules due to the additional exemptions for certain permitting, the streamlining of rules, and the reduction of requirements under permit by rule and registration by rule. It is estimated that the cost savings could range between $50,000 to $100,000 per application for most types of applications. This would include the costs for preparing the application, costs for needed technical expertise, and costs for public hearings. Savings in application costs for beneficial gas recovery facilities is estimated to range from $20,000 to $50,000 per application. Staff estimates that as many as 89 local governments may apply for permits, registrations, amendments, modifications, and temporary authorizations on an annual basis. Statewide cost savings for application costs for local governments is estimated
to range from $4.4 million to $8.9 million per year. These estimated savings are expected to significantly outweigh any additional costs associated with the proposed new §150 application fee that local governments and federal agencies would pay. Statewide costs associated with the application fees are estimated to be $13,000 per year for local governments.

Transporter Costs

Local governments and federal agencies that are issued permits for special collection routes will see their annual fee increase by $60 per vehicle. Staff estimates that ten such vehicles are owned by local governments. The increase in the fees paid statewide by local governments for transporter costs is estimated to be $500 per year.

Buffer Zones

The proposed rules would require that new Type I and Type IV landfills have larger buffer zones than previously required. New rules would require the buffer zones for new facilities to be 125 feet instead of the previously required 50 feet. For an average landfill of 300 acres, the buffer zone would be increased by 25 acres to help address waste management issues with neighbors of landfills. The proposed rules do allow a demonstration for an alternate buffer zone spacing that meets the performance requirements of a 125-foot buffer zone. The proposed rules would require that existing Type I and Type IV landfills that apply for a horizontal expansion increase their buffer zones by 75 feet to 125 feet or make a demonstration for an alternate buffer zone spacing that meets the performance requirements of a 125-foot buffer zone.

The costs to expand a buffer zone varies, depending on the location and size of the landfill. Assuming an average new landfill size of 300 acres and that an average price for a rural acre costs $3,000, local governments may spend as much as an additional $75,000 per landfill to increase their buffer zones by 75 feet. This estimated increase calculates to be an additional 25 acres per average proposed landfill. It is estimated that approximately five new landfills per year are issued a permit for local governments. The incremental statewide costs for local governments to comply with the new buffer zone requirements is estimated to be $375,000 per year. It is not currently known how many local governments need to expand their landfills, but expansions of existing landfills will see the same incremental costs as those estimated for new facilities.

Monitor Well Costs

The proposed rules, under §330.403, would require that Type I and Type IV landfills review their groundwater monitoring program and add additional monitor wells as needed. The proposed rules also specify a default spacing between wells that is less than the current spacing allowed by practice. Both proposed changes would affect local governments.

The potential costs for additional monitor wells varies, depending on the location and size of the landfill and depth of each monitor well. For an average new landfill of 300 acres, the number of monitor wells may increase by as many as 12 per new facility. For existing landfills, the number of additional monitor wells could be as many as ten for an average facility. For expansions to existing landfills, two additional monitor wells could be needed for the average facility.

The construction cost per monitor well is estimated to be $3,500. It is estimated that there will be approximately five new governmentally owned landfill facilities proposed per year. For an average new landfill of 300 acres, the cost to construct new monitor wells is estimated to be $42,000 per new facility. Annual sampling costs are estimated to be $2,000 per well. Total annual sampling costs per new facility would be approximately $24,000, resulting in a total first-time cost increase of $66,000 for monitor wells at a new facility. Sampling costs for the second through the fifth year would total an estimated $96,000 per new facility. The statewide impact to local governments for additional monitor well construction and sampling is estimated to be $330,000 during the first year and $480,000 for the second through the fifth year of operation.

Costs for Monitor Wells at Existing Landfills

It is estimated that there will be 20 existing landfills owned by local governments that will need additional monitor wells. Assuming a landfill size of 300 acres, ten new wells could be needed at each existing landfill. Construction costs and sampling costs for each well at existing landfills are estimated to be the same as for monitor wells at new landfills. Based on these assumptions, a local government could spend as much as $55,000 in the first year for construction and sampling to add additional monitor wells at an existing landfill. Sampling costs for the second through the fifth year of operation could total as much as $20,000. Total statewide costs to local governments for existing landfills are estimated to be $1.1 million for the first year that the proposed rules are in effect and $1.6 million for sampling for the second through the fifth year.

Other Costs and Savings

Other requirements of the proposed rules also have the potential to fiscally impact local governments. Additional monitoring wells required by §330.409(g) could cost local governments and federal agencies as much as $5,500 for construction and sampling costs per added well if groundwater contamination is found. Annual sampling costs for subsequent years are estimated to be $2,000 per well. The proposed rules also require that a professional engineer certify that landfills meet the proposed rules' requirements. This certification is anticipated to be a nominal cost for owners and operators ranging from $1,000 to $10,000 per landfill. The alternative daily cover limits under the proposed rules may increase landfill costs but the cost increase will vary statewide depending on the size and location of the landfill, as well as the cost of cover material chosen. The alternative liner designs available to Type IV arid exempt landfills under the proposed rules may save local governments owning these landfills as much as $150,000.

Local governments and federal agencies may see savings from $3.00 to $10 per cubic yard under §330.331(e), related to the disposal of soils contaminated by petroleum hydrocarbons or other contaminants in dedicated cells at concentrations greater than 1,500 mg/kg total petroleum hydrocarbons or concentrations listed in Table 1 of §335.521(a)(1). Local governments should also experience cost savings from the streamlining of regional solid waste management plan preparation and adoption, but the savings will vary depending on the size of the local government and the expertise utilized in preparing such plans. The proposed rules would require one annual report for groundwater monitoring instead of the two semiannual reports required under the current rules. The reduction in these monitoring reports may or may not produce cost savings for local governments and

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federal agencies, depending on whether additional effort is required to analyze and reassimilate monitoring data for the prior six months.

Public Meetings

The rules implement House Bill 1609, 79th Legislature, by amending the requirement for mandatory public meetings for registration applications to make the meetings discretionary in §330.69(b)(1) based on whether there is significant public interest in the facility. There have been approximately ten to 15 of these meetings held annually in recent years of which several of the meetings have had no one attend from the public. The proposed rules will allow the commission and local government applicants to avoid the cost of conducting these meetings when there is little or no public interest in a proposed facility. The commission estimates that the number of public meetings held for registration applications will be reduced to about 80% under the proposed rules.

In summary, whether the proposed rules will have overall cost increases or cost savings for local governments depends on the type and number of MSW activities that will be undertaken and the size and types of the landfills affected.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years that the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be more easily understood MSW regulations, greater compliance with MSW requirements, and greater protection of the environment and human health.

Impacts to Businesses and Individuals Applications

Businesses or individuals owning or operating MSW facilities should see their costs for preparing an application decrease under the proposed rules due to the additional exemptions for certain permitting, the streamlining of rules, and the reduction of requirements under permit by rule and registration by rule. It is estimated that the cost savings could range between $50,000 to $100,000 per application for most types of applications. Savings in application costs for beneficial gas recovery facilities is estimated to range from $20,000 to $50,000 per application. Staff estimates that as many as 238 businesses may apply for special collection routes or authorizations on an annual basis. Statewide cost savings for businesses is estimated to range from $11.9 million to $23.8 million per year. These estimated savings are expected to significantly outweigh any costs associated with the proposed new $150 application fee that businesses would pay. Costs statewide associated with the application fees are estimated to be $35,700 per year for businesses.

Transporter Costs

Businesses that are issued permits for special collection routes will see their annual fee increase by $50 per vehicle. Staff estimates that 44 such vehicles are owned by businesses. The increase in the fees paid statewide by businesses for transporter costs is estimated to be $2,200 per year.

Buffer Zones

The proposed rules would require that new Type I and Type IV landfills have larger buffer zones than previously required. The proposed rules would require the buffer zones for new facilities to be 125 feet instead of the previously required 50 feet. For an average landfill of 300 acres, the buffer zone would be increased by 25 acres to help minimize waste management issues with neighbors of landfills. The proposed rules do allow a demonstration for an alternate buffer zone spacing that meets the performance requirements of a 125-foot buffer zone. The proposed rules would require that existing Type I and Type IV landfills that apply for a horizontal expansion increase their buffer zones from 50 feet to 125 feet or make a demonstration for an alternate buffer zone spacing that meets the performance requirements of a 125-foot buffer zone.

The costs to expand a buffer zone varies depending on the location and size of the landfill. Assuming an average landfill size of 300 acres and that an average price for a rural acre costs $3,000, businesses may spend as much as an additional $75,000 per landfill to increase buffer zones. It is estimated that businesses will establish five new landfills per year. The incremental statewide costs for businesses to comply with the proposed buffer zone requirements is estimated to be $375,000 per year. It is not currently known how many existing landfills owned or operated by businesses need to increase their size, but expansions of landfills will see the same increase in costs to comply with proposed buffer zone requirements.

Monitor Well Costs

The proposed rules, under §330.403, would require that Type I and Type IV landfills owned or operated by businesses comply with the same groundwater monitoring requirements and default spacing for monitor wells that is required of local governments. The costs for additional monitor wells varies depending on the location and size of the landfill and depth of each monitor well. For an average new landfill of 300 acres, the number of monitor wells could be increased as much as 12 per new facility. For existing landfills, the number of additional monitor wells could be as many as ten for an existing facility. For expansions to existing landfills, as many as two additional monitor wells could be needed for the average facility.

Costs for Monitor Wells at New Landfills

The construction cost per average monitor well is estimated to be $3,500 and annual sampling costs are estimated to be $2,000. It is estimated that there will be approximately five new business- owned landfill facilities proposed per year, and, on average, the cost increase for the first year for each of these landfills for monitor wells will be $66,000. Sampling costs for the second through the fifth year of the proposed rules is estimated to increase $96,000 per landfill. The statewide impact to businesses for additional monitor well construction and sampling is estimated to total $330,000 in the first year and $480,000 for the second through the fifth year of the proposed rules.

Costs for Monitor Wells at Existing Landfills

Staff estimates that 60 existing landfills owned or managed by businesses will need additional monitor wells under the proposed rules. Based on a landfill size assumption of 300 acres, ten new wells could be needed at each existing landfill. Using the same construction and sampling cost assumptions, the cost increase for monitor wells under the proposed rules could total as much as $55,000 per landfill for the first year and $3.3 million statewide. For the second through the fifth year under the proposed rules, incremental sampling costs could be as much as $80,000 per landfill and $4.8 million statewide.

Other Costs and Savings
Other requirements of the proposed rules also have the potential to fiscally impact businesses. Monitoring wells specified under §330.409(g) could cost as much as $5,500 for construction and sampling costs per added well if groundwater contamination is found. Annual sampling costs for subsequent years are estimated to be $2,000 per well. The proposed rules also require that a professional engineer certify that landfills meet the proposed rules’ requirements. This certification is anticipated to be a nominal cost for owners and operators ranging from $1,000 to $10,000 per landfill. The alternative daily cover limits under the proposed rules may increase landfill costs but the cost increase will vary statewide depending on the size and location of the landfill, as well as the cost of cover material chosen.

Businesses may see savings from $3.00 to $10 per cubic yard under §330.331(e), related to the disposal of soils contaminated by petroleum hydrocarbons or other contaminants in dedicated cells at concentrations greater than 1,500 mg/kg total petroleum hydrocarbons or concentrations listed in Table 1 of §335.521(a)(1). The proposed rules would require one annual report for groundwater monitoring instead of the two semianual reports required under the current rules. The reduction in these monitoring reports may or may not produce cost savings for businesses depending on whether additional effort is required to analyze and reabsorb monitoring data for the prior six months.

Public Meetings

The rules implement House Bill 1609, 79th Legislature, by amending the requirement for mandatory public meetings for registration applications to make the meetings discretionary in §330.69(b)(1) based on whether there is significant public interest in the facility. There have been approximately ten to 15 of these meetings held annually in recent years of which several of the meetings have had no one attend from the public. The proposed rules will allow the commission and local government applicants to avoid the cost of conducting these meetings when there is little or no public interest in a proposed facility. The commission estimates that the number of public meetings held for registration applications will be reduced to about 80% under the proposed rules.

In summary, whether the proposed rules will have overall cost increases or cost savings for businesses depends on the type and number of MSW activities that will be undertaken and the size and types of the landfills affected.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small businesses or micro-businesses. Small or micro-businesses do not typically own or operate landfills. Increased buffer zone and monitor well requirements are not expected to impact small or micro-businesses.

In general, a small or micro-business that performs other MSW functions will experience the same cost increases or cost savings as those experienced by large businesses performing these same functions. Staff is unable to estimate how many small or micro-businesses will be affected by the proposed rules except for the impact on transporters for special collection routes. The proposed rules will increase the permit costs for transporters that are issued permits for special collection routes and for municipal routes by $50 per vehicle. Staff estimates that there are two such permits issued to small or micro-business, for a total cost increase statewide of $100. Costs should decrease for operators of small rural transfer stations. The proposed rules will allow these operators to function under a notification instead of a permit or registration. Small or micro-businesses that own or operate Type IX facilities should see an estimated savings between $20,000 to $50,000 per application because they will be allowed to operate under registration by rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS

The commission reviewed the proposed rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rules are not subject to §2001.0225, because they do not meet the criteria for a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This proposal does not qualify as a major environmental rule because it does not have as its specific intent the protection of the environment or the reduction of risk to human health from environmental exposure. The specific intent of the proposed rules is to revise and update the Chapter 330 rules to more appropriately reflect the current programs and requirements of the TCEQ’s Municipal Solid Waste Permits Section; improve the organization of the chapter by providing an overall topic reorganization; restructure the rules from predominantly landfill-based to a general solid waste management structure; remove obsolete requirements and references; incorporate streamlining initiatives for low-risk waste activities to increase the flexibility and efficiency of MSW regulation; update the requirements for counties to obtain permitting authority over certain MSW activities; streamline the MSW transporter requirements; revise the regulatory requirements for medical waste management and transportation; revise the buffer-zone requirements; establish basic levels of quality assurance and quality control for sampling and analysis reports; establish new requirements for vertical expansions over pre-Subtitle D cells; harmonize the MSW rules with the commercial-industrial nonhazardous waste landfill rules; specify which construction activities are allowed prior to authorization; implement operational standards for MSW storage and processing units; revise the well-spacing requirements for groundwater monitoring; revise the requirements relating to regional and local solid waste planning; reduce the level of approval needed for low-impact waste management activities; establish a new standard air permit for MSW facilities and transfer stations; implement revised groundwater monitoring requirements; revise the requirements for detecting and measuring landfill gas at MSW facilities; update the requirements for monitoring landfill gas near closed landfills; and incorporate recent legislative changes. The proposed rules apply to individuals involved in the management and control of MSW. However, it is not anticipated that the proposed rules will 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. Therefore, the commission concludes that the proposed rules do not meet the definition of a major environmental rule.

Furthermore, the proposed rulemaking action does not meet any of the four applicable requirements listed in Texas Government Code, §2001.0225(a). Section 2001.0225(a) only applies to a major environmental rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rules do not meet any of these applicability requirements. First, the proposed rules are consistent with, and do not exceed, the standards set by federal law. Second, the proposed rules do not exceed an express requirement of state law. THSC, Chapter 361 authorizes the commission to control all aspects of the management of MSW. However, there are no specific requirements for the control of MSW that are exceeded by these proposed rules. Third, the rules do not exceed an express 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. Fourth, the commission does not propose these rules solely under the general powers of the agency, but rather under the authority of THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The proposed standard air permit is proposed under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules necessary to implement the permitting requirements of the TCAA, and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits. Therefore, the commission does not propose the adoption of the rules solely under the commission’s general powers.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rules and performed an assessment of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific intent of the proposed rules is to revise and update the Chapter 330 rules to more appropriately reflect the current programs and requirements of the TCEQ’s Municipal Solid Waste Permits Section; improve the organization of the chapter by providing an overall topic reorganization; restructure the rules from predominantly landfill-based to a general solid waste management structure; remove obsolete requirements and references; incorporate streamlining initiatives for low-risk waste activities to increase the flexibility and efficiency of MSW regulation; update the requirements for counties to obtain permitting authority over certain MSW activities; streamline the MSW transporter requirements; revise the regulatory requirements for medical waste management and transportation; revise the buffer zone requirements; establish basic levels of quality assurance and quality control for sampling and analysis reports; establish new requirements for vertical expansions over pre-Subtitle D cells; harmonize the MSW rules with the commercial-industrial nonhazardous waste landfill rules; specify which construction activities are allowed prior to authorization; implement operational standards for MSW storage and processing units; revise the well-spacing requirements for groundwater monitoring; revise the requirements relating to regional and local solid waste planning; reduce the level of approval needed for low-impact waste management activities; establish a new standard air permit for MSW facilities and transfer stations; implement revised groundwater monitoring requirements; revise the requirements for detecting and measuring landfill gas at MSW facilities; update the requirements for monitoring landfill gas near closed landfills; and incorporate recent legislative changes. The proposed rules substantially advance these purposes by repealing specific sections of Chapter 330 and by providing new and modified sections of Chapter 330. The proposed rules will provide a benefit to society by providing updated regulations, streamlining specific waste management activities, and improving the readability and organization of the chapter. The new and modified provisions relate to permitting, reporting, and operational requirements for MSW facilities and do not impose a burden on a recognized real property interest and therefore, do not constitute a taking.

The promulgation of the proposed rules is neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the proposed rules do not affect a landowner’s rights in a recognized private real property interest because this rulemaking does not burden (constitutionally); nor restrict or limit the owner’s right to the property that would otherwise exist in the absence of this rulemaking and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the proposed rules. Therefore, these proposed rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rules include to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; and to balance benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing...
CNRAs, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone.

CMP policies applicable to the proposed rules include the construction and operation of solid waste treatment, storage, and disposal facilities and discharge of municipal and industrial waste to coastal waters.

The specific purpose of this proposal is to streamline low-risk waste activities to lower agency authorizations, including allowing permits by rule and registrations by rule for certain low-impact waste management activities; to decrease regulatory requirements for small rural transfer stations; to increase the ease or desirability for counties to license certain MSW activities, within statutory constraints (see THSC, §§361.154 - 361.160); to streamline and clarify MSW transporter requirements; to allow a permit by rule for persons that transport waste in enclosed containers or enclosed vehicles to Type IV landfills; to decrease regulatory requirements for medical waste management between hospitals and associated clinics; to revise the requirements for detecting and measuring landfill gas to establish more enforceable language; to add requirements to establish basic levels of quality assurance and quality control reporting in sampling and laboratory analysis reports submitted to the commission; to harmonize these proposed rules with the commercial industrial nonhazardous waste landfill rules; to clarify which construction activities are allowed before authorization; to remove the ban on trench burners at MSW facilities and establish requirements for trench burners (air curtain incinerators) at MSW facilities, consistent with the permit by rule allowed by 30 TAC §106.496; to update the language that refers to professional geoscientists; to revise the MSW permit and registration application format to ease the council of government application reviews of MSW facility siting and compatibility with surrounding land use; to revise the annual/quarterly maintenance fee for transporters with a special collection route permit for enclosed containers or enclosed vehicles transported to Type IV landfills so that municipal and other transporters are required to pay the same fee; to add new buffer zone sizing requirements that are tied to the height of the landfill; to harmonize these rules with the MSW landfill operational requirements for claiming the standard air permit under 30 TAC §116.621; to reorganize the rules to improve readability; and to correct citations and update the agency’s name.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any CNRAs, and because, like the current rules, the proposed rules would ensure proper MSW management in all regions of the state, including coastal areas.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS portion of this preamble.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Because the new air standard permit in Chapter 330, Subchapter U is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits, 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 air standard permit requirements for each emission unit affected by the revisions to the standard permit at their site.

ANNOUNCEMENT OF HEARING

A public hearing for this proposed rulemaking has been scheduled for September 29, 2005, at 2:00 p.m., at the Texas Commission on Environmental Quality, 12100 North IH-35, Building E, Room 1015, 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 wishing to present oral statements will be asked to register. In an effort to aid in recording, individuals registering to speak will be asked to indicate their area of interest as medical waste, liquid waste, solid waste management, or general. Individuals will be called in that order to present comment. Individuals may comment on more than one area, but will be asked to do so in order. Regardless of area of interest, all individuals will be given the opportunity to comment. 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, 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 Lola Brown, Office of Legal Services, at (512) 239-0348. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2004-031-330-PR. Comments must be received by 5:00 p.m., October 31, 2005. The proposed rules may be viewed on the commission’s Web site at http://www.tceq.state.tx.us/nav/rules/proposal_adopt.html. For further information, please contact Wayne Harry, Waste Permits Division, at (512) 239-6619.

SUBCHAPTER A. GENERAL INFORMATION


STATUTORY AUTHORITY

The amendment and new sections are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is proposed under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA;

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§382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The proposed amendment and new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed amendment and new sections also implement Texas Water Code, §5.103, Rules.

§330.1. Purpose and Applicability [Declaration and Intent].

(a) The regulations promulgated in this chapter cover all aspects of municipal solid waste (MSW) management and air emissions from MSW units under the authority of the commission [Texas Water Commission] and are based primarily on the stated purpose of Texas Health and Safety Code [Texas Civil Statutes, Health and Safety Code]. Chapter 361, as amended, hereafter referred to as the Texas Solid Waste Disposal Act. The owner or operator of a municipal solid waste landfill (MSWLF) facility shall comply with any other applicable federal rules, laws, regulations, or other requirements. The provisions of this chapter apply to any person as defined in §3.2 of this title (relating to Definitions) involved in any aspect of the management and control of MSW including, but not limited to, storage, collection, handling, transportation, processing, and disposal. Furthermore, these regulations apply to any person that by contract, agreement, or otherwise arrange to process, store, or dispose of, or arrange with a transporter for transport to process, store, or dispose of, solid waste owned or possessed by the person, or by any other person or entity. The comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) are effective 20 days after they are filed with the Office of the Secretary of State.

(1) Permits and registrations, issued by the commission and its predecessors, that existed before the 2006 Revisions became effective, remain valid until suspended or revoked except as expressly provided otherwise in this chapter. Facilities may operate under existing permits and registrations subject to: requirements in the 2006 Revisions, which expressly supersede provisions contained in existing authorizations or require revisions to existing authorizations; and those requirements mandated by the United States Environmental Protection Agency in 40 Code of Federal Regulations (CFR) Parts 257 and 258, as amended, which implement certain requirements of Resource Conservation and Recovery Act, Subtitle D. For those federally mandated requirements and the equivalent state requirements, the effective dates listed in 40 CFR Parts 257 and 258, as amended, shall apply. For those federally mandated requirements, the permittee is under an obligation to apply for a permit change in accordance with §305.62 of this title (relating to Amendment) or §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications), as applicable, to incorporate the required standard. The application shall be submitted no later than six months from the effective date of the required standard.

(2) Applications for new permits and major amendments to existing permits that are administratively complete and registration applications for which the executive director has completed a technical review, as of the effective date of the 2006 Revisions, shall be considered under the former rules of this chapter. Such applications are not subject to §305.127(4)(B) of this title (relating to Conditions to be Determined for Individuals Permits).

(3) Authorizations, other than permits and registrations, that existed before the 2006 Revisions became effective shall comply with the 2006 Revisions within 120 days of the 2006 Revisions becoming effective unless expressly provided otherwise in this chapter. These authorizations include notifications, exemptions, permits by rule, and registrations by rule.

(4) Authorizations, other than permits and registrations, that had not been claimed or did not exist before the 2006 Revisions became effective shall comply with the 2006 Revisions.

(5) Applications for modifications filed before the 2006 Revisions become effective are subject to the former rules.

(6) Owners or operators of medical waste mobile treatment units, operating under an existing authorization may continue operating and shall submit:

(A) a closure cost estimate within 60 days of the effective date of the 2006 Revisions and annually thereafter; and

(B) evidence of financial assurance meeting the requirements specified in §330.9(m)(1)(I) of this title within 120 days of the effective date of this chapter and annually thereafter.

(6a) All permits, including any special provisions therein, issued by the Texas Water Commission or the Texas Department of Health shall remain in force after October 9, 1993, the effective date of this chapter. To the extent that a standard has been changed by this chapter, the permittee may continue to operate under standards contained in previously issued permits, except for those requirements mandated by EPA 40 Code of Federal Regulations, Parts 257 and 258, as amended, which implement certain requirements of Subtitle D of the Resource Conservation and Recovery Act (RCRA). For those federally mandated requirements, the permittee is under an obligation to apply for a change to his permit in accordance with §305.62 of this title (relating to Amendment) or §305.70 of this title (relating to Municipal Solid Waste Permit Modifications), as applicable, to incorporate the required standard. The application shall be submitted no later than April 9, 1994. Timely submission of a request for a permit change qualifies the owners or operators of existing MSWLF units for interim status. MSWLF facility owners or operators with interim status are treated as having been issued a permit modification or amendment until the executive director makes a final determination on the permit modification request or the commission makes a final determination on the permit amendment request. Facility owners or operators with interim status must comply with the requirements of this chapter upon the effective date of this chapter.

(b) (41) The commission at its [A permit or license shall be required for each MSW unit, and the executive director, at his discretion, may include one or more different types of units in a single permit if the units are located at the same facility with the exception of a facility authorized by an MSW permit by rule. Persons shall seek separate authorizations at a facility that qualifies for an MSW permit by rule.

(c) This chapter does not apply to any person that prepares sewage sludge or domestic septage, fires sewage sludge in a sewage sludge incinerator, applies sewage sludge or domestic septage to the land, or to the owner/operator of a surface disposal site; to sewage sludge or domestic septage applied to the land or placed on a surface disposal site, to sewage sludge fired in a sewage sludge incinerator, to land where sewage sludge or domestic septage is applied to a surface

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disposal site or to a sewage sludge incinerator; any person that transports sewage sludge, water treatment sludge, domestic sewage, chemical toilet waste, grit trap waste, or grease trap waste; to any person that applies water treatment sludge for disposal in a landfill, surface impoundment, or waste pile, as defined in 40 CFR §257.2, to any person that applies water treatment sludge for disposal in a land application unit, as defined in §312.121 of this title (relating to Purpose, Scope, and Standards) to water treatment sludge that is disposed of in a landfill, surface impoundment, or waste pile, as defined in 40 CFR, or to water treatment sludge that is disposed of in a land application unit, as defined in §312.121 of this title. Persons managing such wastes shall comply with the requirements of Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation).

(d) This chapter does not apply to any person that compacts MSW in accordance with the requirements of Chapter 332 of this title (relating to Composting), except for those persons that must apply for a permit in accordance with §332.3(a) (relating to Applicability). Those persons that must submit a permit application for a compost operation shall follow the applicable requirements of Subchapter B of this chapter (relating to Permit and Registration Application Procedures).

§330.3. Definitions. Unless otherwise noted, all terms contained in this section are defined by their plain meaning. This section contains definitions for terms that appear throughout this chapter. Additional definitions may appear in the specific section to which they apply. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) 100-year flood--A flood that has a 1.0% or greater chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(2) Active life--The period of operation beginning with the initial receipt of solid waste and ending at certification/completion of closure activities in accordance with §§330.451 - 330.459 of this title (relating to Closure and Post-Closure).

(3) Active portion--That part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with §§330.451 - 330.459 of this title (relating to Closure and Post-Closure).

(4) Airport--A public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(5) Ancillary equipment--Any device that is used to distribute, meter, or control the flow of solid waste from its point of generation to a storage or processing tank(s), between solid waste storage and processing tanks to a point of disposal on-site, or to a point of shipment for disposal off-site. Such devices include, but are not limited to, piping, fittings, flanges, valves, and pumps.

(6) Animal crematory--A facility for the incineration of animal remains that meets the following criteria:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of the emission of the combustion products.

(7) Aquifer--A geological formation, group of formations, or portion of a formation capable of yielding significant quantities of groundwater to wells or springs. Significant quantities of groundwater shall be for the purposes of laboratory analyses.

(8) Areas susceptible to mass movements--Areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the municipal solid waste landfill unit, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluctuation, block sliding, and rock fall.

(9) Asbestos-containing materials--Include the following.

(A) Category I nonfriable asbestos-containing material means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1.0% asbestos as determined using the method specified in Appendix A, Subpart F, 40 Code of Federal Regulations (CFR) Part 763, §1, Polarized Light Microscopy.

(B) Category II nonfriable asbestos-containing material means any material, excluding Category I nonfriable asbestos-containing material, containing more than 1.0% asbestos as determined using the methods specified in Appendix A, Subpart F, 40 CFR Part 763, §1, Polarized Light Microscopy, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

(C) Friable asbestos-containing material means any material containing more than 1.0% asbestos that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

(D) Nonfriable asbestos-containing material means any material containing more than 1.0% asbestos that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

(10) ASTM--The American Society for Testing and Materials.

(11) Battery--An electrochemical device that generates electric current by converting chemical energy. Its essential components are positive and negative electrodes made of more or less electrically conductive materials, a separate medium, and an electrolyte. There are four major types:

(A) primary batteries (dry cells);

(B) storage or secondary batteries;

(C) nuclear and solar cells or energy converters; and

(D) fuel cells.

(12) Battery acid (also known as electrolyte acid)--A solution of not more than 47% sulfuric acid in water suitable for use in storage batteries, which is water white, odorless, and practically free from iron.

(13) Battery retailer--A person or business location that sells lead-acid batteries to the general public, without restrictions to limit purchases to institutional or industrial clients only.

(14) Battery wholesaler--A person or business location that sells lead-acid batteries directly to battery retailers, to government entities by contract sale, or to large-volume users, either directly or by contract sale.

(15) Bioreactor--A permitted Resource Conservation and Recovery Act, Subtitle D landfill or landfill cell where liquid or air is
injected in a controlled fashion into the waste mass in order to accelerate or enhance biostabilization of the waste. A bioreactor landfill typically includes a landfill gas collection system.

(16) Bird hazard—An increase in the likelihood of bird/aircraft collisions that may cause damage to an aircraft or injury to its occupants.

(17) Boiler—An enclosed device using controlled flame combustion and having the following characteristics.

A. The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases.

B. The unit’s combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design:

(i) process heaters (units that transfer energy directly to a process stream); and

(ii) fluidized bed combustion units.

C. While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60%, calculated in terms of the recovered energy compared with the thermal value of the fuel.

D. The unit must export and utilize at least 75% of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps.

(18) Brush—Cuttings or trimmings from trees, shrubs, or lawns and similar materials.

(19) Buffer zone—A zone free of municipal solid waste processing and disposal activities adjacent to the facility boundary.

(20) Citizens’ collection station—A facility established for the convenience and exclusive use of residents (not commercial or industrial users or collection vehicles), except that in small communities where regular collections are not available, small quantities of commercial waste may be deposited by the generator of the waste. The facility may consist of one or more storage containers, bins, or trailers.

(21) Class 1 wastes—Any industrial solid waste or mixture of industrial solid wastes that because of its concentration, or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, or may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or disposed of or otherwise managed, as further defined in §335.505 of this title (relating to Class 1 Waste Determination).

(22) Class 2 wastes—Any individual solid waste or combination of industrial solid waste that are not described as Hazardous, Class 1, or Class 3 as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(23) Class 3 wastes—Inert and essentially insoluble industrial solid waste, usually including, but not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable, as further defined in §335.507 of this title (relating to Class 3 Waste Determination).

(24) Collection—The act of removing solid waste (or materials that have been separated for the purpose of recycling) for transport elsewhere.

(25) Collection system—The total process of collecting and transporting solid waste. It includes storage containers; collection crews, vehicles, equipment, and management; and operating procedures. Systems are classified as municipal, contractor, or private.

(26) Commence physical construction—The initiation of physical on-site construction on a municipal solid waste management unit that is permanent in nature. Such activities include, but are not limited to, installation of foundations, excavation of landfill cells and/or any associated municipal solid waste management units, and construction of permanent structures.

(27) Commercial solid waste—All types of solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, excluding residential and industrial wastes.

(28) Compacted waste—Waste that has been reduced in volume by a collection vehicle or other means including, but not limited to, dewatering, composting, incineration, and similar processes, with the exception of waste that has been reduced in volume by a small, in-house compactor device owned and/or operated by the generator of the waste.

(29) Composite liner—A liner system consisting of two components: the upper component must consist of a minimum 30-mil geomembrane liner or minimum 60-mil high-density polyethylene, and the lower component must consist of at least a two-foot layer of re-compacted soil deposited in lifts with a hydraulic conductivity of no more than 1 x 10⁻⁶ centimeters/second. The geomembrane liner component must be installed in direct and uniform contact with the compacted soil component.

(30) Compost—The stabilized product of the decomposition process that is used or sold for use as a soil amendment, artificial top soil, growing medium amendment, or other similar uses.

(31) Composting—The controlled biological decomposition of organic materials through microbial activity.

(32) Conditionally exempt small-quantity generator—A person that generates no more than 220 pounds of hazardous waste in a calendar month.

(33) Construction or demolition waste—Waste resulting from construction or demolition projects; includes all materials that are directly or indirectly the by-products of construction work or that result from demolition of buildings and other structures, including, but not limited to, paper, cartons, gypsum board, wood, excelsior, rubber, and plastics.

(34) Container—Any portable device in which a material is stored, transported, or processed.

(35) Contaminate—To alter the chemical, physical, biological, or radiological integrity of ground or surface water by man-made or man-induced means.

(36) Contaminated water—Water that has come into contact with waste, leachate, or gas condensate.
(37) Controlled burning--The combustion of solid waste with control of combustion air to maintain adequate temperature for efficient combustion; containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and control of the emission of the combustion products, i.e., incineration in an incinerator.

(38) Discard--To abandon a material and not use, re-use, reclaim, or recycle it. A material is abandoned by being disposed of, burned or incinerated (except where the material is being burned as a fuel for the purpose of recovering usable energy); or physically, chemically, or biologically treated (other than burned or incinerated) in lieu of or prior to being disposed.

(39) Discharge--Includes deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release, or to allow, permit, or suffer any of these acts or operations.

(40) Discharge of dredged material--Any addition of dredged material into the waters of the United States. The term includes, without limitation, the addition of dredged material to a specified disposal site located in waters of the United States and the runoff or overflow from a contained land or water disposal area.

(41) Discharge of fill material--The addition of fill material into waters of the United States. The term generally includes placement of fill necessary to the construction of any structure in waters of the United States: the building of any structure or improvement requiring rock, sand, dirt, or other inert material for its construction; the building of dams, dikes, levees, and riprap.

(42) Discharge of pollutant--Any addition of any pollutant to navigable waters from any point source or any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source.

(43) Displacement--The measured or estimated distance between two formerly adjacent points situated on opposite walls of a fault (synonymous with slip).

(44) Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

(45) Dredged material--Material that is excavated or dredged from waters of the United States.

(46) Drinking-water intake--The point at which water is withdrawn from any water well, spring, or surface water body for use as drinking water for humans, including standby public water supplies.

(47) Elements of nature--Rainfall, snow, sleet, hail, wind, sunlight, or other natural phenomenon.

(48) Endangered or threatened species--Any species listed as such under the Federal Endangered Species Act, 16 U.S.C. §1536, as amended or under the Texas Endangered Species Act.

(49) Essentially insoluble--Any material that, if representative sample and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of the maximum contaminant levels in 40 Code of Federal Regulations (CFR) Part 141, Subparts B and G, and 40 CFR Part 143 for total dissolved solids.

(50) Existing municipal solid waste landfill unit--Any municipal solid waste landfill unit that received solid waste as of October 9, 1993.

(51) Experimental project--Any new proposed method of managing municipal solid waste, including resource and energy recovery projects, that appears to have sufficient merit to warrant commission approval.

(52) Facility--All contiguous land and structures, other appurtenances, and improvements on the land used or proposed to be used for the storage, processing, or disposal of solid waste.

(53) Fault--A fracture or a zone of fractures in any material along which strata, rocks, or soils on one side have been displaced with respect to those on the other side.

(54) Fill material--Any material used for the primary purpose of filling an excavation.

(55) Floodplain--The lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood from a contributing drainage area of at least one square mile and with a depth of inundation of at least one foot.

(56) Garbage--Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.

(57) Gas condensate--The liquid generated as a result of any gas recovery process at a municipal solid waste facility.

(58) Generator--Any person, by site or location, that produces solid waste to be shipped to any other person, or whose act or process produces a solid waste or first causes it to become regulated.

(59) Grease trap waste--Material collected in and from a grease interceptor in the sanitary sewer service line of a commercial, institutional, or industrial food service or processing establishment, including the solids resulting from dewatering processes.

(60) Grit trap waste--Grit trap waste includes waste from interceptors placed in the drains prior to entering the sewer system at maintenance and repair shops, automobile service stations, car washes, laundries, and other similar establishments.

(61) Groundwater--Water below the land surface in a zone of saturation.

(62) Hazardous waste--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 United States Code, §§6901 et seq., as amended.

(63) Holocene--The most recent epoch of the Quaternary Period, extending from the end of the Pliocene Epoch to the present.

(64) Household waste--Any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunks, vacation homes, ranger stations, campgrounds, picnic grounds, and day-use recreation areas); does not include brush.

(65) Incinerator--Any enclosed device that:

(A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace, as defined in §335.1 of this title (relating to Definitions); or

(B) meets the definition of infrared incinerator or plasma arc incinerator.
(66) Industrial solid waste—Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations.

(67) Inert material—A natural or man-made nonputrescible, nonhazardous material that is essentially insoluble, usually including, but not limited to, soil, dirt, clay, sand, gravel, brick, glass, concrete with reinforcing steel, and rock.

(68) Infrared incinerator—Any enclosed device that uses electric-powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and is not listed as an industrial furnace as defined in §335.1 of this title (relating to Definitions).

(69) Injection well—A well into which liquids are injected.

(70) In situ—In natural or original position.

(71) Karst terrain—An area where karst topography, with its characteristic surface and/or subterranean features, is developed principally as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terrains include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

(72) Lateral expansion—A horizontal expansion of the waste boundaries of an existing municipal solid waste landfill unit.

(73) Land application of solid waste—The disposal or use of solid waste (including, but not limited to, sludge or septic tank pumpings or mixture of shredded waste and sludge) in which the solid waste is applied within three feet of the surface of the land.

(74) Land treatment unit—A solid waste management unit at which solid waste is applied onto or incorporated into the soil surface and that is not a corrective action management unit; such units are disposal units if the waste will remain after closure.

(75) Landfill—A solid waste management unit where solid waste is placed in or on land and which is not a pile, a land treatment unit, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(76) Landfill cell—A discrete area of a landfill.

(77) Landfill mining—The physical procedures associated with the excavation of buried municipal solid waste and processing of the material to recover material for beneficial use.

(78) Leachate—A liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

(79) Lead acid battery—A secondary or storage battery that uses lead as the electrode and dilute sulfuric acid as the electrolyte and is used to generate electrical current.

(80) License—

(A) A document issued by an approved county authorizing and governing the operation and maintenance of a municipal solid waste facility used to process, treat, store, or dispose of municipal solid waste, other than hazardous waste, in an area not in the territorial limits or extraterritorial jurisdiction of a municipality.

(B) An occupational license as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(81) Liquid waste—Any waste material that is determined to contain “free liquids” as defined by United States Environmental Protection Agency (EPA) Method 9095 (Paint Filter Test), as described in “Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods” (EPA Publication Number SW-846).

(82) Litter—Rubbish and putrescible waste.

(83) Low volume transfer station—A transfer station used for the storage of collected household waste limited to a total storage capacity of 40 cubic yards located in an unincorporated area that is not within the extraterritorial jurisdiction of a city.

(84) Lower explosive limit—The lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25 degrees Celsius and atmospheric pressure.

(85) Medical waste—Treated and untreated special waste from health care-related facilities which is comprised of animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps as those terms are defined in 25 TAC §1.132 (Definitions) from the sources specified in 25 TAC §1.134 (Application), as well as regulated medical waste as defined in 49 Code of Federal Regulations §173.134(a)(5), except that the term does not include medical waste produced on a farm or ranch as defined in 34 TAC §3.296(f) (Agriculture, Animal Life, Feed, Seed, Plants, and Fertilizer), nor does the term include artificial, nonhuman materials removed from a patient and requested by the patient, including, but not limited to, orthopedic devices and breast implants. Health care-related facilities do not include:

(A) single or multi-family dwellings; and

(B) hotels, motels, or other establishments that provide lodging and related services for the public.

(86) Monofil—A landfill or landfill cell into which only one type of waste is placed.

(87) Municipal hazardous waste—Any municipal solid waste or mixture of municipal solid wastes that has been identified or listed as a hazardous waste by the administrator, United States Environmental Protection Agency.

(88) Municipal solid waste—Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste.

(89) Municipal solid waste facility—All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(90) Municipal solid waste landfill unit—A discrete area of land or an excavation that receives household waste and that is not a landfill application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 Code of Federal Regulations §257.2. A municipal solid waste (MSW) landfill unit also may receive other types of Resource Conservation and Recovery Act Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. An MSW landfill unit may be a new MSW landfill unit, an existing MSW landfill unit, a vertical expansion, or a lateral expansion.

(91) New facility—A municipal solid waste facility that has not begun construction.

(92) Nonpoint source—Any origin from which pollutants emanate in an unconfined and unchanneld manner, including, but not limited to, surface runoff and leachate seeps.
(93) Non-regulated asbestos-containing material—Non-regulated asbestos-containing material as defined in 40 Code of Federal Regulations Part 61. This is asbestos material in a form such that potential health risks resulting from exposure to it are minimal.

(94) Notification—The act of filing information with the commission for specific solid waste management activities that do not require a permit or a registration, as determined by this chapter.

(95) Nuisance—Municipal solid waste that is stored, processed, or disposed of in a manner that causes the pollution of the surrounding land, the contamination of groundwater or surface water, the breeding of insects or rodents, or the creation of odors adverse to human health, safety, or welfare. A nuisance is further set forth in Texas Health and Safety Code, Chapters 341 and 382; Texas Water Code, Chapter 25; and any other applicable regulation or statute.

(96) Off-site—Property that cannot be characterized as on-site.

(97) On-site—The same or geographically contiguous property that may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way, which he/she controls and to which the public does not have access, may also be considered on-site property. For facilities required to submit a legal description, on-site is the property described by the legal description. For the purposes of managing medical waste, on-site shall be defined in §330.125(b) of this title (relating to Definitions).

(98) Open burning—The combustion of solid waste without:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of the emission of the combustion products.

(99) Operate—To conduct, work, run, manage, or control.

(100) Operating hours—The hours when the facility is open to receive waste, perform disposal activities, operate waste management units, operate heavy equipment, conduct on-site waste management activities, and transport materials on- or off-site. Operating hours include facility construction activities. Waste acceptance hours are those hours when waste is received from off-site.

(101) Operating record—All plans, submittals, and correspondence for a municipal solid waste facility required under this chapter; required to be maintained at the facility or at a nearby site acceptable to the executive director.

(102) Operation—A municipal solid waste (MSW) site or facility is considered to be in operation from the date that solid waste is first received or deposited at the MSW site or facility until the date that the site or facility is properly closed in accordance with this chapter.

(103) Operator—The person(s) responsible for operating the facility or part of a facility.

(104) Owner—The person that owns a facility or part of a facility.

(105) Permitted landfill—Any type of municipal solid waste landfill that received a permit from the State of Texas to operate and has not completed post-closure operations.

(106) Physical construction—Any physical changes including, but not limited to, excavation, installation, fabrication, demolition, and/or modification of a municipal solid waste management unit.

(107) Plasma arc incinerator—Any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and not listed as an industrial furnace as defined by §35.1 of this title (relating to Definitions).

(108) Point of compliance—A vertical surface located no more than 500 feet from the hydraulically downgradient limit of the waste management unit boundary, extending down through the uppermost aquifer underlying the regulated units, and located on land owned by the owner of the facility.

(109) Point source—Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, or discrete fissure from which pollutants are or may be discharged.

(110) Pollutant—Contaminated dredged spoil, solid waste, contaminated incinerator residue, sewage, sewage sludge, munitions, chemical wastes, or biological materials discharged into water.

(111) Pollution—The man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of an aquatic ecosystem.

(112) Polychlorinated biphenyl (PCB)—Any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances that contains such substance.

(113) Polychlorinated biphenyl (PCB) waste(s)—Those PCBs and PCB items that are subject to the disposal requirements of 40 Code of Federal Regulations (CFR) Part 761. Substances that are regulated by 40 CFR Part 761 include, but are not limited to: PCB articles, PCB article containers, PCB containers, PCB-contaminated electrical equipment, PCB equipment, PCB transformers, recycled PCBs, capacitors, microwave ovens, electronic equipment, and light ballasts and fixtures.

(114) Poor foundation conditions—Areas where features exist, indicating that a natural or man-induced event may result in inadequate foundation support for the structural components of a municipal solid waste landfill unit.

(115) Population equivalent—The hypothetical population that would generate an amount of solid waste equivalent to that actually being managed based on a generation rate of five pounds per capita per day and applied to situations involving solid waste not necessarily generated by individuals. It is assumed, for the purpose of these sections, that the average volume per ton of waste entering a municipal solid waste disposal facility is three cubic yards.

(116) Post-consumer waste—A material or product that has served its intended use and has been discarded after passing through the hands of a final user. For the purposes of this subchapter, the term does not include industrial or hazardous waste.

(117) Premises—A tract of land with the buildings thereon, or a building or part of a building with its grounds or other appurtenances.

(118) Process to further reduce pathogens—The process to further reduce pathogens as described in 40 Code of Federal Regulations Part 503, Appendix B.

(119) Processing—Activities including, but not limited to, the extraction of materials, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of waste, designed to change
the physical, chemical, or biological character or composition of any waste to neutralize such waste, or to recover energy or material from the waste, or render the waste safer to transport, store, dispose of, or make it amenable for recovery, amenable for storage, or reduced in volume.

(120) Public highway—The entire width between property lines of any road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park is opened to the public for vehicular traffic, is used as a public recreational area, or is under the state’s legislative jurisdiction through its police power.

(121) Putrescible waste—Organic wastes, such as garbage, wastewater treatment plant sludge, and grease trap waste, that are capable of being decomposed by microorganisms with sufficient rapidity as to cause odors or gases or are capable of providing food for or attracting birds, animals, and disease vectors.

(122) Qualified groundwater scientist—A licensed geoscientist or licensed engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university programs that enable the individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

(123) Radioactive waste—Waste that requires specific licensing under 25 TAC Chapter 289 (Radiation Control), and the rules adopted by the commission under the Texas Health and Safety Code.

(124) Recyclable material—A material that has been recovered or diverted from the nonhazardous waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable material is not solid waste. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

(125) Recycling—A process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Except for mixed municipal solid waste composting, that is, composting of the typical mixed solid waste stream generated by residential, commercial, and/or institutional sources, recycling includes the composting process if the compost material is put to beneficial use.

(126) Refuse—Same as rubbish.

(127) Registration—The act of filing information with the commission for review and approval for specific solid waste management activities that do not require a permit, as determined by this chapter.

(128) Regulated asbestos-containing material—Regulated asbestos-containing material as defined in 40 Code of Federal Regulations Part 61, as amended, includes: friable asbestos material. Category I nonfriable asbestos-containing material that has become friable; Category I nonfriable asbestos-containing material that will be or has been subjected to sanding, grinding, cutting, or abrasing; or Category II nonfriable asbestos-containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations.

(129) Regulated hazardous waste—A solid waste that is a hazardous waste as defined in 40 Code of Federal Regulations (CFR) §261.3 and that is not excluded from regulation as a hazardous waste under 40 CFR §261.4(b), or that was not generated by a conditionally exempt small-quantity generator.

(130) Resource recovery—The recovery of material or energy from solid waste.

(131) Resource recovery facility—A solid waste processing facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(132) Rubbish—Nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, brush, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

(133) Run-off—Any rainfall, leachate, or other liquid that drains over land from any part of a facility.

(134) Run-on—Any rainfall, leachate, or other liquid that drains over land onto any part of a facility.

(135) Salvaging—The controlled removal of waste materials for utilization, recycling, or sale.

(136) Saturated zone—That part of the earth’s crust in which all voids are filled with water.

(137) Scavenging—The uncontrolled and unauthorized removal of materials at any point in the solid waste management system.

(138) Scrap tire—Any tire that can no longer be used for its original intended purpose.

(139) Seasonal high water level—The highest measured or calculated water level in an aquifer during investigations for a permit application and/or any groundwater characterization studies at a facility.

(140) Septage—The liquid and solid material pumped from a septic tank, cesspool, or similar sewage treatment system.

(141) Site—Same as facility.

(142) Site development plan—A document, prepared by the design engineer, that provides a detailed design with supporting calculations and data for the development and operation of a solid waste site.

(143) Site operating plan—A document, prepared by the design engineer in collaboration with the facility operator, that provides general instruction to facility management and operating personnel throughout the operating life of the facility in a manner consistent with the engineer’s design and the commission’s regulations to protect human health and the environment and prevent nuisances.

(144) Site operator—The holder of, or the applicant for, an authorization (or license) for a municipal solid waste facility.

(145) Sludge—Any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water-supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant.

(146) Small municipal solid waste landfill—A municipal solid waste landfill at which less than 20 tons of municipal solid waste are disposed of daily based on an annual average. A small municipal solid waste landfill facility may dispose of less than 20 tons of construction or demolition waste in addition to the municipal solid waste the facility normally receives.
(147) Solid waste—Garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Texas Water Code, Chapter 26;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 United States Code, §§6901 et seq.);

(148) Solid waste management unit—A landfill, surface impoundment, waste pile, furnace, incinerator, kiln, injection well, container, drum, salt dome waste containment cavern, land treatment unit, tank, container storage area, or any other structure, vessel, appurtenance, or other improvement on land used to manage solid waste.

(149) Source-separated recyclable material—Recyclable material from residential, commercial, municipal, institutional, recreational, industrial, and other community activities, that at the point of generation has been separated, collected, and transported separately from municipal solid waste (MSW), or transported in the same vehicle as MSW, but in separate containers or compartments. Source-separation does not require the recovery or separation of non-recyclable components that are integral to a recyclable product, including:

(A) the non-recyclable components of white goods, whole computers, whole automobiles, or other manufactured items for which dismantling and separation of recyclable from non-recyclable components by the generator are impractical, such as insulation or electronic components in white goods;

(B) source-separated recyclable material rendered unmarketable by damage during collection, unloading, and sorting, such as broken recyclable glass; and

(C) tramp materials, such as:

(i) glass from recyclable metal windows;

(ii) nails and roofing felt attached to recyclable shingles;

(iii) nails and sheetrock attached to recyclable lumber generated through the demolition of buildings; and

(iv) pallets and packaging materials.

(150) Special waste—Any solid waste or combination of solid wastes that because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and disposal to protect the human health or the environment. If improperly handled, transported, stored, processed, or disposed of or otherwise managed, it may pose a present or potential danger to the human health or the environment. Special wastes are:

(A) hazardous waste from conditionally exempt small-quantity generators that may be exempt from full controls under Chapter 335, Subchapter N of this title (relating to Household Materials Which Could Be Classified as Hazardous Wastes);

(B) Class I industrial nonhazardous waste;

(C) untreated medical waste and treated medical waste that retains special characteristics or properties after the treatment process similar to those items listed in subparagraphs (A) - (S) of this paragraph;

(D) municipal wastewater treatment plant sludges, other types of domestic sewage treatment plant sludges, and water-supply treatment plant sludges;

(E) septic tank pumpings;

(F) grease and grit trap wastes;

(G) wastes from commercial or industrial wastewater treatment plants; air pollution control facilities; and tanks, drums, or containers used for shipping or storing any material that has been listed as a hazardous constituent in 40 Code of Federal Regulations (CFR) Part 261, Appendix VIII but has not been listed as a commercial chemical product in 40 CFR §261.33(e) or (f);

(H) slaughterhouse wastes;

(I) dead animals;

(J) drugs, contaminated foods, or contaminated beverages, other than those contained in normal household waste;

(K) pesticide (insecticide, herbicide, fungicide, or rodenticide) containers;

(L) discarded materials containing asbestos;

(M) incinerator ash;

(N) soil contaminated by petroleum products, crude oils, or chemicals in concentrations of greater than 1,500 milligrams per kilogram total petroleum hydrocarbons; or contaminated by constituents of concern that exceed the concentrations listed in Table 1 of §335.321(a)(1) of this title (relating to Appendices);

(O) used oil;

(P) waste from oil, gas, and geothermal activities subject to regulation by the Railroad Commission of Texas when those wastes are to be processed, treated, or disposed of at a solid waste management facility authorized under this chapter;

(Q) waste generated outside the boundaries of Texas that contains:

(i) any industrial waste;

(ii) any waste associated with oil, gas, and geothermal exploration, production, or development activities;

(iii) any item listed as a special waste in this paragraph;

(R) lead acid storage batteries; and

(S) used-oil filters from internal combustion engines.

(151) Special waste from health care-related facilities—Includes treated and untreated animal waste, blood and blood products, body fluids, microbiological waste, pathological waste, and sharps as
defined in 25 TAC §1.132 (Definitions) from the sources specified in 25 TAC §1.134 (Application).

(152) Stabilized sludges--Those sludges processed to significantly reduce pathogens, by processes specified in 40 Code of Federal Regulations Part 257, Appendix II.

(153) Storage--The keeping, holding, accumulating, or aggregating of solid waste for greater than 24 hours, at the end of which the solid waste is processed, disposed, or stored elsewhere.

(A) Examples of storage facilities are collection points for:

(i) only nonputrescible source-separated recyclable material;

(ii) consolidation of parking lot or street sweepings or wastes collected and received in sealed plastic bags from such activities as periodic citywide cleanup campaigns and cleanup of rights-of-way or roadside parks; and

(iii) accumulation of used or scrap tires prior to transportation to a processing or disposal facility.

(B) Storage includes operation of pre-collection or post-collection as follows:

(i) pre-collection—that storage by the generator, normally on his premises, prior to initial collection; or

(ii) post-collection—that storage by a transporter or processor, at a processing facility, while the waste is awaiting processing or transfer to another storage, disposal, or recovery facility.

(154) Storage battery--A secondary battery, so called because the conversion from chemical to electrical energy is reversible and the battery is thus rechargeable. Secondary or storage batteries contain an electrode made of sponge lead and lead dioxide, nickel-iron, nickel-cadmium, silver-zinc, or silver-cadmium. The electrolyte used is sulfuric acid. Other types of storage batteries contain lithium, sodium-liquid sulfur, or chlorine-zinc using titanium electrodes.

(155) Structural components--Liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the municipal solid waste landfill that is necessary for protection of human health and the environment.

(156) Surface impoundment--A natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is designed to hold an accumulation of liquids; examples include holding, storage, settling, and aeration pits, ponds, and lagoons.

(157) Surface water--Surface water as included in water in the state.

(158) Tank--A stationary device, designed to contain an accumulation of solid waste, which is constructed primarily of non-earth materials (e.g., wood, concrete, steel, plastic) that provide structural support.

(159) Tank system--A solid waste storage or processing tank and its associated ancillary equipment and containment system.

(160) Transfer station--A facility used for transferring solid waste from collection vehicles to long-haul vehicles (one transportation unit to another transportation unit). It is not a storage facility such as one where individual residents can dispose of their wastes in bulk storage containers that are serviced by collection vehicles.

(161) Transportation unit--A truck, trailer, open-top box, enclosed container, rail car, piggy-back trailer, ship, barge, or other transportation vehicle used to contain solid waste being transported from one geographical area to another.

(162) Transporter--A person that collects, conveys, or transports solid waste; does not include a person transporting his or her household waste.

(163) Trash--Same as Rubbish.

(164) Treatment--Same as Processing.

(165) Triple rinse--To rinse a container three times using a volume of solvent capable of removing the contents equal to 10% of the volume of the container or liner for each rinse.

(166) Uncompacted waste--Any waste that is not a liquid or a sludge, has not been mechanically compacted by a collection vehicle, has not been driven over by heavy equipment prior to collection, or has not been compacted prior to collection by any type of mechanical device other than small, in-house compactor devices owned and/or operated by the generator of the waste.

(167) Unified soil classification system--The standardized system devised by the United States Army Corps of Engineers for classifying soil types.

(168) Universal waste--Any of the following hazardous wastes that are subject to the universal waste requirements of Chapter 335, Subchapter H, Division 5 of this title (relating to Universal Waste Rule):

(A) batteries, as described in 40 Code of Federal Regulations (CFR) §273.2;

(B) pesticides, as described in 40 CFR §273.3;

(C) thermostats, as described in 40 CFR §273.4;

(D) paint and paint-related waste, as described in §335.262(b) of this title (relating to Standards for Management of Paint and Paint-Related Waste); and

(E) lamps, as described in 40 CFR §273.5.

(169) Unstable area--A location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(170) Uppermost aquifer--The geologic formation nearest the natural ground surface that is an aquifer; includes lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(171) Vector--An agent, such as an insect, snake, rodent, bird, or animal capable of mechanically or biologically transferring a pathogen from one organism to another.

(172) Washout--The carrying away of solid waste by waters.

(173) Waste acceptance hours--Those hours when waste is received from off-site.

(174) Waste management unit boundary--A vertical surface located at the perimeter of the unit. This vertical surface extends down into the uppermost aquifer.

(175) Waste-separation/intermediate-processing center--A facility, sometimes referred to as a materials recovery facility, to which recyclable materials arrive as source-separated materials, or where recyclable materials are separated from the municipal waste stream and processed for transport off-site for reuse, recycling, or other beneficial use.
(176) Waste-separation/recycling facility—A facility, sometimes referred to as a material recovery facility, in which recyclable materials are removed from the waste stream for transport off-site for reuse, recycling, or other beneficial use.

(177) Water in the state—Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(178) Water table—The upper surface of the zone of saturation at which water pressure is equal to atmospheric pressure, except where that surface is formed by a confining unit.

(179) Waters of the United States—All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide, with their tributaries and adjacent wetlands, interstate waters and their tributaries, including interstate wetlands; all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters that are or could be used by interstate or foreign travelers for recreational or other purposes; from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; that are used or could be used for industrial purposes by industries in interstate commerce; and all impoundments of waters otherwise considered as navigable waters; including tributaries of and wetlands adjacent to waters identified herein.

(180) Wetlands—As defined in Chapter 307 of this title (relating to Texas Surface Water Quality Standards).

(181) White goods—Discarded large household appliances such as refrigerators, stoves, washing machines, or dishwashers.

(182) Yard waste—Leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

§330.5. Classification of Municipal Solid Waste Facilities

(a) The commission has classified all municipal solid waste (MSW) facilities according to the method of processing or disposal of MSW. Subject to the limitations in §§330.15, 330.171, and 330.173 of this title (relating to General Prohibitions; Disposal of Special Wastes; and Disposal of Industrial Wastes), and with the written approval of the executive director, Type I, IV, V, and VI MSW facilities may also receive special wastes, including Class I industrial solid waste and hazardous waste from conditionally exempt small quantity generators, if properly handled and safeguarded in the facility.

(1) MSW facility - Type I. A Type I landfill unit is the standard landfill for the disposal of MSW. The commission may authorize the designation of special-use areas for processing, storage, and disposal or any other functions involving solid waste. Except as allowed in subsections (b) - (e) of this section, owners or operators shall follow the permit application requirements prescribed in Subchapter B of this chapter (relating to Permit and Registration Application Procedures) and the minimum design and operational requirements of Subchapter D of this chapter (relating to Operational Standards for Municipal Solid Waste Landfill Facilities); Subchapter F of this chapter (relating to Analytical Quality Assurance and Quality Control); Subchapter G of this chapter (relating to Surface Water Drainage); Subchapter H of this chapter (relating to Liner System Design and Operation); Subchapter I of this chapter (relating to Landfill Gas Management); Subchapter J of this chapter (relating to Groundwater Monitoring and Corrective Action); Subchapter K of this chapter (relating to Closure and Post-Closure); Subchapter L of this chapter (relating to Closure, Post-Closure, and Corrective Action Cost Estimates); Subchapter M of this chapter (relating to Location Restrictions); Subchapter T of this title (relating to Use of Land Over Closed Municipal Solid Waste Landfills); and Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities). Those facilities meeting the requirements of subsection (b) of this section shall be referred to as Type IAE facilities and are exempt from Subchapters I and K of this chapter. Owners or operators of Type I facilities that are authorized to operate a Type IV cell or trench shall operate the cell or trench in accordance with paragraph (2) of this subsection.

(2) MSW facility - Type IV. A Type IV landfill unit may only accept brush, construction, or demolition waste, and/or rubbish that is free of putrescible wastes and free of household wastes. Except as allowed in subsection (b) of this section, owners or operators shall follow the permit application requirements prescribed in Subchapter B of this chapter and the minimum design and operational standards prescribed in Subchapters D, F, and G of this chapter; §§330.331(d), 330.335, 330.337, 330.339, and 330.341 of this title (relating to Liner System Design and Operation); §§330.417 of this title (relating to Groundwater Monitoring at Type IV Landfills); §§330.453, 330.463(a), 330.465, and 330.467 of this title (relating to Closure and Post-Closure); Subchapters M and N of this chapter (relating to Location Restrictions; and Landfill Mining); and Chapter 37, Subchapter R of this title. Those facilities meeting the requirements of subsection (c) of this section shall be referred to as Type IVAE facilities and are exempt from Subchapters C, I, and K of this chapter (relating to Municipal Solid Waste Collection and Transportation; Landfill Gas Management; and Closure and Post-Closure).

(3) MSW facility - Type V. Separate solid waste processing facilities are classified as Type V. These facilities include processing plants that transfer, incinerate, shred, grind, bale, salvage, separate, dewater, reclaim, and/or provide other storage or processing of solid waste. Owners or operators shall follow the minimum design and operational requirements prescribed in Subchapter E of this chapter (relating to Operational Standards for Municipal Solid Waste Storage and Processing Units); Subchapter F of this chapter; Subchapter G of this chapter; Subchapter H of this chapter, if required; Subchapter K of this chapter; Subchapter L of this chapter, if financial assurance is required; Subchapter M of this chapter; and Chapter 37, Subchapter R of this title, except that owners and operators of recycling facilities who store combustible material are required to comply with Chapter 37, Subchapter J of this title (relating to Financial Assurance for Recycling Facilities). Groundwater monitoring may be required by the executive director and shall be maintained in accordance with the requirements of Subchapter J of this chapter.

(4) MSW facility - Type VI. A Type VI facility or operation is a facility using a new or unproven method of managing or utilizing MSW, including resource and energy recovery projects for processes that are not currently in use in Texas. The commission may limit the size of these facilities until the method is proven. The minimum operational standards are prescribed in Subchapter E of this chapter.

(5) MSW facility - Type VII. A Type VII facility or operation is a facility for the land management of sludges and/or similar wastes. Operational standards, depending on the particular waste, facility purpose, and method of operation (land application for beneficial use, land disposal to include landfilling and land treatment, etc.) are
contained in Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation).

(6) MSW facility - Type VIII. Facilities for the management of used or scrap tires are classified as Type VIII. Standards are prescribed in Chapter 328, Subchapter F of this title (relating to Management of Used or Scrap Tires).

(7) MSW facility - Type IX. A Type IX facility is an energy, material, or gas recovery for beneficial use facility located within or adjacent to a closed disposal facility, an inactive portion of a disposal facility, or an active disposal facility, used for extracting materials for energy and material recovery or for gas recovery for beneficial use. Registration by rule requirements are prescribed in §330.9(b) of this title (relating to Registration Required). Owners or operators shall follow the minimum design and operational requirements of Subchapter E of this chapter; §330.459 and §330.561 of this title (relating to Closure Requirements for Municipal Solid Waste Storage and Processing Units; and Coastal Areas); §330.505 (relating to Closure Cost Estimates for Storage and Processing Units); and Chapter 37, Subchapter R of this title. Owners or operators of an MSW landfill facility applying for a non-beneficial use gas control system for any area within the facility’s permit boundary shall apply for a permit modification under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications). Type IX facility permits and registrations previously issued for the recovery and beneficial use of landfill gas are considered to remain valid under applicable permit provisions until amended, modified, or revoked by the commission. The owner or operator must submit all information necessary to complete the air quality review as prescribed by the commission and be approved by the executive director prior to the Type IX registration by rule becoming effective.

(b) Owners or operators of a small MSW landfill may qualify for an arid exemption, as follows,

(1) Owners or operators of new, existing, and lateral expansions of small MSW landfill facilities may qualify for an arid exemption and be exempt from Subchapters H and J of this chapter, provided all of the following conditions are met:

(A) the facility disposes up to 20 tons per day of MSW and nonhazardous industrial solid waste and 20 tons per day of construction and demolition waste and rubbish for a total waste acceptance rate not to exceed 40 tons per day for the facility considering all waste streams based on an annual average;

(B) there is no evidence of existing groundwater contamination from the facility;

(C) the facility serves a community that has no practicable waste management alternative; and

(D) the facility is located in an area that receives less than or equal to 25 inches of annual average precipitation based on precipitation data from the nearest official precipitation recording station for the most recent 30-year reporting period.

(2) Requests for exemptions under §330.63(d)(5) of this title (relating to Contents of Part III of the Application) may be approved administratively by the executive director, upon demonstration of compliance with all applicable criteria. The executive director may deny an exemption request if the available information indicates that granting the exemption could result in a substantial threat of groundwater contamination. Existing Type IAE landfill permits, which include a 20 tons per day waste disposal limit, may be modified to allow for disposal of an additional 20 tons of construction and demolition waste. Such a modification must be processed in accordance with §305.70(d) of the title as a modification subject to public notice. Such a modification application must be submitted in conjunction with a corresponding application to modify the revised estimated waste acceptance rate under §330.125(h) of this title (relating to Recordkeeping Requirements).

(3) Owners or operators may appeal denials to the commission for decision.

(4) If the owner or operator of a new, existing, or lateral expansion of a small landfill facility has previously asserted eligibility for the arid exemption has knowledge or becomes aware of groundwater contamination from the facility within a one-mile radius of the unit, the facility no longer meets the definition of a small MSW landfill, the waste reduction program is ineffective (based upon an evaluation of trends established after a minimum period of a year), or a practicable alternative becomes available, the owner or operator shall notify in writing the executive director of such condition(s) and thereafter comply with Subchapter B (for Type I and Type IV landfills), Subchapter H, and Subchapter J of this chapter on a schedule specified by the executive director.

(5) The executive director may consider the economic investment made by the owner or operator in establishing the schedule for compliance.

(6) The minimum time allowed for compliance necessitated by loss of small MSW landfill facility status or availability of a practicable alternative shall be 18 months.

(7) A small MSW landfill facility that meets the requirements of this subsection shall maintain the integrity of any existing on-site groundwater monitor wells and make them available to the executive director for the collection of groundwater samples.

(c) For MSW landfills that stopped receiving waste before October 9, 1991 and unauthorized MSW sites, the closure provisions of §330.453 of this title (relating to Closure Requirements for Municipal Solid Waste Landfill Units that Stop Receiving Waste Prior to October 9, 1991, Type IV Landfills, and Municipal Solid Waste Sites) apply. If not previously submitted, owners or operators shall submit a closure report that documents that MSW landfill units or unauthorized MSW sites, or portions thereof, have received final cover.

(d) MSW landfill units that receive waste after October 9, 1991, but stop receiving waste before October 9, 1993, are subject to the final cover requirements specified in §330.455 of this title (relating to Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1991, but Stop Receiving Waste Prior to October 9, 1993). The final cover must be installed and certified in accordance with the requirements contained in §§330.451, 330.453, 330.455, and 330.457 of this title (relating to Closure and Post-Closure). Owners or operators of MSW landfill units described in this subsection that fail to complete cover installation and certification within the time limits specified in Subchapter L of this chapter will be subject to all the requirements of these regulations.

(e) All MSW landfill units that receive waste on or after October 9, 1993, must comply with all requirements of these regulations, unless otherwise specified.

§330.7 Permit Required.

(a) Except as provided in §§330.9, 330.11, 330.13, or 330.25 of this title (relating to Registration Required; Notification Required; Waste Management Activities Exempt from Permitting, Registration, or Notification; and Relationship with County Licensing System), no person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any solid waste unless such activity is authorized by a permit or other authorization from the commission. In the event this requirement is violated, the executive director may seek recourse against not only the person that stored, processed, or disposed of the waste but also against the generator, transporter, owner or operator, or other person who caused, suffered, allowed, or permitted its waste to be disposed of without a permit or other authorization.
stored, processed, or disposed. No person may commence physical construction of a new municipal solid waste (MSW) management facility, a vertical expansion, or a lateral expansion without first having submitted a permit application in accordance with §§330.57, 330.59, 330.61, 330.63, and 330.65 of this title (relating to Permit and Registration Application Procedures) and received a permit from the commission, except as provided otherwise in this section.

(b) A separate permit is required for the storage, transportation, or handling of used oil mixtures collected from oil/water separators. Any person that intends to conduct such activity shall comply with the regulatory requirements of Chapter 324 of this title (relating to Used Oil Standards).

(c) Permits by rule may be granted for persons that compact or transport waste in enclosed containers or enclosed transportation units to a Type IV facility.

(1) A permit by rule is granted for a generator operating a stationary compactor that is only used to compact waste to be disposed of at a Type IV landfill, if all of the following conditions are met.

(A) The generator submits the following information and any requested additional information on forms provided by the executive director:

(i) generator contact person, company name, mailing address, street address, city, state, ZIP code, and telephone number;

(ii) contract renewal date, if applicable;

(iii) rated compaction capability in pounds per cubic yard;

(iv) container size;

(v) description of waste stream to enter compactor;

(vi) receiving MSW Type IV disposal facility name, permit number, mailing address, street address, city, state, ZIP code, telephone number, and contact person; and

(vii) a certification from the generator that states the following: (name) (title) of (company name), located at (street address) in (city) certify that the contents of the compactor located at the location stated herein are free of and shall be maintained free of putrescible, hazardous, infectious, or any other waste not allowed in an MSW Type IV landfill.

(B) The generator submits a $75 fee along with the claim for the permit by rule.

(C) The generator complies with the operational requirements of §330.215 of this title (relating to Requirements for Stationary Compactors).

(D) A stationary compactor permit by rule expires after one year. The generator must submit an annual renewal fee in the amount of $75. Failure to timely pay the annual fee eliminates the option of disposal of these wastes at a Type IV landfill until the generator claims a new or renewed permit by rule.

(2) A permit by rule is granted for transporters using enclosed containers or enclosed vehicles to collect and transport brush, construction or demolition wastes, and rubbish along special collection routes to MSW Type IV landfill facilities if all of the following conditions are met.

(A) The owner or operator seeking a special collection route permit by rule submits to the executive director the following information and any requested additional information on forms provided by the executive director:

(i) name of owner and operator, mailing address, street address, city, state, ZIP code, and title of a contact person, and telephone number;

(ii) receiving MSW Type IV disposal facility name, permit number, mailing address, street address, city, state, ZIP code, telephone number, and contact person;

(iii) information on each transportation unit, including, at a minimum, license number, vehicle identification number, year model, make, capacity in cubic yards, and rated compaction capability in pounds per cubic yard;

(iv) route information, which shall include as a minimum the collection frequency, the day of the week the route is to be collected, and the day and time span within which the route is to arrive at the MSW Type IV landfill;

(v) a description of the wastes to be transported;

(vi) an alternative contingency disposal plan to include alternate trucks to be used or alternative disposal facilities; and

(vii) a signed and notarized certification from the owner or operator that states the following: (name) (title) of (company name) located at (street address) in (city) certify that the contents of the vehicles described above will be free of putrescible, household, hazardous, infectious, or any other waste not allowed in an MSW Type IV landfill.

(B) The transporter submits a $100 per vehicle fee along with the claim for a permit by rule.

(C) The transporter documents each load delivered with a trip ticket form provided by the executive director, and provides the trip ticket to the landfill operator prior to discharging the load.

(D) A special collection route permit by rule expires after one year. The owner or operator must submit an annual renewal fee in the amount of $100 per vehicle. Failure to timely pay the annual fee eliminates the option of disposal of these wastes at a Type IV landfill until the owner or operator claims a new or renewed permit by rule.

(E) This paragraph does not apply if the waste load is from a single collection point that is a stationary compactor authorized in accordance with paragraph (1) of this subsection.

(3) Revision requirements for stationary compactor permits or special collection route permits by rule identified in paragraphs (1) and (2) of this subsection are as follows:

(A) An update must be submitted if any information within the original permit by rule submittal changes.

(B) A submittal to update an existing permit by rule must include all of the same documentation required for an original permit by rule submittal.

(d) A major permit amendment, as defined by §305.62 of this title (relating to Amendment), is required to reopen a Type I, Type IAE, Type IV, or Type IVAE MSW facility permitted by the commission or any of its predecessors or successor agencies that has either stopped accepting waste, or only accepted waste in accordance with an emergency authorization, for a period of five years or longer. The MSW facilities covered by this subsection may not be reopened to accept waste again unless the permittee demonstrates compliance with all applicable requirements.
of the Resource Conservation and Recovery Act, Subtitle D and the implementing Texas state regulations. If an MSW facility was subject to a contract of sale on January 1, 2001, the scope of any public hearing held on the permit amendment required by this subsection is limited to land use compatibility, as provided by §330.57(a) of this title (relating to Permit and Registration Applications for Municipal Solid Waste Facilities). This subsection does not apply to any MSW facility that has received a permit but never received waste, or that received an approved Subtitle D permit modification before September 1, 2001.

(e) A permit by rule is granted for an animal crematory that meets the following criteria. For facilities that do not meet all the requirements of this subsection, the owner or operator shall submit a permit application under §§330.57, 330.59, 330.61, 330.63, and 330.65 of this title and obtain a permit. To qualify for a permit by rule under this subsection, the following requirements must be met.

(1) General prohibitions. An animal crematory facility shall comply with §330.15(a) of this title (relating to General Prohibitions).

(2) Incineration limits. Incineration of carcasses shall be limited to the conditions specified in §106.494 of this title (relating to Pathological Waste Incinerators). The facility shall not accept animal carcasses that weigh more than the capacity of the largest incinerator at the facility and shall not dismember any carcasses during processing.

(3) Ash control. Ash disposal must be at an authorized facility unless the ash is returned to the animal owner or sent to a pet cemetery. Ash shall be stored in an enclosed container that will prevent release of the ash to the environment. There shall be no more than 2,000 pounds of ash stored at an animal crematory at any given time.

(4) Air pollution control. Air emissions from the facility shall not cause or contribute to a condition of air pollution as defined in Texas Clean Air Act, §382.003. All animal crematories, prior to construction or modification, must have an air permit issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), or qualify for a permit by rule under §106.494 of this title.

(5) Fire protection. The facility shall prepare, maintain, and follow a fire protection plan. This fire protection plan shall describe fire protection resources (a local fire department, fire hydrants, fire extinguishers, water tanks, water well, etc.), and employee training and safety procedures. The fire protection plan shall comply with local fire codes.

(6) Storage limits. Carcasses must be incinerated within two hours of receipt, unless stored at or below a temperature of 29 degrees Fahrenheit. Storage of carcasses shall be in a manner that minimizes the release of odors. Storage of carcasses shall be limited to the lesser of 3,200 pounds or the amount that can be incinerated at the maximum loading rate for the incinerators at the facility in a two-day period.

(7) Unauthorized waste. Only carcasses or animal parts, with any associated packaging, shall be processed. Carcasses shall not be accepted in packaging that includes any chlorinated plastics. Carcasses or animal parts that are either hazardous waste or medical waste are prohibited.

(8) Cleaning. Storage and processing units must be properly cleaned on a routine basis to prevent odors and the breeding of flies.

(9) Nuisance prevention. The facility shall be designed and operated in a manner so as to prevent nuisance conditions, including, but not limited to, dust from ashes, disease vectors, odors, and liquids from spills, from being released from the property boundary of the authorized facility.

(10) Diseased animals. The facility shall be equipped with appropriate protective equipment and clothing for personnel handling diseased animals that may be received at the facility. Facility owners or operators must inform customers and local veterinarians of the need to identify diseased animals for the protection of personnel handling the animals.

(11) Buffer zone. An animal crematory, including unloading and storage areas, constructed after March 2, 2003, must be at least 50 feet from the property boundary of the facility.

(12) Operating hours. A crematory shall operate within the time frames allowed by §111.129 of this title (relating to Operating Requirements).

(13) Documentation. The operator of an animal crematory shall document the carcasses’ weight, date and time when carcasses are received, and when carcasses are loaded into the incinerator. A separate entry in the records for loading into the incinerator is not required if a carcass is loaded within two hours of receipt. This information will be maintained in records on site.

(14) Breakdown. The facility is subject to §330.241 of this title (relating to Overloading and Breakdown).

(15) Records management. The owner or operator must retain records as follows:

(A) maintain a copy of all requirements of this subsection that apply to the facility;

(B) maintain records for the previous consecutive 12-month period containing sufficient information to demonstrate compliance with all requirements of this subsection;

(C) keep all required records at the facility; and

(D) make the records available upon request to personnel from the commission or from local governments with jurisdiction over the facility.

(16) Fees. An animal crematory facility authorized under this section is exempt from the fee requirements of Subchapter P of this chapter (relating to Fees and Reporting).

(17) Other requirements. No other requirements under this chapter are applicable to a facility that meets all of the requirements of this subsection.

(f) A permit by rule is granted for a Type IV MSW landfill that qualifies for the air exemption allowed in §330.5(b) of this title (relating to Classification of Municipal Solid Waste Facilities) if the owner or operator is compliant with the following regulations.

(1) Subchapter D, Operational Standards for Municipal Solid Waste Landfill Facilities;

(2) Subchapter G, Surface Water Drainage;

(3) Subchapter I, Landfill Gas Management;

(4) Subchapter K, Closure and Post-Closure;

(5) Subchapter L, Closure, Post-Closure, and Corrective Action Cost Estimates;

(6) Subchapter M, Location Restrictions; and

(7) §39.501(e) of this title (relating to Application for Municipal Solid Waste Permit).

(g) A permit by rule is granted for a dual chamber incinerator if the owner or operator complies with §106.491 of this title (relating to Dual-Chamber Incinerators).
(h) A permit by rule is granted for an air curtain incinerator if the owner or operator complies with §§106.496 of this title (relating to Air Curtain Incinerators). An air curtain incinerator may not be located within 300 feet of an active or closed MSW landfill unit boundary.

(i) A standard air permit is granted for facilities that comply with Subchapter U of this chapter (relating to Standard Air Permits for Municipal Solid Waste Landfill Facilities and Transfer Stations).

§330.9   Registration Required.

(a) Except as provided in §§330.7, 330.11, 330.13, or 330.25 (relating to Permit Required; Notification Required; Waste Management Activities Exempt from Permitting, Registration, or Notification; Relationship with County Licensing System), no person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any municipal solid waste (MSW) unless that activity is authorized by a registration or other authorization from the commission. In the event this requirement is violated, the executive director may seek recourse against not only the person that stored, processed, or disposed of the waste but also against the generator, transporter, owner or operator, or other person who caused, suffered, allowed, or permitted waste to be stored, processed, or disposed. No person may commence physical construction of a new MSW management facility subject to this registration requirement without first having submitted a registration application in accordance with §§330.57, 330.59, 330.61, 330.63, and 330.65 of this title (relating to Permit and Registration Application Procedures) and received a registration from the commission. A person shall include a statement justifying the facility’s eligibility for a registration as established under this section. A person shall submit a claim for a registration by rule in duplicate with one copy sent directly to the appropriate Texas Commission on Environmental Quality regional office.

(b) A registration is required for an MSW transfer station facility that is in the transfer of MSW to a solid waste processing or disposal facility from any of the following:

1. A municipality with a population of less than 50,000;
2. A county with a population of less than 85,000;
3. A facility used in the transfer of MSW that transfers or will transfer 125 tons per day or less;
4. A transfer station located within the permitted boundaries of an MSW Type I or Type IV facility as specified in §330.5(c) of this title (relating to Classification of Municipal Solid Waste Facilities).

(c) A registration is required to establish a waste-separation/recycling facility established at a permitted MSW facility owned by the permittee.

(d) A registration is required for a facility where the only operation is the storage and/or processing of used and scrap tires as provided for in Chapter 328 of this title (relating to Waste Minimization and Recycling). These facilities shall be registered with the executive director in accordance with Chapter 328 of this title. Failure to operate such registered facilities in accordance with the requirements established in Chapter 328 of this title may be grounds for the revocation of the registration.

(e) A licensed hospital may function as a medical waste collection and transfer facility for generators that generate less than 50 pounds of untreated medical waste per month and that transport their own waste if:

1. The hospital is located in an incorporated area with a population of less than 25,000 and in a county with a population of less than one million; or
2. The hospital is located in an unincorporated area that is not within the extraterritorial jurisdiction of a city with a population more than 25,000 or within a county with a population of more than one million. The hospital shall submit a request to the executive director for registration as a medical waste collection station.

(f) A registration is required for any new MSW Type V transfer station that includes a material recovery operation that meets all of the following requirements.

1. Materials recovery. The transfer facility must recover 10% or more by weight or weight equivalent of the total incoming waste stream for re-use or recycling. The owner or operator must demonstrate in the registration application the method that will be used to assure that the 10% requirement is achieved.
2. Distance to a landfill. The transfer facility must demonstrate in the registration application that it will transfer the remaining non-recyclable waste to a landfill not more than 50 miles from the facility.

(g) Except as provided in §330.11(d) of this title, a registration is required for an MSW Type V processing facility that processes only grease trap waste, grit trap waste, or seepage or a combination of these three liquid wastes. For the purposes of this section, grit trap waste means grit trap waste from commercial car washes and excludes grit trap waste from other generators. The following requirements also apply:

1. The facility must attain a 10% recovery of material for beneficial use from the incoming waste. Recovery of material for beneficial use is considered to be the recovery of fats, oils, greases, and the recovery of food solids for composting, but does not include the recovery of water.
2. The Type V processing facility must be located within the permit boundaries of a Type I landfill; or
3. The Type V processing facility must be located at a manned treatment facility that is permitted under Texas Water Code, Chapter 26, is permitted to discharge at least one million gallons per day; and is owned by and operated for the benefit of a political subdivision of this state. Facilities that have received a permit and wish to add capacity may apply for a registration in lieu of a permit amendment if the facilities meet the registration requirements established in this chapter.

(h) A registration is required for a mobile liquid waste processing unit that processes only grease trap waste, grit trap waste, or seepage or a combination of these three liquid wastes. For the purposes of this section, grit trap waste means grit trap waste from commercial car washes and excludes grit trap waste from other generators. Registration applications shall contain the information specified in §§330.59(a) and (e) - (f), 330.61(a) and (b), and 330.63(a), (d)(7), (b), and (j) of this title (relating to Contents of Part I of the Application; Contents of Part II of the Application; and Contents of Part III of the Application). The following requirements also apply:

1. Mobile liquid waste processing shall be limited to the processing of liquid waste while at the generator’s trap.
2. Effluent from the processing of the liquid waste must be discharged to the generator’s trap or interceptor.
3. The mobile liquid waste processing units regulated under this section include truck-mounted processes that are also known as separator trucks, and any other liquid waste processes that are not considered to be fixed to a specific location.
4. This section is not meant to supplant rules or ordinances of local governments where stricter standards are in effect.
5. This section is not applicable to seepage if waste has received only a pH adjustment prior to or during transportation for disposal at a treatment facility permitted under Texas Water Code, Chapter 26, or other authorized facility. Transporters who only adjust seepage pH during...
transportation shall register in accordance with §312.142 of this title (relating to Transporter Registration).

(i) A registration is required for an MSW Type VI facility that demonstrates new management methods for processing or handling grease trap waste, grit trap waste, septage, or a combination of these three liquid wastes. For the purposes of this section, grit trap waste means grit trap waste from commercial car washes and excludes grit trap waste from other generators. Those facilities meeting this exemption must obtain a registration by meeting the operational criteria and design criteria established in §330.63(d)(10) of this title.

(j) A registration is required for the following material recovery operations from a landfill. The following operations are subject to the general requirements found in §330.601 of this title (relating to General Requirements), and the requirements set for soil end product standards in §330.615 of this title (relating to Final Soil Product Grades and Allowable Uses), and the air quality requirements in §330.607 of this title (relating to Air Quality Requirements):

1. operations that recover reusable or recyclable material buried in permitted or closed MSW landfill facilities, or MSW landfill facilities that were never permitted;

2. operations that reclaim soil from permitted or closed MSW landfills, or from MSW landfill facilities that were never permitted; and

3. facilities that have received prior approval for excavation of buried materials through permits, permit amendments, or other agency authorization, which are exempt from further authorization requirements, as established in this subchapter, for the specific authorization received. Soil final product standards shall be applicable for all registered facilities.

(k) A registration by rule is granted for the owner or operator of a Type IX MSW facility that recovers landfill gas for beneficial use if all of the following conditions are met:

1. The owner or operator shall submit the following information at least 60 days prior to commencing operations:

   (A) a large-scale plan drawing of the facility showing the following:

   (i) facility boundaries (show permit boundaries and/or boundaries and dimensions of tract or land or closed MSW landfill units on which the gas recovery system is to be developed); and

   (ii) landfill gas treatment, gas compression, electrical power generation equipment, and any other beneficial gas-use equipment, indicating limits of waste placement and additional easements required;

   (B) for enclosed structures, provisions for fire control facilities (fire hydrants, fire extinguisher, water tanks, and waterwell), continuous methane monitoring, and explosion-proof fixtures;

   (C) a discussion of the proposed method for condensate disposal, including during the landfill post-closure care period;

   (D) an estimation of average daily gas production;

   (E) an estimation of the design daily gas production;

   (F) descriptions of the process units;

   (G) a cost estimate for closure following the requirements of §330.505 of this title (relating to Closure Cost Estimates for Storage and Processing Units); and

   (H) a description of the financial assurance mechanism required by Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities).

2. The owner or operator shall acquire all authorizations regarding air emissions for the facility and comply with the following regulations:

   (A) Subchapter E of this chapter, Operational Standards for Municipal Solid Waste Storage and Processing Units;

   (B) §330.459 and §330.461 of this title (relating to Closure Requirements for Municipal Solid Waste Storage and Processing Units; and Certification of Final Facility Closure); and

   (C) §330.505 of this title.

3. The owner or operator shall conduct a public meeting in accordance with §330.69(b)(2) of this title (relating to Public Notice for Registrations).

4. A registration by rule is granted for persons that plan to transport untreated medical waste and that are not the generator of the waste if all of the following conditions are met:

   (A) name, address, and telephone number of registrant;

   (B) name, address, and telephone number of partners, corporate officers, and directors;

   (C) description of each transportation unit, including:

   (i) make, model, and year;

   (ii) motor vehicle identification number, if applicable;

   (iii) license plate (tag) number, including state and year; and

   (iv) name of transportation unit owner.

5. The owner or operator submits the fee required by §330.1211(m) of this title (relating to Transporters of Untreated Medical Waste) along with the claim for the registration by rule.

6. Registrations by rule expire after one year. The owner or operator must submit an annual fee in accordance with §330.1211(m) of this title. Failure to timely pay the annual fee eliminates the option to manage wastes until the owner or operator claims a new or renewed registration by rule.

7. Persons that claim the registration maintain a copy of the registration form, as annotated by the executive director with an assigned registration number, at their designated place of business and with each transportation unit used to transport untreated medical waste.

8. The owner or operator submits annual summary reports in accordance with applicable provisions in §330.1211(m) of this title.

   (m) A registration by rule is granted for owners or operators of mobile treatment units conducting on-site treatment of medical waste and who are not the generator if the following conditions are met:

   (1) The registrant completes registration forms provided by the commission and provides the following information at least 60 days prior to commencing operations:

   (A) name, address, and telephone number of registrant;

   (B) name, address, and telephone number of partners, corporate officers, and directors;

   (C) description of each treatment unit, including:

   (i) make, model, and year;

   (ii) motor vehicle identification number, if applicable;

   (iii) license plate (tag) number, including state and year; and

   (iv) name of treatment unit owner.

   (2) The owner or operator submits the fee required by §330.1211(m) of this title (relating to Transporters of Untreated Medical Waste) along with the claim for the registration by rule.

   (3) Registrations by rule expire after one year. The owner or operator must submit an annual fee in accordance with §330.1211(m) of this title. Failure to timely pay the annual fee eliminates the option to manage wastes until the owner or operator claims a new or renewed registration by rule.

   (4) Persons that claim the registration maintain a copy of the registration form, as annotated by the executive director with an assigned registration number, at their designated place of business and with each transportation unit used to transport untreated medical waste.

   (5) The owner or operator submits annual summary reports in accordance with applicable provisions in §330.1211(m) of this title.

   (m) A registration by rule is granted for owners or operators of mobile treatment units conducting on-site treatment of medical waste and who are not the generator if the following conditions are met:

   (1) The registrant completes registration forms provided by the commission and provides the following information at least 60 days prior to commencing operations:

   (A) name, address, and telephone number of registrant;
(B) name, address, and telephone number of partners, corporate officers, and directors;

(C) description of each mobile treatment unit, including:

(i) make, model, and year;

(ii) motor vehicle identification number, if applicable; and

(iii) license plate (tag) number, including state and year;

(D) name of mobile treatment unit owner;

(E) description of approved treatment method to be employed and chemical preparations, as well as the procedure to be utilized for routine performance testing/parameter monitoring;

(F) evidence of competency;

(G) a description of the management and disposal of process waters generated during treatment events;

(H) a written contingency plan that describes the handling and disposal of waste in the event of treatment failure or equipment breakdown; and

(I) an estimate of the cost to remove and dispose of waste and disinfect the waste treatment equipment and evidence of financial assurance using procedures specified in Subchapter A of this chapter (relating to Closure, Post-Closure, and Corrective Action Cost Estimates) and Chapter 37, Subchapter R of this title.

(2) The owner or operator submits the fee required by §330.1221(k) of this title (relating to On-Site Treatment Services on Mobile Treatment Units) along with the claim for the registration by rule.

(3) Registrations by rule expire after one year. The owner or operator must submit an annual renewal fee in accordance with §330.1221(k) of this title. Failure to timely pay the annual fee eliminates the option to manage wastes until the owner or operator claims a new or renewed registration by rule.

(4) The owner or operator submits annual summary reports in accordance with applicable provisions in §330.1221(l) of this title.

(5) Providers of on-site treatment of medical waste in mobile units notify the executive director, by letter, within 30 days of any changes to their registration if:

(A) the method employed to treat medical waste changes;

(B) the office or place of business is moved;

(C) the name of registrant or owner of the operation is changed;

(D) the name of the partners, corporate directors, or corporate officers change; or

(E) the unit information changes.

(n) A registration is required for facilities that store or process untreated medical waste that is received from off-site sources. For the purposes of this subsection, off-site shall be based on the definition of on-site found in §330.1205(b) of this title (relating to Definitions).

(o) A registration is required for a new MSW transfer station that is used only in the transfer of grease trap waste, grit trap waste, septic tank, or other similar liquid waste if the facility used in the transfer will receive 32,000 gallons per day or less.

(p) A registration is required for a new liquid waste transfer facility to be located on, or at, other commission-authorized facilities.

§330.11. Notification Required.

(a) Except as provided by §330.13 of the title (relating to Waste Management Activities Exempt from Permitting, Registration, or Notification) and recycling facilities that notify in accordance with §328.5 of this title (relating to Reporting and Recordkeeping Requirements), a person that intends to store, process, or dispose of municipal solid waste (MSW) without a permit as authorized by §330.7 of this title (relating to Permit Required), registration as authorized by §330.9 of this title (relating to Registration Required), or §330.25 of this title (relating to Relationship with County Licensing System), shall notify the executive director, in writing, that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in these activities, except for recycling and other activities as may be specifically exempted. Additional information may be requested to enable the executive director to determine whether such storage, processing, or disposal is in compliance with the terms of this chapter. This information may include, but is not limited to, type of waste, waste management methods, facility engineering plans and specifications, and the geology and hydrogeology at the facility. Any information provided under this subsection shall be submitted to the executive director in duplicate with one copy sent directly to the Texas Commission on Environmental Quality (TCEQ) regional office. A person shall include a statement justifying the facility’s eligibility for a notification as established under this section.

(b) Any person that stores, processes, or disposes of MSW shall have the continuing obligation to provide prompt written notice to the executive director of any changes or additional information concerning waste type, waste management methods, facility engineering plans and specifications, and geology and hydrogeology at the facility additional to that reported in subsection (a) of this section, authorized in any permit or registration, or stated in any application filed with the executive director. Any information provided under this subsection shall be submitted to the executive director in duplicate form with one copy sent directly to the TCEQ’s regional office.

(c) A person that stores, processes, or disposes of MSW shall notify the executive director in writing of any closure activity or activity of facility expansion not authorized by permit or registration, at least 90 days prior to conducting this activity. The executive director may request additional information to determine whether such activity is in compliance with this chapter. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

(d) A notification is required for the storage or processing of the following types of MSW: grease trap wastes, grit trap wastes; or septic tank that contains free liquids if the waste is treated/processed at a permitted Type I MSW facility.

(e) A notification is required for the following facilities or locations:

(1) a citizens’ collection station;

(2) a collection and processing point for only nonputrescible source-separated recyclable material, provided that the facility is in compliance with §§328.3 - 328.5 of this title (relating to General Requirements; Limitations on Storage of Recyclable Materials; and Reporting and Recordkeeping Requirements);

(3) a facility to treat petroleum-contaminated soil if the contaminated soil is treated/processed at a permitted Type I MSW facility;

(4) an MSW transfer station in existence prior to the comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) that is used only in the transfer of grease trap waste, grit trap waste, septic tank, or other similar liquid waste if the facility used in the transfer will
receive 32,000 gallons per day or less. These liquid waste transfer stations must be designed and operated in accordance with the requirements of Subchapter E of this chapter (relating to Operational Standards for Municipal Solid Waste Storage and Processing Units);

(5) a temporary storage facility regulated under §312.147 of this title (relating to Temporary Storage) that stores 8,000 gallons or less for a period of four days or less in containers. This facility is not required to follow the requirements of Subchapter E of this chapter; or

(6) a liquid waste transfer facility in existence prior to the effective date of the 2006 Revisions located on or at other commission authorized facilities if the facility is designed and operated in accordance with the requirements of Subchapter E of this chapter;

(7) a pet cemetery. A person that intends to operate a pet cemetery shall comply with the requirements of §330.19 of this title (relating to Deed Recordation) and shall ensure that the animal carcasses are covered with at least two feet of soil within a time period that will prevent the generation of nuisance odors or health risks. A pet cemetery is a facility used only for the burial of domesticated animals kept as pets and service animals such as seeing-eye dogs. Animals raised for meat production or used only for animal husbandry may not be disposed of in a pet cemetery authorized under this subsection.

(f) A generator is required to notify the commission of the operation of an approved treatment process unit used only for the treatment of on-site generated medical waste, as defined in §330.1205(b) of this title (relating to Definitions).

(g) An operator is required to notify the commission of the intended operation of a low-volume transfer station subject to the following conditions.

1. The operator must own or otherwise effectively control the facility.

2. Prior to notification, the operator must coordinate with the county authority to ensure compliance with all appropriate ordinances.

3. The operator must notify the adjacent landowners, by first-class mail, concurrent with commission notification.

4. Collected waste shall be sent off-site to an authorized facility at least weekly.

(h) Generators that generate greater than 50 pounds per month of untreated medical waste and that transport their own untreated waste to an authorized medical waste storage or processing facility shall notify the commission.

§330.13. Waste Management Activities Exempt from Permitting, Registration, or Notification.

(a) A permit, registration, notification, or other authorization is not required for the disposal of up to 2,000 pounds per year of litter or other solid waste generated by an individual on that individual’s own land and is not required to comply with §330.19 of this title (relating to Deed Recordation) provided that:

1. the litter or waste is generated on land that the individual owns;

2. the litter or waste is not generated as a result of an activity related to a commercial purpose;

3. the disposal occurs on land that the individual owns;

4. the disposal is not for a commercial purpose;

5. the waste disposed of is not hazardous waste or industrial waste;

(6) the waste disposal method complies with Chapter 111, Subchapter B of this title (relating to Outdoor Burning); and

(7) the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment. Exceeding 2,000 pounds per individual’s residence per year is considered to be a nuisance.

(b) A permit, registration, notification, or other authorization is not required for the disposal of animal carcasses from government roadway maintenance where:

1. either of the following:

   A) the animals were killed on county or municipal roadways and the carcasses are buried on property owned by the entity that is responsible for road maintenance; or

   B) the animals were killed on state highway rights-of-way and the carcasses are disposed of by the Texas Department of Transportation by burying the carcasses on state highway rights-of-way; and

2. the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment; and

3. the animal carcasses are covered with at least two feet of soil within 24 hours of collection in accordance with §330.171(c)(2) of this title (relating to Disposal of Special Wastes).

(c) A permit, registration, notification, or other authorization is not required for veterinarians performing activities as authorized by Texas Occupations Code, §801.361, Disposal of Animal Remains. Disposal, by burning under this section must comply only with §111.209(3) of this title (relating to Exception for Disposal Fires).

(d) A permit, registration, notification, or other authorization is not required for on-site storage of medical waste for a generator that uses a medical waste storage facility only for medical waste generated on-site. Storage of medical waste generated on-site must be in compliance with §330.1209(a) of this title (relating to Storage of Medical Waste).

(e) A permit, registration, notification, or other authorization is not required for generators that generate less than 50 pounds per month of untreated medical waste that transport their own waste to an authorized medical waste storage or processing facility.

(f) Except as required by §330.7(c)(2) and §330.9(1) of this title (relating to Permit Required; and Registration Required), a permit, registration, notification, or other authorization is not required for transporters of municipal solid waste.

(g) A permit, registration, notification, or other authorization is not required for a collection point for parking lot or street sweepings or wastes collected and received in sealed plastic bags from such activities as periodic city-wide cleanup campaigns and cleanup of rights-of-way or roadside parks.

(h) A permit, registration, notification, or other authorization is not required from a car wash facility for drying grit trap waste as long as these wastes are disposed of in compliance with applicable federal, state, and local regulations. Grit trap waste from car wash facilities may be transported for drying purposes to other property if the car wash facility and the property with the drying bed have the same owner and if the facilities are located within 50 miles of each other. This subsection is not intended to preempt or supersede local government regulation of grit trap waste-drying facilities. Drying facilities must comply with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) if applicable.

§330.15. General Prohibitions.
(a) A person may not cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of municipal solid waste (MSW), or the use or operation of a solid waste facility to store, process, or dispose of solid waste, or to extract materials under Texas Health and Safety Code, §361.092, in violation of the Texas Health and Safety Code, or any regulations, rules, permit, license, order of the commission, or in such a manner that causes:

(1) the discharge or imminent threat of discharge of MSW into or adjacent to the waters in the state without obtaining specific authorization for the discharge from the commission;

(2) the creation and maintenance of a nuisance; or

(3) the endangerment of the human health and welfare or the environment.

(b) MSW land disposal facilities (Types I, IAE, IV, IVAE, and VI) failing to satisfy the applicable requirements of this chapter, unless exempted by this chapter, are considered open dumps for purposes of state solid waste management planning under the Resource Conservation and Recovery Act and are prohibited under Resource Conservation and Recovery Act, §4005(a).

(c) Except as otherwise authorized by this chapter, a person may not cause, suffer, allow, or permit the dumping or disposal of MSW without the written authorization of the commission.

(d) The open burning of solid waste, except for the infrequent burning of waste generated by land-clearing operations, agricultural waste, silvicultural waste, diseased trees, emergency cleanup operations as authorized by the commission or executive director as appropriate, or the operation of an air curtain incinerator as allowed in §330.177(g) of this title (relating to Permit Required) is prohibited at any MSW landfill.

(e) The following wastes are prohibited from disposal in any MSW facility:

(1) A lead acid storage battery shall not be intentionally or knowingly offered by a generator or transporter for disposal at an MSW landfill or incinerator, and/or shall not be intentionally or knowingly accepted for disposal at an MSW landfill or incinerator permitted under this chapter.

(A) Each battery improperly disposed of constitutes a separate violation and offense.

(B) A person that violates the provisions of this paragraph is subject to the criminal and/or civil penalties found in the Texas Health and Safety Code, as amended.

(2) Do-it-yourself used motor vehicle oil shall not be intentionally or knowingly offered by a generator or transporter for disposal at an MSW landfill or municipal incinerator, either by itself or mixed with other solid waste, and/or shall not be intentionally or knowingly accepted for disposal at an MSW landfill or municipal incinerator permitted under this chapter.

(A) It is an exception to this subsection if the mixing or commingling of used oil with solid waste that is to be disposed of in a landfill is incidental to, and the unavoidable result of, the mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals.

(B) A person that violates the provisions of this paragraph is subject to the criminal and/or civil penalties found in the Texas Health and Safety Code, as amended.

(3) Used oil filters from internal combustion engines shall not be offered for landfill disposal by any generator and shall not be intentionally or knowingly accepted for disposal at a landfill permitted under this chapter.

(4) Whole used or scrap tires shall not be accepted for disposal or disposed of in any MSW landfill, unless processed prior to disposal in a manner acceptable to the executive director.

(5) Refrigerators, freezers, air conditioners, and any other items containing chlorinated fluorocarbon (CFC) must be handled in accordance with 40 Code of Federal Regulations §82.156(f), as amended.

(6) Except as allowed in §330.177 of this title (relating to Leachate and Gas Condensate Recirculation), liquid waste as defined in §330.3 of this title (relating to Definitions) and as described in subparagraphs (A) and (B) of this paragraph below shall not be disposed of in any MSW landfill unit.

(A) Bulk or noncontainerized liquid waste shall not be accepted for disposal or disposed of in an MSW landfill unless the waste is household waste other than septic waste.

(B) Containers holding liquid waste shall not be accepted for disposal or disposed of in an MSW landfill unless:

(i) the container is a small container similar in size to that normally found in household waste;

(ii) the container is designated to hold liquids for use other than storage; or

(iii) the waste is household waste.

(7) Regulated hazardous waste as defined in §330.3 of this title shall not be accepted at an MSW facility.

(8) Polychlorinated biphenyls (PCB) wastes, as defined under 40 Code of Federal Regulations Part 761, shall not be accepted for disposal or disposed of in an MSW facility unless authorized by the United States Environmental Protection Agency and the MSW permit.

(f) MSW facilities receiving sewage sludge and failing to satisfy the criteria of this chapter violate Federal Clean Water Act, §309 and §405(e).

(g) The drilling of any test borings, for any reason, through previously deposited waste or cover material without prior written authorization from the executive director is prohibited.

(h) An MSW facility shall not cause:

(1) a discharge of solid wastes or pollutants adjacent to or into waters of the state, including wetlands, that is in violation of the requirements of Texas Water Code, §26.121;

(2) a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Federal Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System requirements under §402, as amended, or Texas Pollutant Discharge Elimination System requirements;

(3) a discharge of dredged or fill material to waters of the United States, including wetlands, that is in violation of the requirements under Federal Clean Water Act, §404, as amended; and

(4) a discharge of a nonpoint source pollution into waters of the United States, including wetlands, that violates any requirement of an area-wide or state-wide water quality management plan that has been approved under Federal Clean Water Act, §208 or §319, as amended.
(i) Processing of liquid waste as defined in §330.3 of this title, other than that incidental to transfer and storage, at a transfer station without a specific Type V processing authorization is prohibited.


In order to promote the proper collection, handling, storage, processing, and disposal of municipal solid waste in a manner consistent with the purpose of the Texas Health and Safety Code and 40 Code of Federal Regulations Parts 257 and 258 as amended, the executive director will make available technical guidelines outlining acceptable methods designed to aid in compliance with this chapter. Guidelines should be considered as suggestions only.


(a) Recording required. A person may not cause, suffer, allow, or permit the disposal of municipal solid waste prior to recording, in the county deed records of the county or counties in which the disposal takes place, a metes and bounds description of the portion or portions of the tract of land on which disposal of solid waste will take place.

(b) Proof of recordation. A certified copy of the recorded document shall be provided to the executive director prior to instituting disposal operations.

(c) Final recording. Upon completion of the disposal operation, closure of all landfill units, or final closure of the facility or site, the owner or operator shall file an "Affidavit to the Public" in a form provided by the executive director that includes an updated metes and bounds description of the extent of the disposal areas and the restrictions to future use of the land in accordance with §330.437(g) of this title (relating to Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1993 and §330.461(c)(1) of this title (relating to Certification of Final Facility Closure).


(a) Except for those persons subject to §330.13 of this title (relating to Waste Management Activities Exempt from Permitting, Registration, or Notification), a person is obligated to perform closure or remediation for a facility or area that contains municipal solid waste. The person can fulfill this obligation by meeting the remedy standards of Chapter 350 of this title (relating to Texas Risk Reduction Program). The regulations in Chapter 350 of this title supplement, but do not replace, any requirements for closure or remediation specified in subsections (b) and (c) of this section.

(b) Any person that stores, processes, or disposes of municipal solid waste at a facility permitted under §330.7 of this title (relating to Permit Required), or registered under §330.9 of this title (relating to Registration Required) shall, unless specifically authorized by the commission, close the facility in accordance with the closure provisions of the permit or registration.

(c) Any person that stores, processes, or disposes of municipal solid waste is subject to the applicable provisions in Subchapter K of this chapter (relating to Closure and Post-Closure).

§330.23. Relationships with Other Governmental Entities.

(a) Texas Department of Transportation (TxDOT). The executive director shall coordinate with TxDOT on the review of all permit applications for municipal solid waste (MSW) land disposal facilities existing or proposed within 1,000 feet of an interstate or primary highway to determine the need for screening or special operating requirements. When primary access to an MSW disposal facility is provided by state-maintained streets or highways, the executive director shall solicit recommendations from TxDOT regarding the adequacy and design capacity of such roads to safely accommodate the additional volumes and weights of traffic generated or expected to be generated by the facility operation.

(b) United States Army Corps of Engineers. The executive director shall coordinate the review of all permit applications for MSW disposal facilities with the appropriate district engineer to determine the need for a permit from the Corps of Engineers.

(c) Federal Aviation Administration (FAA). The executive director shall coordinate the review of permit applications for all MSW land disposal facilities existing or proposed in the vicinity of airports with the appropriate airport’s district office of the FAA (FAA Agency Order 5200.5A, "FAA Guidance Concerning Waste Disposal Sites on or Near Airports").

(d) Special districts. The Texas Health and Safety Code (THSC) applies to political subdivisions of the state to which the legislature has given waste handling authority for two or more counties. The relationship between the agency and any such waste handling authority will be similar to that between the agency and a county.

(e) Regional planning agencies. The agency will provide educational, technical, and advisory assistance to the various councils of government and regional planning commissions throughout the state.

(f) Municipal governments. Municipalities may enforce the provisions of this chapter as provided for in the THSC and the Texas Water Code. The commission is committed to assisting municipal governments in an educational and advisory capacity. The commission is a necessary and indispensable party to any suit filed by a local government under the THSC and the Texas Water Code.

(g) County governments. County governments may exercise the authority provided in THSC, Chapters 361, 363, and 364, regarding the management of solid waste including the enforcement of the requirements of the THSC and this chapter. The provisions of THSC, Chapters 361, 363, and 364, allow county governments to require and issue licenses authorizing and governing the operation and maintenance of facilities used for the storage, processing, or disposal of solid waste not in the territorial or extraterritorial jurisdiction of a municipality. THSC, Chapters 361, 363, and 364, provide that no license for disposal of solid waste may be issued, renewed, or extended without the prior approval of the commission. Under Texas Water Code, Chapter 7, the commission is a necessary and indispensable party to any suit filed by a local government for the violation of any provision of the Solid Waste Disposal Act. If a permit is issued, renewed, or extended by the commission, the owner or operator of the facility does not need to obtain a separate license for the same facility from a county or from a political subdivision as defined in THSC, Chapters 361, 363, and 364.

(h) Texas Parks and Wildlife Department (TPWD). TPWD has jurisdiction over certain environmental issues that may be affected by MSW facilities including, but not limited to, endangered species and wetlands. The executive director will solicit comments from, and consider information provided by, TPWD.

§330.25. Relationship with County Licensing System.

(a) General procedures. Under Texas Health and Safety Code, Chapters 361, 363, and 364, counties are empowered to require and issue licenses authorizing and governing the operation and maintenance of solid waste storage, processing, or disposal facilities not within the territorial limits or extraterritorial jurisdiction of incorporated cities and towns. The county shall mail a copy of the approved license to the appropriate Texas Commission on Environmental Quality regional office. No license for the use of a facility for the disposal of solid waste may be issued, renewed, or extended without prior approval of the commission. The territorial limits and the extraterritorial jurisdiction of incorporated cities and towns are excluded from county authority to make regulations.
for the governing and controlling of solid waste collection, handling, storage, and disposal.

(b) Licensing procedures. The following pertain only to those counties that may choose to exercise licensing authority in accordance with this section.

(1) Licensing authority.

(A) Before exercising licensing authority for a municipal solid waste (MSW) facility required to obtain a permit, a county government shall promulgate regulations that are consistent with those established by the commission and that have been approved by the commission. A county exercising authority shall use the same evaluation processes as prescribed for use by the commission to include providing appropriate agencies, in accordance with §330.23 of this title (relating to Approved Containers) and Subchapter B of this chapter (relating to Permit and Registration Application Procedures), an opportunity to review and comment on those applications for which they may have a jurisdictional interest. In view of the technical evaluations and site investigations that must be made by some review agencies, ample time shall be allowed to receive and review agency comments prior to a public hearing. To ensure that review agencies are provided sufficient information on which to base a determination, counties will include in their permit application forms the data requirements as specified in permit applications used by the commission, supplemented by any other requirements deemed necessary by the individual counties.

(B) Before exercising licensing authority for an MSW facility that is not required to obtain a permit, a county government shall promulgate regulations that are consistent with those established by the commission. The county’s regulations must be submitted to the commission for approval. At a minimum, county regulations shall be protective of human health and the environment.

(C) A county may not make regulations for MSW management within the extraterritorial or territorial jurisdiction of incorporated cities or towns.

(D) The commission will issue permits for MSW facilities located within the extraterritorial or territorial jurisdiction of incorporated cities or towns within the county.

(E) A county license for an MSW facility may not be issued, extended, or renewed without prior approval of the commission.

(F) Once a license is issued by a county and remains valid, a permit from the commission is not required.

(2) Public meeting. A county shall hold a public meeting and offer an opportunity for a public hearing, and issue appropriate notifications, in accordance with the procedures established in Chapter 39, Subchapter H of this title (relating to Applicability and General Provisions) and this chapter prior to issuance, amendment, extension, revocation, or renewal of a license.

(c) Contents of a license. A license for a solid waste facility issued by a county must include:

(1) the name and address of each person that owns the land on which the solid waste facility is located and the person that is or will be the operator or person in charge of the facility;

(2) a legal description of the land on which the facility is located;

(3) the terms and conditions on which the license is issued, including the duration of the license; and

(4) the volume of waste to be managed.

(d) Licensee’s responsibilities. Solid waste facilities licensed by a county shall be operated in compliance with regulations of the commission and the county.

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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For further information, please call: (512) 239-0348

30 TAC §§330.2 - 330.8, 330.10 - 330.15

(Editors note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The proposed repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed repeals also implement Texas Water Code, §5.103, Rules.

§330.2. Definitions.
§330.3. Applicability.
§330.4. Permit Required.
§330.5. General Prohibitions.
§330.7. Deed Recordation.
§330.10. Closure.
§330.11. Relationships with Other Governmental Entities.
§330.12. Relationship with County Licensing System.

§330.15. Effective Date.

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

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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) 239-0348

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SUBCHAPTER B. MUNICIPAL SOLID WASTE STORAGE

30 TAC §§330.21 - 330.26

(EDITOR’S NOTE: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The proposed repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.0519, Standard Permit. The proposed repeals also implement Texas Water Code, §5.103, Rules.


§330.22. Storage Requirements.

§330.23. Approved Containers.


§330.25. Requirements for Stationary Compactors.


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

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SUBCHAPTER B. PERMIT AND REGISTRATION APPLICATION PROCEDURES


STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The standard air permit is proposed under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.0519, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The proposed new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.0519, Standard Permit. The proposed new sections also implement Texas Water Code, §5.103, Rules.

§330.53. Pre-application Review.

(a) Applicability. This section applies to potential permit owners or operators who desire to enter into agreements with affected persons and/or identify issues of local concern prior to submission of an application. A pre-application review process may be useful in situations where opposition to an application is likely to exist.

(b) Purpose. A pre-application review should serve to identify issues of concern, facilitate communication between a potential owner or operator and persons that would be affected by an application, and resolve as many points of conflict as possible prior to the submission of an application. A local review committee shall:

(i) interact with the owner or operator in a structured manner during the pre-application review stage of the permitting process and,
if necessary, during the technical review stage of the permitting process, raise and attempt to resolve both technical and nontechnical issues of concern;

(2) produce a fact-finding report documenting resolved and unresolved issues and unanswered questions. The owner or operator shall submit this report to the executive director with the owner’s or operator’s permit application.

(c) Procedure.

(1) If an owner or operator decides to participate in a local review committee process, the owner or operator shall file three copies of a notice of intent to file an application with the executive director. The filing of this notice initiates the pre-application review process. The date of filing shall be the date the notice is stamped as received by the executive director. An owner or operator who wishes to have a pre-application meeting under the provisions of Texas Health and Safety Code, §361.0635, should include a draft Part I, as described in §330.59 of this title (relating to Contents of Part I of the Application) with their request.

(2) Upon receipt of the notice of intent to file, the executive director shall forward a copy of the notice and an explanation of the local review committee process by certified mail to:

(A) the appropriate mayor and county judge if the proposed facility is to be located within the corporate limits or extraterritorial jurisdiction of a city; or

(B) the appropriate county judge if the proposed facility is to be located within an unincorporated area of the county; and

(C) the appropriate regional solid waste planning agency and council of government (COG).

(3) Local review committees shall be composed of representatives of both local and regional interests and shall consist optimally of 12 individuals. However, an owner or operator may request a larger committee to better represent all interest groups present in a community or a smaller committee for economic reasons; however, committees shall maintain a 2:1 ratio of regional appointments to local appointments. Appointments to the local review committee shall be made according to the following guidelines.

(A) If a proposed facility is to be located within a particular city’s limits, the mayor of the city shall be asked to make all local appointments.

(B) If a proposed facility is to be located in an unincorporated area, but within five miles of a city or cities, the mayor of each affected city shall be asked to appoint one member. The appropriate county judge shall be asked to appoint at least one member who lives within five miles of the proposed facility, if available and qualified. The county judge shall also be asked to appoint any remaining individuals necessary to complete local appointments to the committee.

(C) If a proposed facility would not be within five miles of a city, the appropriate county judge shall appoint at least one member, if available and qualified, who lives within five miles of the proposed facility and as many other individuals from the county as are necessary to complete the local appointments.

(D) Regional appointments shall be made by the appropriate regional solid waste planning agency/COG or another regional entity such as a special district or river authority designated by the COG. An attempt shall be made to make regional appointments from as many of the following interest groups as possible:

(i) organized environmental groups;

(ii) citizen organizations active in environmental issues;

(iii) industry, preferably, but not necessarily, individuals with expertise in waste management;

(iv) academic community, preferably, but not necessarily, individuals trained in a technical discipline related to waste management and/or public involvement;

(v) community or land-use planning;

(vi) organized public-interest advocates; and

(vii) public health professionals.

(E) If any local official or regional entity has failed to make the necessary appointments within 15 days after the notice of intent to file has been submitted, the owner or operator may cease the local review process.

(F) Every effort should be made to appoint individuals who are willing to participate in good faith, able to devote adequate time to participation, and respected in the community or region. An elected official shall not be appointed to the committee if the official is elected by a constituency wholly or partially within the localities surrounding the facility, and appointees shall not be employees or agents of the owner or operator.

(G) An individual shall not serve on more than one local review committee at any one time.

(4) The local review committee shall meet within 21 days after the notice of intent is filed. The executive director will provide manuals to committee members that will orient them as to what the committee’s activities should be, i.e., the production of a report detailing issues resolved, issues unresolved, and questions not able to be answered.

(5) The pre-application review process shall continue for a maximum of 90 days unless it is shortened or lengthened by mutual agreement between the owner or operator and the local review committee.

(6) Individuals who serve on local review committees shall serve without compensation. The potential owner or operator shall provide resource support that may include clerical and technical assistance, a facilitator, meeting space, and/or other items that may be necessary to aid the committee in its work.

(d) Committee report.

(1) Any report produced by a local review committee set up under this section shall be submitted to the executive director with the owner’s or operator’s permit application. The executive director may consider the report as an additional source of information concerning the application.

(2) The report shall not recommend approval or disapproval of the proposed facility. Rather, it shall describe the committee’s work and summarize the committee’s findings. The findings shall include issues resolved, issues unresolved, and questions not able to be answered.

§330.55. Other Authorizations.

(a) Air pollution control. The construction and operation of waste management facilities shall comply with Subchapter U of this chapter (relating to Standard Air Permits for Municipal Solid Waste Landfill Facilities and Transfer Stations) or other approved air authorizations. Owners or operators of these types of facilities should consult with the Air Permits Division on or before the date that the municipal solid waste application is filed with the executive director.

(b) Water pollution control. All liquids resulting from the operation of solid waste facilities shall be disposed of in a manner that will
not cause surface water or groundwater pollution. Facilities shall provide for the treatment of wastewaters resulting from waste management activities and from cleaning and washing. Owners or operators shall ensure that storm water and wastewater management is in compliance with the regulations of the commission.

§330.57. Permit and Registration Applications for Municipal Solid Waste Facilities

(a) Permit application. The application for a municipal solid waste facility is divided into Parts I - IV. Parts I - IV of the application shall be required before the application is declared administratively complete in accordance with Chapter 281 of this title (relating to Applications Processing). The owner or operator shall submit a complete application, containing Parts I - IV, before a hearing can be conducted on the technical design merits of the application. An owner or operator applying for a permit may request a land-use only determination. If the executive director determines that a land-use only determination is appropriate, the owner or operator shall submit a partial application consisting of Parts I and II of the application. The executive director may process a partial permit application to the extent necessary to determine land-use compatibility alone. If the facility is determined to be acceptable on the basis of land use, the executive director will consider technical matters related to the permit application at a later time. When this procedure is followed, an opportunity for a public hearing will be offered for each determination in accordance with §39.419 of this title (relating to Notice of Application and Preliminary Decision). A complete application, consisting of Parts I - IV of the application, shall be submitted based upon the results of the land-use only public hearing. Owners or operators of Type I AEE and Type IV AEE municipal solid waste landfill units are required to submit all parts of the application except for those items pertaining to Subchapters H and J of this chapter (relating to Liner System Design and Operation; and Groundwater Monitoring and Corrective Action).

(b) Registration application. A registration application for a municipal solid waste facility is also divided into Parts I - IV, but is not subject to a hearing request or to the administrative completeness determinations of Chapter 281 of this title.

(c) Parts of the application.

(1) Part I of the application consists of the information required in §281.5 of this title (relating to Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits), §305.45 of this title (relating to Contents of Application for Permit) and §330.59 of this title (relating to Contents of Part I of the Application).

(2) Part II of the application describes the existing conditions and character of the facility and surrounding area. Part II of the application shall consist of the information contained in §330.61 of this title (relating to Contents of Part II of the Application). Parts I and II of a permit application must provide information relating to land-use compatibility under the provisions of Texas Health and Safety Code, §361.069. Part II may be combined with Part I of the application or may be submitted as a separate document. An owner or operator must submit Parts I and II of the permit application before a land-use determination is made in accordance with subsection (a) of this section.

(3) Part III of the application contains design information, detailed investigative reports, schematic designs of the facility, and required plans. Part III shall consist of the documents required in §330.65 of this title (relating to Contents of Part III of the Application).

(4) Part IV of the application contains the site operating plan that shall discuss how the owner or operator plans to conduct daily operations at the facility. Part IV shall consist of the documents required in §330.65 of this title (relating to Contents of Part IV of the Application).

(d) Required information. The information required by this subchapter defines the basic elements for an application. All aspects of the application and design requirements must be addressed by the owner or operator, even if only to show why they are not applicable for that particular site. It is the responsibility of the applicant to provide the executive director data of sufficient completeness, accuracy, and clarity to provide assurance that operation of the site will pose no reasonable probability of adverse effects on the health, welfare, environment, or physical property of nearby residents or property owners. Failure of the owner or operator to provide complete information as required by this chapter may be cause for the executive director to return the application without further action in accordance with §281.18 and §281.19 of this title (relating to Applications Returned and Technical Review). Submission of false information shall constitute grounds for denial of the permit or registration application.

(e) Number of copies.

(1) Applications shall be initially submitted in four copies. The owner or operator shall furnish up to 18 additional copies of the application for use by required reviewing agencies, upon request of the executive director.

(2) For permit applications, the owner or operator shall furnish Parts I and II to the Regional Solid Waste Council of Government.

(f) Preparation. Preparation of the application must conform with Texas Occupations Code, Texas Engineering Practice Act, Chapter 1001 and Texas Geoscience Practice Act, Chapter 1002.

(1) The responsible engineer shall seal, sign, and date the title page of each bound engineering report or individual engineering plan in the application and each engineering drawing as required by Texas Engineering Practice Act, §15c, and in accordance with 22 TAC §137.33 (relating to Sealing Procedures).

(2) The responsible geoscientist shall seal, sign, and date applicable items as required by Texas Geoscience Practice Act, §6.13(b), and in accordance with 22 TAC §851.156 (relating to Geoscientist’s Seals).

(3) Applications that have not been sealed shall be considered incomplete for the intended purpose and shall be returned to the owner or operator.

(g) Application format.


(2) The title page shall show the name of the project; the municipal solid waste permit application number, if known; the name of the owner and operator; the location by city and county; the date the part was prepared; and, if appropriate, the number and date of the revision. It shall be sealed as required by the Texas Engineering Practice Act.

(3) The table of contents shall list and give the page numbers for the main sections of the application. It shall be sealed as required by the Texas Engineering Practice Act.

(4) The narrative of the report shall be printed on 8-1/2 by 11 inches white paper. Drawings or other sheets shall be no larger than 11 by 17 inches so that they can be reproduced by standard office copy machines.

(5) All pages shall contain a page number and date.

(6) Revisions shall have the revision date and note that the sheet is revised in the header or footer of each revised sheet. The revised text shall be marked to highlight the revision.

(7) Dividers and tabs are encouraged.
(h) Application drawings.
(1) All information contained on a drawing shall be legible, even if it has been reduced. The drawings shall be 8-1/2 by 11 inches or 11 by 17 inches. Standard-sized drawings (24 by 36 inches) folded to 8-1/2 by 11 inches may be submitted or required if reduction would render them illegible or difficult to interpret.
(2) If color coding is used, it should be legible and the code distinct when reproduced on black and white photocopy machines.
(3) Drawings shall be submitted at a standard engineering scale.
(4) Each drawing shall have a:
(A) dated title block;
(B) bar scale at least one-inch long;
(C) revision block;
(D) responsible engineer’s or geoscientist’s seal, if required; and
(E) drawing number and a page number.
(5) Each map or plan drawing shall also have:
(A) a north arrow. Preferred orientation is to have the north arrow pointing toward the top of the page;
(B) reference to the base map source and date, if the map is based upon another map. The latest published edition of the base map should be used; and
(C) a legend.
(6) Match lines and section lines shall reference the drawing where the match or section is shown. Section drawings should note from where the section was taken.
(i) Posting application on internet.
(1) The owner or operator shall provide a complete copy of the application for any permit, permit modification, permit amendment, or registration including all revisions and supplements to the application, on a publicly accessible Web site, and provide the commission with the Web address link for the application materials.
(2) The commission shall post on its Web site the identity of all owners and operators filing such applications and the Web address link required by this subsection.
§330.59 Contents of Part I of the Application.
(a) General.
(1) Part I of the application consists of information that is required regardless of the type of facility involved. All items required by this section, §281.5 of this title (relating to Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits) and §305.45 of this title (relating to Contents of Application for Permit) must be submitted.
(2) Submittal of Part I by itself will not necessarily require publication of a notice of intent to obtain a municipal solid waste (MSW) permit under the provisions of Texas Health and Safety Code (THSC), §361.0665, or a notice concerning receipt of a permit application under the provisions of THSC, §361.679.
(3) For a permit application, submittal of Part I only will not allow a permit application to be declared administratively complete under the provisions of THSC, §361.068; §281.3 of this title (relating to Initial Review); and §281.18 of this title (relating to Applications Returned).
(b) Facility location. The owner or operator shall:
(1) provide a description of the location of the facility with respect to known or easily identifiable landmarks;
(2) detail the access routes from the nearest United States or state highway to the facility; and
(3) provide the longitudinal and latitudinal geographic coordinates of the facility.
(c) Maps.
(1) General. The maps submitted as a group shall show the elements contained in §305.45 of this title and the following:
(A) latitudes and longitudes; and
(B) the property boundary of the facility.
(2) General location maps. These maps shall be all or a portion of county maps prepared by Texas Department of Transportation (TxDOT). At least one general location map shall be at a scale of one-half inch equals one mile. If TxDOT publishes more detailed maps of the proposed facility area, the more detailed maps shall also be included in Part I. The latest revision of all maps shall be used.
(3) Land ownership map with accompanying landowners list.
(A) These maps shall comply with the requirements §281.5 of this title by locating the property owned by adjacent and potentially affected landowners. The maps should show all property ownership within 500 feet of the facility, and all mineral interest ownership under the facility.
(B) The adjacent and potentially affected landowners’ list shall be keyed to the land ownership maps and shall give each property owner’s name and mailing address. The list shall comply with the requirements of §281.5 of this title, and shall include all property owners within 500 feet of the facility, and all mineral interest ownership under the facility. Property and mineral interest owners’ names and mailing addresses derived from county deed records will comply with this paragraph. The list shall also be provided in electronic form.
(d) Property owner information. Property owner information shall include the following:
(1) the legal description of the facility;
(A) the legal description of the property and the county, book, and page number or other generally accepted identifying reference of the current ownership record;
(B) for property that is platted, the county, book, and page number or other generally accepted identifying reference of the final plat record that includes the acreage encompassed in the application and a copy of the final plat in addition to a written legal description;
(C) a boundary metes and bounds description of the facility signed and sealed by a registered professional land surveyor; and
(D) drawings of the boundary metes and bounds description;
(2) a property owner affidavit signed by the owner that includes the following:
(A) acknowledgment that the State of Texas may hold the property owner of record either jointly or severally responsible for the operation, maintenance, and closure and post-closure care of the facility;
(B) for facilities where waste will remain after closure, acknowledgment that the owner has a responsibility to file with the
county deed records an affidavit to the public advising that the land will be used for a solid waste facility prior to the time that the facility actually begins operating as a municipal solid waste landfill facility, and to file a final recording upon completion of disposal operations and closure of the landfill units in accordance with §330.19 of this title (relating to Deed Recordation); and

(C) acknowledgment that the facility owner or operator and the State of Texas shall have access to the property during the active life and post-closure care period, if required, after closure for the purpose of inspection and maintenance.

(e) Legal authority. The owner and operator shall provide verification of their legal status as required by §281.5 of this title. Normally, this shall be a one-page certificate of incorporation issued by the secretary of state. The owner or operator shall list all persons having over a 20% ownership in the proposed facility.

(f) Evidence of competency. Requirements for demonstrating evidence of competency are as follows.

(1) The owner or operator shall submit a list of all Texas solid waste sites that the owner or operator has owned or operated within the last ten years. The site name, site type, permit or registration number, county, and dates of operation shall also be submitted.

(2) The owner or operator shall submit a list of all solid waste sites in all states, territories, or countries in which the owner or operator has a direct financial interest. The type of site shall be identified by location, operating dates, name, and address of the regulatory agency, and the name under which the site was operated.

(3) The executive director shall require that a licensed solid waste facility supervisor, as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations), be employed before commencing facility operation.

(4) The names of the principals and supervisors of the owner’s or operator’s organization shall be provided, together with previous affiliations with other organizations engaged in solid waste activities.

(5) For landfill permit applications only, evidence of competency to operate the facility shall also include landfilling and earthmoving experience if applicable, and other pertinent experience, or licenses as described in Chapter 30 of this title possessed by key personnel, and the number and size of each type of equipment to be dedicated to facility operation.

(6) For mobile liquid waste processing units, the owner or operator shall submit a list of all solid waste, liquid waste, or mobile waste units that the owner or operator has owned or operated within the past five years. The owner or operator shall submit a list of any final enforcement orders, court judgments, consent decrees, and criminal convictions of this state and the federal government within the last five years relating to compliance with applicable legal requirements relating to the handling of solid or liquid waste under the jurisdiction of the commission or the United States Environmental Protection Agency. Applicable legal requirement means an environmental law, regulation, permit, order, consent decree, or other requirement.

(g) Appointments. The owner or operator shall provide documentation that the person signing the application meets the requirements of §305.44 of this title (relating to Signatories to Applications). If the authority has been delegated, provide a copy of the document issued by the governing body of the owner or operator authorizing the person that signed the application to act as agent for the owner or operator.

(h) Application fees.

(1) In accordance with §305.53 of this title (relating to Application Fee), the application fee for a permit, registration, amendment, modification, or temporary authorization is $100 plus a notice fee of $50.

(2) For a development permit or registration over a closed municipal solid waste landfill, THSC, §361.532, requires the Texas Commission on Environmental Quality (TCEQ) to charge an application fee equal to the actual cost of reviewing the application prior to the issuance of a development permit. The owner or operator shall submit an initial application fee of $2,500 to be submitted in the form of a check or money order made payable to the TCEQ. Upon completion of the review process, including the public meeting, the executive director shall present the owner or operator with a refund for an overcharge, or an invoice for an undercharge.

§330.61. Contents of Part II of the Application

(a) Existing conditions summary. The owner or operator shall determine and report to the executive director any site-specific conditions that require special design considerations and possible mitigation of conditions identified in subsections (h) - (o) of this section. The owner or operator may discuss any additional land-use, environmental, or special issues in an existing conditions summary.

(b) Waste acceptance plan.

(1) The owner or operator shall identify the sources and characteristics of wastes (i.e., residential, commercial, grease trap, grit trap, soluble sludges, septage, special wastes, Class 2 or Class 3 industrial solid wastes, compost feedstocks, etc.) proposed to be received for storage, processing, or disposal. Municipal solid waste facilities may not receive regulated hazardous waste. If a waste constituent or characteristic could be a limiting parameter that may impact or influence the design and operation of the facility, the owner or operator shall specify parameter limitations of each type of waste to be managed by the facility, which may include constituent concentrations and characteristics such as pH, fats, oil and grease concentrations, total suspended solids, chemical oxygen demand, biochemical oxygen demand, organic and metal constituent concentrations, water content, or other constituents. The owner or operator shall include:

(A) a brief description of the general sources and generation areas contributing wastes to the facility. This description shall include an estimate of the population or population equivalent served by the facility. Additionally, if applicable, a descriptive narrative must be included that describes the percentage of incoming waste that must be recovered and its intended use;

(B) for transfer stations, the maximum amount of solid waste to be received daily and annually projected for five years, the maximum amount of solid waste to be stored, the maximum and average lengths of time that solid waste is to remain at the facility, and the intended destination of the solid waste received at this facility; and

(C) for landfills, an estimated maximum annual waste acceptance rate for the facility projected for five years.

(2) For registration applications, this information shall also establish why a facility qualifies for a registration in accordance with §330.9 (relating to Registration Required).

(c) General location maps. The owner or operator shall provide maps in addition to those required by §330.59(c) of this title (relating to Contents of Part I of the Application) as necessary to accurately show proximity to surrounding features:

(1) the prevailing wind direction with a wind rose;

(2) all known water wells within 500 feet of the proposed permit boundary with the state well numbering system designation for Water Development Board ‘located wells’;
(3) all structures and inhabitable buildings within 500 feet of the proposed facility;

(4) schools, licensed day-care facilities, churches, hospitals, cemeteries, ponds, lakes, and residential, commercial, and recreational areas within one mile of the facility;

(5) the location and surface type of all roads within one mile of the facility that will normally be used by the owner or operator for entering or leaving the facility;

(6) latitudes and longitudes;

(7) area streams;

(8) airports within six miles of the facility;

(9) the property boundary of the facility;

(10) drainage, pipeline, and utility easements within or adjacent to the facility;

(11) facility access control features; and

(12) archaeological sites, historical sites, and sites with exceptional aesthetic quality adjacent to the facility.

(d) Facility layout maps. A map or set of maps showing:

(1) the outline of the units;

(2) locations of all interior facility roadways, and for landfill units, interior facility roadways that provide access to all fill areas;

(3) locations of monitor wells;

(4) locations of buildings;

(5) any other graphic representations or marginal explanatory notes necessary to communicate the proposed construction sequence of the facility;

(6) fencing;

(7) provisions for the maintenance of any natural windbreaks, such as greenbelts, where they will improve the appearance and operation of the facility and, where appropriate, plans for screening the facility from public view;

(8) all site entrance roads from public access roads; and

(9) for landfill units:

(A) sectors with appropriate notations to communicate the types of wastes to be disposed of in individual sectors;

(B) the general sequence of filling operations;

(C) sequence of excavations and filling;

(D) dimensions of cells or trenches; and

(E) maximum waste elevations and final cover.

(e) General topographic maps. The owner or operator shall submit United States Geological Survey 1/2-minute quadrangle sheets or equivalent for the facility. At least one general topographic map shall be at a scale of one inch equals 2,000 feet.

(f) Aerial photograph.

(1) The owner or operator shall submit an aerial photograph approximately nine inches by nine inches with a scale within a range of one inch equals 1,667 feet to one inch equals 3,334 feet and showing the area within at least a one-mile radius of the site boundaries. The site boundaries and actual fill areas shall be marked.

(2) A series of aerial photographs can be used to show growth trends.

(3) If submitted, digital prints and photocopies of photographs must be legible.

(g) Land-use map. This is a constructed map of the facility showing the boundary of the facility and any existing zoning on or surrounding the property and actual uses (e.g., agricultural, industrial, residential, etc.) both within the facility and within one mile of the facility. The owner or operator shall make every effort to show the location of residences, commercial establishments, schools, licensed day-care facilities, churches, cemeteries, ponds or lakes, and recreational areas within one mile of the facility boundary. Drainage, pipeline, and utility easements within the facility shall be shown. Access roads serving the facility shall also be shown.

(h) Impact on surrounding area. A primary concern is that the use of any land for a municipal solid waste facility not adversely impact human health or the environment. The owner or operator shall provide information regarding the likely impacts of the facility on cities, communities, groups of property owners, or individuals by analyzing the compatibility of land use, zoning in the vicinity, community growth patterns, and other factors associated with the public interest. To assist the commission in evaluating the impact of the site on the surrounding area, the owner or operator shall provide the following:

(1) information about zoning at the facility and within two miles of the facility. If the site requires approval as a nonconforming use or a special permit from the local government having jurisdiction, a copy of such approval shall be submitted;

(2) information about the character of surrounding land uses within one mile of the proposed facility;

(3) information about growth trends within five miles of the facility with directions of major development;

(4) the proximity to residences and other uses (e.g., schools, churches, cemeteries, historic structures and sites, archaeologically significant sites, sites having exceptional aesthetic quality, etc.) within one mile of the facility. The owner or operator shall provide the approximate number of residences and commercial establishments within one mile of the proposed facility including the distances and directions to the nearest residences and commercial establishments. Population density and proximity to residences and other uses described in this paragraph may be considered for assessment of compatibility;

(5) a description and discussion of all known wells within 500 feet of the proposed facility. Well density may be considered for assessment of compatibility; and

(6) any other information requested by the executive director.

(i) Transportation. The owner or operator shall:

(1) provide data on the availability and adequacy of roads that the owner or operator will use to access the site;

(2) provide data on the volume of vehicular traffic on access roads within one mile of the proposed facility, both existing and expected, during the expected life of the proposed facility;

(3) project the volume of traffic expected to be generated by the facility on the access roads within one mile of the proposed facility;

(4) submit documentation of coordination of all designs of proposed public roadway improvements such as turning lanes, storage lanes, etc., associated with site entrances with the agency exercising maintenance responsibility of the public roadway involved. In addition,
the owner or operator shall submit documentation of coordination with the Texas Department of Transportation for traffic and location restrictions; and

(5) for landfill units and landfill mining operations, analyze the impact of the facility upon airports in accordance with §330.545 of this title (relating to Airport Safety). The owner or operator shall submit documentation of coordination with the Federal Aviation Administration for compliance with airport location restrictions.

(i) General geology and soils statement. The reports prepared under this subsection must meet the following requirements:

(1) discuss in general terms the geology and soils of the proposed site;

(2) for landfills, identify and provide data on fault areas located within the proposed site in accordance with §330.555 of this title (relating to Fault Areas);

(3) for landfills, identify and provide data on seismic impact zones in accordance with §330.557 of this title (relating to Seismic Impact Zones); and

(4) for landfills, identify and provide data on unstable areas in accordance with §330.559 of this title (relating to Unstable Areas).

(k) Groundwater and surface water. The owner or operator shall submit:

(1) data about the site-specific groundwater conditions at and near the site;

(2) data on surface water at and near the site; and

(3) information demonstrating how the municipal solid waste facility will comply with applicable Texas Pollutant Discharge Elimination System (TPDES) storm water permitting requirements and the Clean Water Act, §402, as amended. This information may include, but is not limited to:

(A) a certification statement indicating the owner/operator will obtain the appropriate TPDES permit coverage when required; or

(B) a copy of the permit number for coverage under an individual wastewater permit.

(1) Abandoned oil and water wells.

(1) The owner or operator shall identify the location of any and all existing or abandoned water wells situated within the facility. Water wells necessary for supply for operations at the landfill may remain in use as long as the wells are located outside of the groundwater monitoring well network, and are not subject to impact from landfill operations. Water wells that will be used for supply at the landfill that are located inside of the groundwater monitoring network, but outside the landfill unit boundary, may be used if identified and approved in the facility permit. For all other facility water wells, the owner or operator shall provide, within 30 days prior to construction, the executive director with written certification that all such wells have been capped, plugged, and closed in accordance with all applicable rules and regulations of the commission or other state agency.

(2) The owner or operator shall identify the location of any and all existing or abandoned on-site crude oil or natural gas wells, or other wells associated with mineral recovery that are under the jurisdiction of the Railroad Commission of Texas. The owner or operator shall provide the executive director with written certification that these wells have been properly capped, plugged, and closed in accordance with all applicable rules and regulations of the Railroad Commission of Texas at the time of application. Producing crude oil or natural gas wells that do not affect or hamper landfill operations may remain in their current state, if identified in the permit for the facility.

(m) Floodplains and wetlands statement. The floodplains and wetlands statement must:

(1) provide data on floodplains in accordance with Chapter 301, Subchapter C of this title (relating to Approval of Levees and Other Improvements);

(2) include a wetlands determination under applicable federal, state, and local laws and discuss wetlands in accordance with §330.553 of this title (relating to Wetlands). For the purpose of this subsection, demonstration can be made by providing evidence that the facility has a Corps of Engineers permit for the use of any wetlands area; and

(3) identify wetlands located within the facility boundary.

(n) Endangered or threatened species.

(1) The owner or operator shall consider the impact of a solid waste disposal facility upon endangered or threatened species. The facility and the operation of the facility shall not result in the destruction or adverse modification of the critical habitat of endangered or threatened species, or cause or contribute to the taking of any endangered or threatened species.

(2) For landfill applications, the owner or operator shall submit Endangered Species Act compliance demonstrations as required under state and federal laws and determine whether the facility is in the range of endangered or threatened species. If the facility is located in the range of endangered or threatened species, the owner or operator shall have a biological assessment prepared by a qualified biologist in accordance with standard procedures of the United States Fish and Wildlife Service and the Texas Parks and Wildlife Department to determine the effect of the facility on the endangered or threatened species. Where a previous biological assessment has been made for another project in the general vicinity, a copy of that assessment may be submitted for evaluation. The United States Fish and Wildlife Service and the Texas Parks and Wildlife Department shall be contacted for locations and specific data relating to endangered and threatened species in Texas.

(o) Texas Historical Commission review. The owner or operator shall submit a review letter from the Texas Historical Commission documenting compliance with the Natural Resources Code, Chapter 191, Texas Antiquities Code.

(p) Councils of government and local government review request. The owner or operator shall submit documentation that a review letter from the regional solid waste Councils of Government and, as appropriate, any local governments was requested to document compliance with regional and local solid waste plans.


(a) Site development plan. This plan must include criteria that in the selection and design of a facility will provide for the safeguarding of the health, welfare, and physical property of the people and the environment through consideration of geology, soil conditions, drainage, land use, zoning, adequacy of access roads and highways, and other considerations as the specific facility dictates. The site development plan must include the items listed in this section.

(b) General facility design.

(1) Facility access. The owner or operator shall describe how access will be controlled for the facility such as the type and location of fences or other suitable means of access control to prevent the entry of livestock, to protect the public from exposure to potential health and
safety hazards, and to discourage unauthorized entry or uncontrolled disposal of solid waste or hazardous materials.

(2) Waste movement. The owner or operator shall submit a generalized process design and working plan of the overall facility that includes, at a minimum:

(A) flow diagrams indicating the storage, processing, and disposal sequences for the various types of wastes and feedstocks received;

(B) schematic view drawings showing the various phases of collection, separation, processing, and disposal as applicable for the types of wastes and feedstocks received at the facility;

(C) proposed ventilation and odor control measures for each storage, separation, processing, and disposal unit;

(D) generalized construction details of all storage and processing units and ancillary equipment (i.e., tanks, foundations, sumps, etc.) with regard to approximate dimensions and capacities, construction materials, vents, covers, enclosures, protective coatings of surfaces, etc. Performance data on all units shall be provided;

(E) generalized construction details of slab and subsurface supports of all storage and processing components;

(F) locations and engineering design details of all containment dikes or walls (with indicated freeboard) proposed to enclose all storage and processing components and all loading and unloading areas;

(G) plans for the storage of grease, oil, and sludge on site including determinations of maximum periods of time all separated materials will remain on site and the ultimate disposition of such materials off site;

(H) proposed disposition of effluent resulting from all processing operations; and

(I) for transfer stations, provide designs for noise pollution control.

(3) Sanitation. The owner or operator shall describe how solid waste processing facilities will be designed to facilitate proper cleaning. This may be accomplished by:

(A) controlling surface drainage in the vicinity of the facility to prevent surface water runoff onto, into, and off the treatment area;

(B) constructing walls and floors in operating areas of masonry, concrete, or other hard-surfaced materials that can be hosed down and scrubbed;

(C) providing necessary connections and equipment to permit thorough cleaning with water or steam; and

(D) providing adequate floor or sump drains to remove wash water.

(4) Water pollution control. The owner or operator shall describe how all liquids resulting from the operation of solid waste processing facilities will be disposed of in a manner that will not cause surface water or groundwater pollution. The owner or operator shall provide for the treatment of wastewaters resulting from the process or from cleaning and washing and specify how the procedure for wastewater disposal is in compliance with the rules of the commission.

(5) Endangered species protection. If necessary, the owner or operator shall describe how the facility will be designed to protect endangered species.

(c) Facility surface water drainage report. The owner or operator of a municipal solid waste (MSW) facility shall include a statement that the facility design complies with the requirements of §330.303 of this title (relating to Surface Water Drainage for Municipal Solid Waste Facilities). Additionally, applications for landfill and compost units shall include a surface water drainage report to satisfy the requirements of Subchapter G of this chapter (relating to Surface Water Drainage) and shall include the following:

(1) Drainage analyses. The owner or operator shall submit the following information and analyses:

(A) drawing(s) showing the drainage areas and drainage calculations;

(B) designs of all drainage facilities within the facility area, including such features as typical cross-sectional areas, ditch grades, flow rates, water surface elevation, velocities, and flowline elevations along the entire length of the ditch;

(C) sample calculations provided to verify that existing drainage patterns will not be adversely altered;

(D) a description of the hydrologic method and calculations used to estimate peak flow rates and runoff volumes including justification of necessary assumptions:

(i) the 25-year rainfall intensity used for facility design including the source of the data; all other data and necessary input parameters used in conjunction with the selected hydrologic method and their sources should be documented and described;

(ii) hydraulic calculations and designs for sizing the necessary collection, drainage, and/or detention facilities;

(iii) discussion and analyses to demonstrate that existing drainage patterns will not be adversely altered as a result of the proposed landfill development; and

(iv) structural designs of the collection, drainage, and/or storage facilities.

(2) Flood control and analyses. The owner or operator shall:

(A) identify whether the site is located within a 100-year floodplain. If applicable, indicate 100-year floodplain on the drawing in paragraph (1)(A) of this subsection;

(B) provide the source of all data for such determination and include a copy of the relevant Federal Emergency Management Agency (FEMA) flood map or the calculations and maps used where a FEMA map is not used. Information shall also be provided identifying the 100-year flood level and any other special flooding factors (e.g., wave action) that must be considered in designing, constructing, operating, or maintaining the proposed facility to withstand washout from a 100-year flood. The boundaries of the proposed landfill facility should be shown on the floodplain map;

(C) if the site is located within the 100-year floodplain, provide information detailing the specific flooding levels and other events (e.g., design hurricane projected by Corps of Engineers) that impact the flood protection of the facility. Data should be that required by §§301.33 - 301.36 of this title (relating to Preliminary Plans: Data To Be Submitted, Criteria For Approval of Preliminary Plans; Additional Information; Plans To Bear Seal of Engineer). The owner or operator shall include cross-sections or elevations of landfill levees shown tied into contours;

(D) for construction in a floodplain, submit, where applicable:
(i) approval from the governmental entity with jurisdiction under Texas Water Code, §16.236, as implemented by Chapter 301 of this title (relating to Levee Improvement Districts, District Plans of Reclamation, and Levees and Other Improvements);

(ii) a floodplain development permit from the city, county, or other agency with jurisdiction over the proposed improvements;

FEMA; and

(iii) a Conditional Letter of Map Amendment from a Corps of Engineers Section 404 Specification of Disposal Sites for Dredged or Fill Material permit for construction of all necessary improvements.

(d) Waste management unit design.

(1) Storage and transfer units. The owner or operator shall:

(A) describe how the solid waste management facility will be designed for the rapid processing and minimum detention of solid waste at the facility. The owner or operator shall specify that all solid waste capable of creating public health hazards or nuisances be stored indoors only and processed or transferred promptly and shall not be allowed to result in nuisances or public health hazards. If the facility is in continuous operation, such as for resource or energy recovery, the owner or operator shall provide design features for wastes storage units that will prevent the creation of nuisances or public health hazards due to odors, fly breeding, or harborage of other vectors;

(B) design the units to control and contain spills and contaminated water from leaving the facility. The design shall be sufficient to control and contain a worst-case spill or release from the unit. Enclosed containment areas shall also account for precipitation from a 25-year, 24-hour rainfall event; and

(C) specify the maximum allowable period of time that unprocessed and processed wastes are to remain on site;

(2) Incineration units. The owner or operator shall provide waste feed rates, an estimate of the amount and planned method for testing and final disposal of incinerator ash, an estimate of the volume of quench or process water, and the planned method of treatment and disposal of such water.

(3) Surface impoundment. The owner or operator shall provide:

(A) design specifications for surface impoundments, including a plan view and cross-section of the impoundment;

(B) the minimum freeboard to be maintained and the basis of the design to prevent overtopping resulting from normal or abnormal operations; overfilling: wind and wave action; rainfall; run-on (if allowed); malfunctions of level controllers, alarms, and other equipment; and human error. The owner or operator shall show that adequate freeboard will be available to prevent overtopping from a 25-year, 24-hour rainfall event; and/or

(C) in accordance with §330.339 of this title (relating to Liner Quality Control Plan), a liner quality control plan prepared in accordance with Subchapter H of this chapter (relating to Liner System Design and Operation).

(4) Landfill units. The owner or operator shall specify:

(A) provisions for all-weather operation, e.g., all-weather road, wet-weather pit, alternative disposal facility, etc., and provisions for all-weather access from publicly owned routes to the disposal facility and from the entrance of the facility to unloading areas used during wet weather. Interior access road locations and the type of surfacing shall be indicated on a facility plan. The roads within the facility shall be designed so as to minimize the tracking of mud onto the public access road;

(B) the landfill method proposed, e.g., moving-face cell or trench, area fill, or combination;

(C) elevation of deepest excavation, maximum elevation of waste, maximum elevation of final cover;

(D) a calculation of the estimated rate of solid waste deposition and operating life of the landfill unit. As a general rule, 10,000 people with a per capita collection rate of five pounds per day, dispose of 10 - 15 acre-feet of solid waste in one year;

(E) landfill unit cross-sections consisting of plan profiles across the facility clearly showing the top of the levies, top of the proposed fill (top of the final cover), maximum elevation of proposed fill, top of the wastes, existing ground, bottom of the excavations, side slopes of trenches and fill areas, gas vents or wells, and groundwater monitoring wells, plus the initial and static levels of any water encountered. The owner or operator shall provide a sufficient number of cross-sections, both latitudinally and longitudinally, so as to accurately depict the existing and proposed depths of all fill areas within the site. The plan portion shall be shown on an inset key map. The fill cross-sections shall go through or very near the soil borings in order that the boring logs obtained from the soils report can also be shown on the profile;

(F) construction and design details of compacted perimeter or toe berms that are proposed in conjunction with above-ground (aerial-fill) waste disposal areas shall be included in the fill cross-sections; and

(G) a liner quality control plan prepared in accordance with Subchapter H of this chapter;

(5) Arid exemption landfill application information. Owners or operators of new, existing, and lateral expansions of small MSW landfill facilities that meet the criteria in §330.5(c) of this title (relating to Classification of Municipal Solid Waste Facilities) shall submit a certification of eligibility to the executive director and place a copy of the certification in the operating record. The certification shall be signed by a principal executive officer, a ranking elected official, or an independent professional engineer licensed to practice in the State of Texas. The certification must contain the following information:

(A) a certification that the MSW landfill facility meets all requirements contained in §330.5(c) of this title for exemptions from Subchapter H of this chapter and Subchapter J of this chapter (relating to Groundwater Monitoring and Corrective Action);

(B) documentation that the small MSW landfill facility receives for disposal an annual average of up to 20 tons per day of MSW and nonhazardous industrial solid waste and up to 20 tons per day of construction and demolition waste and rubbish for a total waste acceptance rate not to exceed 40 tons per day for the facility, based upon the most recent four reporting quarters or a certification that programs have been put in place, or will be implemented, to reduce the annual average to less than 20 tons per day for either waste category within one year;

(C) documentation that there are no practicable waste management alternatives available. The documentation shall demonstrate one of the following:

(i) additional costs of available alternatives are estimated to exceed 1.0% of the owner’s or operating community’s budget for all public services; and/or

(ii) haul distances to alternative sites are unreasonable long; or
(iii) all other alternatives are not feasible to implement, given the community location and economic condition; and

(D) documentation that the small MSW landfill unit receives less than or equal to 25 inches of average annual precipitation as determined from precipitation data for the nearest official precipitation recording station for the most recent 30-year reporting period.

(6) Bioreactors. The owner or operator shall provide:

(A) a description of the use and placement of liquid sensors within the waste;

(B) a slope stability analysis of the waste and the reactor;

(C) a description of the liquids recirculation system;

(D) a recirculated liquids management plan including liquids to be used, parameters monitored, and nutrient addition; and

(E) a description of the gas collection system.

(7) Type V mobile liquid waste processing units. The owner or operator shall provide the following:

(A) documentation of affirmative local government approval or acceptance of the mobile unit operation, including conformity with local ordinances, local rules, or requirements set forth by the treatment facility for the discharge, including local limits, zoning restrictions, permits, licenses, authorizations, etc. These regulations do not grant authorization for operation of mobile liquid waste processing units in non-compliance with local government ordinances and regulations or without the express approval of the local wastewater authority. Discharge from a mobile liquid waste processing unit is allowed only at selected disposal points selected by the local treatment facility permitted under Texas Water Code, Chapter 26, so that they can be monitored by the local treatment facility; and

(B) written approval from the receiving treatment facility permitted under Texas Water Code, Chapter 26.

(8) Landfill mining. The owner or operator shall provide:

(A) a test pit evaluation report prepared by an engineer. Prior approval of a test pit plan must be obtained from the executive director before excavation of test pits including location and depth of all test pits, including a discussion and information on the following:

(i) a description of the characteristics of waste observed in test pits excavated on the site to include the percent of paper, plastics, ferrous metal, other metal, glass, other constituents, and soil fraction by weight;

(ii) a design for the test pits to extend four feet beneath the waste or to a depth authorized by the executive director and information submitted to include a Toxicity Characteristic Leaching Procedure (TCLP) of the soil to characterize the soil beneath the site. Liners if present shall not be disrupted;

(iii) a TCLP analysis of each representative type of waste excavated. Additionally, waste excavated from each test pit must be analyzed for asbestos and polychlorinated biphenyls (PCBs). Consideration should be given to the analysis of waste material from each test pit for hazardous waste constituents;

(iv) a determination as to a sufficient number of test pits to establish the properties of the waste. A site of five acres or less must have a minimum of three test pits. Sites larger than five acres must have three test pits plus one for every additional five acres or fraction of an acre. The number of test pits shall be approved by the executive director prior to making the pits. The test pits should be sufficiently large enough to provide representative information;

(v) a description of how all test pits will be backfilled with clean high plasticity or low plasticity clay. The excavation shall be backfilled to exceed the existing grade and provide positive drainage;

(vi) a cross-section drawing using the information from the test pits to depict the top and bottom elevations of the landfill;

(vii) a plan view map depicting the location and extent (vertical and lateral) of the waste unit and proposed extent of mining/recovery operations. In areas with liners, mining operations should not extend below the top of the protective cover of the liner. In areas where no liner exists, excavation operations may extend below the waste;

(viii) an evaluation of historical records of landfill operations, where available, to determine such things as hazardous waste potential, receipt of special waste, types of waste received, special waste disposal areas, construction or demolition waste disposal areas, methane and leachate records, age, volume, disposal methods, existence of liners, gas collection systems, and leachate collection systems; and

(ix) a description of how all waste removed in test pit evaluation will be disposed of in a permitted landfill;

(B) a process description to include:

(i) a list of the typical materials intended for processing along with the anticipated volume to be processed. This description shall also contain an estimate of the daily quantity of material to be processed at the facility along with a description of the proposed process of screening for hazardous materials;

(ii) the methods of excavating the buried waste materials. The owner or operator shall indicate how the material will be handled, how long it will remain in the area, what equipment will be used, how the material will be moved from the excavation area, how the excavation area will be held to a minimum, the maximum side slopes in buried waste, and the maximum excavation area at any one time. The owner or operator shall provide the sequence of excavation;

(iii) the processes used to recover reusable or recyclable material. The narrative shall include any water addition, processing rates, equipment, and mass balance calculations;

(iv) how any process water will be handled and disposed of if a wet mining process is to be used;

(v) a complete narrative on product distribution to include items such as disposition of material recovered and probable use of soils on site and off site; and

(vi) a process diagram that depicts the general process; and

(C) a description of liner system used for excavated waste storage, processing, and screening areas to control seepage and runoff. The liner shall be covered with a material designed to withstand normal traffic from the processing operations.

(9) Compost units. The owner or operator shall provide:

(A) for mechanical composting systems, a detailed engineering description of the system and the manufacturer's performance data;

(B) facility layout, including calculations for area requirements;

(C) a description of the movement of the material as it leaves the tipping area indicating how the material is incorporated into the composting process and what handling techniques are used all the way through to the post-processing area. The narrative must include:

(i) processing rates;
(ii) equipment;

(iii) mass balance calculations;

(iv) use of bulking agents, moisture control, or feed amendments;

(v) process monitoring methods;

(vi) temperature range and resident time;

(vii) storage of compost for curing after the primary composting operation; and

(viii) provision for additional drying and screening;

(D) a narrative on the post-processing process, including post-processing times, identification and segregation of product, storage of product, and quality assurance and quality control; and

(E) a narrative on product distribution including items such as end-product quantities, anticipated final grades, packaging, labeling, loading, marketing, distribution, tracking, and delivery of composted material.

10 Type VI waste processing demonstration facilities.

(A) The facility size shall be limited to a liquid waste processing rate no greater than 10,000 gallons per day.

(B) The facility design and operation shall be coordinated with a consultant connected with an accredited college or university or with a consultant that has demonstrated the ability to carry out scientific experiments for demonstrating new and unproven waste handling methods and submitted to the executive director. The owner or operator shall submit to the executive director an annual and final status report to document the viability of the method being demonstrated. The report, at a minimum, must document the effluent standards and solid waste standards achieved.

(C) The owner or operator may request a variance.

(ii) In specific cases, the executive director may approve a variance from the requirements of this chapter if the variance is not contrary to the public health and safety. A variance may not be approved concerning the procedural requirements of this chapter.

(iii) A request for a variance must be submitted in writing to the executive director. The request may be made in an application for a registration. Any approval of a variance must be in writing from the executive director.

(e) Geology report. This portion of the application applies to owners or operators of MSW landfills, compost units, and if otherwise requested by the executive director. The geology report shall be prepared and signed by a licensed geologist. Previously prepared documents may be submitted but must be supplemented as necessary to provide the requested information. Sources and references for information must be provided. The geology report must contain the following information:

(1) a description of the regional geology of the area that includes:

(A) a geologic map of the region with text describing the stratigraphy and lithology of the map units. An appropriate section of a published map series such as the Geologic Atlas of Texas prepared by the Bureau of Economic Geology is acceptable; and

(B) a description of the generalized stratigraphic column in the facility area from the base of the lowestmost aquifer capable of providing usable groundwater, or from a depth of 1,000 feet, whichever is less, to the land surface. The geologic age, lithology, variations in lithology, thickness, depth, geometry, hydraulic conductivity, and depositional history of each geologic unit should be described based upon available geologic information. Regional stratigraphic cross-sections should be provided;

(2) a description of the geologic processes active in the vicinity of the facility that includes an identification of any faults and subsidence in the area of the facility. The information about faulting and subsidence shall include at least that required in §330.555(b) and §330.559 of this title (relating to Fault Areas and Unstable Areas);

(3) a description of the regional aquifers in the vicinity of the facility based upon published and open-file sources that provides:

(A) aquifer names and their association with geologic units described in paragraph (2) of this subsection;

(B) the composition of the aquifer(s);

(C) the hydraulic properties of the aquifer(s);

(D) information on whether the aquifers are under water table or artesian conditions;

(E) information on whether the aquifers are hydrologically connected;

(F) a regional water-table contour map or potentiometric surface map for each aquifer, if available;

(G) an estimate of the rate of groundwater flow;

(H) typical values or a range of values for total dissolved solids content of groundwater from the aquifers;

(I) identification of areas of recharge to the aquifers within five miles of the site; and

(J) the present use of groundwater withdrawn from aquifers in the vicinity of the facility. The identification, location, and aquifer of all water wells within one mile of the property boundaries of the facility shall be provided;

(4) the results of investigations of subsurface conditions at a particular waste management unit. This report must describe all borings drilled on site to test soils and characterize groundwater and must include a site map drawn to scale showing the surveyed locations and elevations of the borings. Boring logs must include a detailed description of materials encountered including any discontinuities such as fractures, fissures, slickensides, lenses, or seams. Geophysical logs of the boreholes may be useful in evaluating the stratigraphy. Each boring must be presented in the form of a log that contains, at a minimum, the boring number, surface elevation and location coordinates; and a columnar section with text showing the elevation of all contacts between soil and rock layers, description of each layer using the unified soil classification, color, degree of compaction, and moisture content. A key explaining the symbols used on the boring logs and the classification terminology for soil type, consistency, and structure must be provided.

(A) A sufficient number of borings shall be performed to establish subsurface stratigraphy and to determine geotechnical properties of the soils and rocks beneath the facility. Other types of samples may also be taken to provide geologic and geotechnical data. The number of borings necessary can only be determined after the general characteristics of a site are analyzed and will vary depending on the heterogeneity of subsurface materials. Locations with stratigraphic complexities such as non-uniform beds that pinch out, vary significantly in thickness, coalesce, or grade into other units, will require a significantly greater degree of subsurface investigation than areas with simple geologic frameworks.

(B) Borings shall be sufficiently deep enough to allow identification of the uppermost aquifer and underlying hydraulically
interconnected aquifers. Borings shall penetrate the uppermost aquifer and all deeper hydraulically interconnected aquifers and be deep enough to identify the aquiclude at the lower boundary. All the borings shall be at least five feet deeper than the elevation of the deepest excavation. In addition, at least the number of borings shown on the Table of Borings shall be drilled to a depth at least 30 feet below the deepest excavation planned at the waste management unit, unless the executive director approves a different depth. If no aquifers exist within 50 feet of the elevation of the deepest excavation, at least one test hole shall be drilled to the top of the first perennial aquifer beneath the site, if sufficient data does not exist to accurately locate it. The executive director may accept data equivalent to a deep boring on the site to determine information for aquifers more than 50 feet below the site. Aquifers more than 300 feet below the lowest excavation and where the estimated travel times for constituents to the aquifer are in excess of 30 years plus the estimated life of the site need not be identified through borings.

Figure: 30 TAC §330.63(e)(4)(B)

(C) All borings shall be conducted in accordance with established field exploration methods. The hollow-stem auger boring method is recommended for softer materials; coring may be required for harder rocks. Other methods shall be used as necessary to obtain adequate samples for soil testing required in this paragraph. Investigation procedures shall be discussed in the report.

(D) Installation, abandonment, and plugging of the borings in accordance with the rules of the commission.

(E) Both the number and depth of borings may be modified because of site conditions with approval of the executive director.

(F) Geophysical methods, such as electrical resistivity, may be used with authorization of the executive director to reduce the number of borings that may be necessary or to provide additional information between borings.

(G) Cross-sections must be prepared from the borings depicting the generalized strata at the facility. For small waste management units, two perpendicular cross-sections will normally suffice.

(H) A narrative that describes the investigator’s interpretations of the subsurface stratigraphy based upon the field investigation shall be provided;

(5) geotechnical data that describes the geotechnical properties of the subsurface soil materials and a discussion with conclusions about the suitability of the soils and strata for the uses for which they are intended. All geotechnical tests shall be performed in accordance with industry practice and recognized procedures such as described below. A brief discussion of geotechnical test procedures including:

(A) a laboratory report of soil characteristics determined from at least one sample from each soil layer or stratum that will form the bottom and side of the proposed excavation and from those that are less than 30 feet below the lowest elevation of the proposed excavation. Additional tests shall be performed, as necessary, to provide a typical profile of soil stratification within the site. No laboratory work need be performed on highly permeable soil layers such as sand or gravel. The samples shall be tested by a competent independent third-party soils laboratory;

(B) permeability tests performed according to one of the following standards on undisturbed soil samples. Permeability tests shall be performed using tap water or 0.5 Normal solution of calcium sulfate (CaSO4), and not distilled water, as the permeant. Those undisturbed samples that represent the sidewall of any proposed cell, pit, or excavation shall be tested for the coefficient of permeability on the sample’s in-situ horizontal axis; all others shall be tested on the in-situ vertical axis. All test results shall indicate the type of tests used and the orientation of each tested sample. All calculations for the final coefficient of permeability tests result for each sample tested shall be included in the report:


(ii) falling head per Appendix VII of Corps of Engineers Manual EM1100-2-1906, “Laboratory Soils Testing”;

(iii) sieve analysis for the 200, and less than 200 fraction per ASTM D1140;

(iv) Atterberg limits per ASTM D4318;

(v) moisture content per ASTM D2216;

(C) the depth at which groundwater was encountered and records of after-equilibrium measurements in all borings. The cross-sections prepared in response to paragraph (4)(G) of this subsection must be annotated to note the level at which groundwater was first encountered and the level of groundwater after equilibrium is reached or just prior to plugging, whichever is later. This water-level information must also be presented on all borings required by paragraph (4) of this subsection and presented in a table format in the report;

(D) records of water-level measurements in monitoring wells. Historic water-level measurements made during any previous groundwater monitoring shall be presented in a table for each well;

(E) a tabulation of all relevant groundwater monitoring data from wells on site or on adjacent MSW landfill units(s); and

(F) identification of the uppermost aquifer and any lower aquifers that are hydraulically connected to it beneath the facility, including groundwater flow direction and rate, and the basis for such identification (i.e., the information obtained from hydrogeologic investigations of the facility area);

(6) for owners and operators seeking an arid exemption for their landfill unit designs, a groundwater certification process must be used for meeting the provisions for groundwater certification of the arid exemption, as described in §330.5(b) of this title:

(A) locate and plot the facility accurately on a topographic map (7.5-minute or 15-minute United States Geological Survey quadrangle). Draw a line to enclose all of the area within one mile of the facility boundary;

(B) visit the facility and locate by physical inspection water wells and springs in the facility area. Determine the locations and plot them on the topographic map;

(i) if no wells or springs exist within the facility area, refer to subparagraph (I) of this paragraph. Otherwise, refer to clause (ii) of this subparagraph; and

(ii) determine from appropriate records (for example, water-well drillers, pump installers, city records, underground water conservation district, Texas Water Development Board, Texas Commission on Environmental Quality, United States Geological Survey, etc.) which of the wells are completed in the shallowest aquifer. If no wells are completed in the shallowest aquifer or if the shallowest aquifer is more than 150 feet below the land surface at the facility, refer to subparagraph (I) of this paragraph. Otherwise, refer to subparagraph (C) of this paragraph;

(C) determine the groundwater gradient of the shallowest aquifer in the vicinity of the facility. This can be done by measuring stabilized water levels in wells completed in the shallowest aquifer in the facility area from subparagraph (B)(ii) of this paragraph) or from previous hydrogeologic studies using contemporaneous stabilized
water-level measurements. Care should be taken to measure water levels when nearby high-volume wells, such as irrigation wells, have not been pumped for a long enough period to allow the water level to stabilize. Where no data exist or cannot be determined, the regional gradient can be used:

(D) from springs and from the wells completed in the shallowest aquifer, select the two wells/springs downgradient of and nearest to the facility based on the findings from subparagraph (C) of this paragraph. Select a well/spring upgradient or lateral to the facility, where groundwater quality is not likely to have been affected by landfill activities and preferably not by other human activities such as oil and gas operations, feedlots, sewage treatment plants, septic systems, etc;

(E) sample the three selected wells/springs determined by subparagraphs (C) and (D) of this paragraph in accordance with accepted practices, such as described in technical guidance from the executive director. The owner or operator shall have the samples analyzed by a qualified laboratory for the following parameters:

(i) chloride;
(ii) nitrate (as N);
(iii) sulfate;
(iv) total dissolved solids;
(v) specific conductance;
(vi) pH;
(vii) chromium;
(viii) non-purgeable organic carbon; and
(ix) volatile organic compounds listed in §330.419 of this title (relating to Constituents for Detection Monitoring);

(F) if permission cannot be obtained to sample one or more of the three selected wells/springs, select one or more alternate wells/springs, within the plotted area. If fewer than three wells/springs are available, sample those that are available;

(G) if permission cannot be obtained to sample any appropriately located wells/springs, submit written documentation of the facts to the executive director. If the executive director confirms that permission cannot be obtained for sampling, the well(s) may be eliminated from consideration;

(H) compile the data from subparagraphs (A) - (F) of this paragraph in a report that includes:

(i) a map showing all known wells, springs, facility boundaries, sampling points, etc.;
(ii) a map showing the groundwater gradient and data points;
(iii) chemical analyses, showing analytical methods used;
(iv) logs and construction information for the sampled wells and description and flow rate for sampled springs;
(v) text describing methods of investigation, such as sampling and water-level measurements; and
(vi) conclusions with respect to presence or lack of evidence of groundwater contamination by the facility;

(J) the report shall be signed and sealed by the qualified groundwater scientist who reviewed the data and reached the conclusions;

(K) if there is no evidence of groundwater contamination by the landfill, the qualified groundwater scientist who reviewed the data and reached the conclusions shall sign and seal a statement in the following format: "I/we have reviewed the groundwater data described in a report submitted with this certification and have found no evidence that the municipal solid waste landfill located at has contaminated groundwater in the uppermost aquifer."

(L) the executive director may accept information and data, other than described in this paragraph, as showing that there is no evidence of groundwater contamination by the landfill, if the information and data are deemed to be adequate for such a determination.

(f) Groundwater sampling and analysis plan. The groundwater sampling and analysis plan for landfills and if otherwise requested by the executive director for other MSW units must be prepared in accordance with Subchapter J of this chapter (relating to Groundwater Monitoring and Corrective Action). The groundwater sampling and analysis plan for composting operations that require a permit must be prepared in accordance with the groundwater monitoring requirements of §332.47(6)(C)(ii) (relating to Permit Application Preparation). As part of this plan for Type I landfills, submit the following:

(1) on a topographic map, a delineation of the waste management area, the property boundary, the proposed point of compliance as defined under §330.3 of this title (relating to Definitions), the proposed location of groundwater monitoring wells as required under §330.403 of this title (relating to Groundwater Monitoring Systems);

(2) a description of any plume of contamination that has entered the groundwater from an MSW management unit at the time that the application was submitted. In addition:

(A) delineate the extent of the plume on the topographic map required in paragraph (1) of this subsection; and

(B) identify the concentration of each assessment constituent as defined in §330.409 of this title (relating to Assessment Monitoring Program) throughout the plume or identify the maximum concentration of each assessment constituent in the plume;

(3) an analysis of the most likely pathway(s) for pollutant migration in the event that the primary barrier liner system is penetrated. This must include any groundwater modeling data and results as described in §330.403(e)(2) of this title and consider changes in groundwater flow that are expected to result from construction of the facility;

(4) detailed plans and an engineering report describing the proposed groundwater monitoring program to be implemented to meet the requirements of §330.403 of this title;

(5) if the hazardous constituents listed in the table located in 40 Code of Federal Regulations Part 258, Appendix I, and §330.419 of this title have not been detected in the groundwater at the time of permit application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a detection monitoring program that meets the requirements of §330.407 of this title (relating to Detection Monitoring Program for Type I Landfills). This submission must address the following items as specified in §330.407 of this title:

(A) a proposed groundwater monitoring system;
(B) background values for each monitoring parameter or constituent listed in §330.419 of this title, or procedures to calculate such values; and

(C) a description of proposed sampling, analysis, and statistical comparison procedures to be utilized in evaluating groundwater monitoring data;

(6) if the presence of hazardous constituents listed in §330.419 of this title has been detected in the groundwater at the time of the permit application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish an assessment monitoring program that meets the requirements of §330.409 of this title. To demonstrate compliance with §330.409 of this title, the owner or operator shall address the following items:

(A) a description of any special wastes previously handled at the MSW facility;

(B) a characterization of the contaminated groundwater, including concentration of assessment constituents as defined in §330.409 of this title;

(C) a list of assessment constituents as defined in §330.409 of this title for which assessment monitoring will be undertaken in accordance with §330.405 of this title (relating to Groundwater Sampling and Analysis Requirements) and §330.409 of this title;

(D) detailed plans and an engineering report describing the proposed groundwater monitoring system, in accordance with the requirements of §330.405 of this title; and

(E) a description of proposed sampling, analysis, and statistical comparison procedures to be utilized in evaluating groundwater monitoring data; and

(7) if hazardous constituents have been measured in the groundwater that exceed the concentration limits established in §330.419 of this title, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a corrective action program that meets the requirements of §330.411 and §330.413 of this title (relating to Assessment of Corrective Measures and Selection of Remedy). To demonstrate compliance with §330.411 of this title, the owner or operator shall address, at a minimum, the following:

(A) a characterization of the contaminated groundwater, including concentrations of assessment constituents as defined in §330.409 of this title;

(B) the concentration limit for each constituent found in the groundwater;

(C) detailed plans and an engineering report describing the corrective action to be taken;

(D) a description of how the groundwater monitoring program will demonstrate the adequacy of the corrective action; and

(E) a schedule for submittal of the information required in subparagraphs (C) and (D) of this paragraph provided the owner or operator obtains written authorization from the executive director prior to submittal of the complete permit application.

(g) Landfill gas management plan. A facility gas management plan shall be prepared to address all of the requirements in Subchapter I of this chapter (relating to Landfill Gas Management).

(h) Closure plan. The facility closure plan shall be prepared in accordance with Subchapter K of this chapter (relating to Closure and Post-Closure). For a landfill unit, the closure plan will include a contour map showing the final constructed contour of the entire landfill to include internal drainage and side slopes plus accommodation of surface drainage entering and departing the completed fill area plus areas subject to flooding due to a 100-year frequency flood. Cross-sections shall be provided.

(i) Post-closure plan. The facility post-closure care plan shall be prepared in accordance with Subchapter K of this chapter.

(j) Cost estimate for closure and post-closure care. The owner or operator shall submit a cost estimate for closure and post-closure care in accordance with Subchapter L of this chapter (relating to Closure, Post-Closure, and Corrective Action Cost Estimates). For an existing facility, the owner or operator shall also submit a copy of the documentation required to demonstrate financial assurance as specified in Chapter 37, Subchapter K of this title (relating to Financial Assurance for Municipal Solid Waste Facilities). For a new facility, a copy of the required documentation shall be submitted 60 days prior to the initial receipt of waste.

§330.65. Contents of Part IV of the Application.

(a) The owner or operator shall submit a site operating plan. This plan will provide general operating procedures for facility management for day-to-day operations at the facility. The site operating plan must be retained during the active life of the facility. At a minimum, the site operating plan must include a description for how the items in Subchapters D and E of this chapter (relating to Operational Standards for Municipal Solid Waste Landfill Facilities; and Operational Standards for Municipal Solid Waste Storage and Processing Units) will be implemented.

(b) A facility that has an environmental management system that meets both the minimum standards described in §90.32 of this title (relating to Minimum Standards for Environmental Management Systems) and the United States Environmental Protection Agency’s National Environmental Performance Track (NEPT) Program standards and is approved to operate under an environmental management system in accordance with §90.36 of this title (relating to Evaluation of an Environmental Management System by the Executive Director), is not subject to site operating plan requirements while the authorization to operate under the environmental management system remains in place. In the event the executive director terminates authorization to operate under an environmental management system, the facility will comply with the site operating plan requirements within 90 days.

(c) The owner or operator shall specify procedures for recirculating leachate or gas condensate into a landfill unit as part of the site operating plan.

(d) The owner or operator of a grease trap, grit trap waste, or septage processing facility shall submit information identifying any permit requirements under the Texas Pollutant Discharge Elimination System and any permit requirements imposed by other agencies (e.g., local government pretreatment or discharge authorization requirements).


(a) It is the responsibility of an owner or operator to possess or acquire a sufficient interest in or right to the use of the surface estate of the property for which a permit is issued, including the access route. The granting of a permit does not convey any property rights or interest in either real or personal property; nor does it authorize any injury to private property, invasion of personal rights, or impairment of previous contract rights; nor any infringement of federal, state, or local laws or regulations outside the scope of the authority under which a permit is issued.

(b) The owner or operator shall retain the right of entry to the facility until the end of the post-closure care period for inspection and maintenance of the facility.

(c) Executive director approval or a permit will be required if any on-site operations subsequent to closure of a landfill facility involve disturbing the cover or liner of the landfill.
(d) It is also the responsibility of an owner or operator to obtain any permits or approvals that may be required by local agencies such as for building construction, discharge of uncontaminated waters into ditches under control of a drainage district, discharge of effluent into a local sanitary sewer system, etc.

§330.69  Public Notice for Registrations.

(a) Notice to local governments. For mobile liquid waste processing unit registration applications only, upon filing a registration application, the owner or operator shall mail notice to the city, county, and local health department of any local government in which operations will be conducted notifying local governments that an application has been filed. Proof of mailing shall be provided to the executive director in the form of return receipts for registered mail.

(b) Public meeting. The owner, operator, or a representative authorized to make decisions and act on behalf of the owner or operator shall attend the public meeting. A public meeting conducted under this section is not a contested case hearing under the Texas Government Code, Chapter 2001, Administrative Procedure Act.

1. Except as provided in paragraph (2) of this subsection, notice of the opportunity to request a public meeting for all registration applications shall be provided not later than 45 days of the executive director’s receipt of the application in accordance with the procedures contained in §39.501(c) of this title (relating to Application for Municipal Solid Waste Permit) and by posting signs at the proposed site. The owner or operator and the commission shall hold a public meeting in the local area, prior to facility authorization, if a public meeting is required based on the criteria contained in §55.154(c) of this title (relating to Public Meetings). Notice of a public meeting shall be provided as specified in §39.501(c)(3) and (4) of this title. This section does not require the commission to respond to comments, and it does not create an opportunity for a contested case hearing. Applications for registrations filed before the comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) become effective are subject to the former rule requirements to conduct a public meeting. Applications for registrations filed after the 2006 Revisions become effective are subject to the 2006 Revisions requirements to provide notice of the opportunity to request a public meeting. At the owner’s or operator’s expense, a sign or signs must be posted at the site of the proposed facility declaring that the application has been filed and stating the manner in which the commission and owner or operator may be contacted for further information. Such signs must be provided by the owner or operator and must substantially meet the following requirements:

(A) Signs must:

(i) consist of dark lettering on a white background and must be not smaller than four feet by four feet with letters at least three inches in height and block printed capital lettering;

(ii) be headed by the words "PROPOSED MUNICIPAL SOLID WASTE FACILITY";

(iii) include the words "REGISTRATION NO.," the number of the registration, and the type of registration;

(iv) include the words "for further information contact":

(v) include the words "Texas Commission on Environmental Quality" and the address and telephone number of the appropriate commission permitting office;

(vi) include the name of the owner or operator, and the address of the appropriate responsible official;

(vii) include the telephone number of the owner or operator;

(viii) remain in place and legible until the period for filing a motion to overturn has expired. The owner or operator shall provide a verification to the executive director that the signing posting was conducted according to the requirements of this section; and

(ix) describe how persons affected may request that the executive director and applicant conduct a public meeting.

(B) Signs must be located within ten feet of every property line bordering a public highway, street, or road. Signs must be visible from the street and spaced no more than 1,500-foot intervals. A minimum of one sign, but no more than three signs, shall be required along any property line paralleling a public highway, street, or road. This paragraph’s sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless the property is part of the registered facility.

(C) The executive director may approve variances from the requirements of subparagraphs (A) and (B) of this paragraph if the owner or operator has demonstrated that it is not practical to comply with the specific requirements of those subparagraphs and alternative sign posting plans proposed by the applicant are at least as effective in providing notice to the public. Approval from the executive director under this subparagraph must be received before posting alternative signs for purposes of satisfying the requirements of this paragraph.

(2) The owner or operator of a Type IX facility that recovers gas for beneficial use must conduct a public meeting in the local area at least 30 days before bringing facility operation, or as determined by the executive director, to describe the proposed action to the general public. A one-time notice of the public meeting shall be provided by the facility owner or operator two weeks prior to the meeting in the format prescribed in §39.501(c)(3) of this title. Evidence that the meeting was held shall be submitted to the executive director in the form of a copy of the meeting notice as published and a notarized statement from the facility owner or operator stating that the meeting was held and stating the meeting date and location.

(c) Notice of final determination. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. In accordance with §50.133(b) of this title (relating to Executive Director Action on Application or WQMP Update), if the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion under §50.139 of this title (relating to Motion to Overturn Executive Director’s Decision). The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the land ownership map and landowners list required by §330.39 of this title (relating to Contents of Part I of the Application), and to other persons who timely filed public comment in response to public notice.

(d) Motion to overturn. The owner or operator, or a person affected may file with the chief clerk a motion to overturn the executive director’s action on a registration application, under §50.139 of this title. The criteria regarding motions to overturn shall be explained in public notices given under Chapter 39 of this title (relating to Public Notice) and §50.133 of this title.

§330.71  Duration and Limits of Registrations and Permits.

(a) The executive director shall, after review of any application for registration, approve or deny an application in whole or in part. This action shall be based on whether the application meets the requirements of this chapter.

(b) Except as provided in subsections (c) and (f) of this section for demonstration facilities, a registration or permit is normally issued for
the life of the facility but may be revoked at any time if the operating conditions do not meet the minimum standards set forth in this chapter or for any other good cause.

(c) When deemed appropriate a registration or permit may be issued for a specific period of time. When an owner or operator has made timely and sufficient application for the renewal of a registration or permit, the existing registration or permit does not expire until the application has been finally determined by the commission.

(d) A registration or permit is issued to a specific person (see definition of person contained in §3.2 of this title (relating to Definitions)) and may not be transferred from one person to another without complying with the transfer approval requirements of the commission.

(e) Except for transporters and mobile treatment units, a registration or permit is attached to the realty to which it pertains and may not be transferred from one facility to another.

(f) Demonstration projects for liquid waste processing facilities shall be limited to a two-year period. Re-registration of a demonstration facility may be considered only if the new method being demonstrated is not widely used in Texas.

(g) If a registered facility does not commence physical construction within two years of issuance of a registration or within two years of the conclusion of the appeals process, whichever is longer, the registration shall terminate and will no longer be effective.

(h) If a registered mobile liquid waste processing unit does not begin operation within two years of obtaining its registration, the registration shall terminate and no longer be effective.

(i) Revocation or denial of registration procedures are as follows. The commission may involuntarily revoke a registration or refuse to issue a registration by the procedures of §305.66 of this title (relating to Permit Denial, Suspension, and Revocation) for:

(1) transporters that:
(A) fail to maintain a complete and accurate record of shipments of waste;
(B) fail to maintain vehicles in safe working order as evidenced by citations from the Texas Department of Public Safety or local law enforcement agencies;
(C) fail to ship or transport hazardous waste as evidenced by citations from the Texas Department of Public Safety or local law enforcement agencies;
(D) falsify waste shipping documents or shipment records; or
(E) deliver waste to a facility not authorized to handle the waste;

(2) owners or operators of mobile treatment units that:
(A) fail to maintain complete and accurate records of waste treated;
(B) fail to maintain vehicles in safe working order as evidenced by citations from the Texas Department of Public Safety or local law enforcement agencies;
(C) falsify waste treatment records;
(D) fail to treat medical waste in accordance with the provisions of 25 TAC §1.136(a) (relating to Approved Methods of Treatment and Disposition);
(E) illegally dispose of untreated or treated medical waste; or
(F) treat or dispose of medical waste without a registration as required in this section;

(3) failure to comply with any rule or order issued by the commission in accordance with the requirements of this chapter;

(4) failure to submit any required annual reports or pay fees;

(5) failure to maintain financial assurance in accordance with Chapter 37 of this title (relating to Financial Assurance);

(6) illegal disposal of waste; or

(7) such other cause sufficient to warrant termination or suspension of the registration.

(j) The owner or operator shall file with the chief clerk a motion to overturn the executive director’s denial of a registration under §50.139 of this title.

(k) Revocation and suspension upon request or consent may occur if:

(1) an owner or operator no longer desires to continue a waste management activity under a registration or is agreeable to a suspension of authorization to do so for a specified period of time, the owner or operator shall file with the executive director a written request for revocation or suspension of the registration; and

(2) the executive director may revoke or suspend the permit without the necessity of a public hearing or commission action. The executive director shall notify the commission of each such revocation or suspension.

§330.73. Additional Standard Permit and Registration Conditions for Municipal Solid Waste Facilities.

(a) If at any time during the life of the facility the owner or operator becomes aware of any condition in the permit or registration that necessitates a change to accommodate new technology or improved methods or that makes it impractical to keep the facility in compliance, the owner or operator shall submit to the executive director requested changes to the permit or registration in accordance with §305.62 of this title (relating to Amendment) or §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications) and must be approved prior to their implementation.

(b) All drawings or other sheets prepared for requested revisions must be submitted following the format in §330.57(a) of this title (relating to Permit and Registration Applications for Municipal Solid Waste Facilities). All revised engineering and geoscientific plans, drawings, and reports shall be signed and sealed by a licensed professional engineer or geoscientist as specified in §330.57(f) of this title.

(c) A preconstruction conference shall be held within 90 days prior to the beginning of initial excavation or construction for a municipal solid waste (MSW) landfill facility, a vertical expansion, or a lateral landfill expansion. All aspects of the permit, construction activities, and inspections shall be discussed. Additional preconstruction conferences may be held prior to the opening of a new MSW landfill unit. The executive director and owner’s representatives, including the engineer, the geotechnical consultant, the contractor, and the facility manager, shall attend the preconstruction conference.

(d) The owner or operator shall obtain and submit certification by a Texas-licensed professional engineer that the facility has been constructed as designed in accordance with the issued registration or permit and in general compliance with the regulations prior to initial operation. The owner or operator shall maintain that certification on site for inspection.

(e) After all initial construction activity has been completed and prior to accepting any solid waste, the owner or operator shall contact the executive director and region office in writing and request a pre-opening inspection. A pre-opening inspection shall be conducted by the executive
director within 14 days of notification by the owner or operator that all construction activities have been completed, accompanied by representatives of the owner or operator and the engineer.

(f) The MSW facility shall not accept solid waste until the executive director has confirmed in writing that all applicable submissions required by the permit registration and this chapter have been received and found to be acceptable, and that construction is in compliance with the permit or registration and the approved site development plan. If the executive director has not provided a written or verbal response within 14 days of completion of the pre-opening inspection, the facility shall be considered approved for acceptance of waste.

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
Earliest possible date of adoption: October 9, 2005
For further information, please call: (512) 239-0348

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SUBCHAPTER C. MUNICIPAL SOLID WASTE COLLECTION AND TRANSPORTATION

§330.31. Collection and Transportation Requirements.

§330.32. Collection Vehicles and Equipment.


§330.34. Applicability.

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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STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rule-making authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The proposed repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed repeals also implement Texas Water Code, §5.103, Rules.


This subchapter applies to all public and private collection and transportation systems.

§330.103. Collection and Transportation Requirements.

(a) Municipal solid waste (MSW) containing putrescibles shall be collected a minimum of once weekly to prevent propagation and attraction of vectors and the creation of public health nuisances. Collection should be made more frequently in circumstances where vector breeding or haborage potential is significant.
(b) Transporters of MSW shall be responsible for ensuring that all solid waste collected is unloaded only at facilities authorized to accept the type of waste being transported. Off-loading at an unauthorized location or at a facility not authorized to accept such waste is a violation of this subchapter. Allowable wastes at a particular solid waste management facility may be determined by reviewing the following regulations as applicable:

1. §330.5 of this title (relating to Classification of Municipal Solid Waste Facilities);
2. Subchapter D of this chapter (relating to Operational Standards for Municipal Solid Waste Landfill Facilities);
3. Subchapter E of this chapter (relating to Operational Standards for Municipal Solid Waste Storage and Processing Units);
4. Chapter 312, Subchapters A - E of this title (relating to General Provisions, Land Application for Beneficial Use and Storage at Beneficial Use Sites, Surface Disposal, Pathogen and Vector Attraction Reduction, Guidelines and Standards for Sludge Incineration); and
5. §330.15(e) of this title (relating to General Prohibitions).

(c) All transporters of solid waste shall maintain records for at least three years to document that waste was taken to an authorized MSW facility. Upon request of the executive director or of a local government with jurisdiction, a transporter is responsible for providing adequate documentation regarding the destination of all collected waste including billing documents to prove that the proper disposal procedure is being followed.

(d) Each transporter delivering waste to a solid waste management facility shall immediately remove any non-allowable wastes delivered to the solid waste management facility or, at the option of the disposal facility operator, pay any applicable surcharges to have the disposal facility operator remove the non-allowable waste.

(e) If non-allowable wastes are discovered in a load of waste being discharged at an MSW facility, the transporter shall immediately take all necessary steps to determine the origin of the non-allowable waste and to assure that non-allowable wastes are either not collected or are taken to a facility approved to accept such wastes.

(f) Transporters of untreated medical waste shall follow the requirements of §330.1211 of this title (relating to Transporters of Untreated Medical Waste).


(a) Sanitation standards. All vehicles and equipment used for the collection and transportation of municipal solid waste shall be constructed, operated, and maintained to prevent loss of liquid or solid waste material and to minimize health and safety hazards to solid waste management personnel, the public, and the environment. Collection vehicles and equipment shall be maintained in a sanitary condition to preclude odors and fly breeding.

(b) Operating condition of vehicles. Collection vehicles should be maintained and serviced periodically and should receive periodic safety checks. Safety defects in a vehicle should be repaired before the vehicle is used.


(a) Cleanup at collection point. The person operating the collection system shall provide for prompt cleanup of all spillages caused by the collection operation.

(b) Cleanup along route. Persons transporting solid waste shall not discharge or allow the discharge of solid waste from the vehicle on the way to the municipal solid waste facility. If a discharge of waste occurs during transportation, the transporter shall take immediate action to contain the waste and to clean up and remove the discharged waste to an approved solid waste management facility.

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

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

30 TAC §330.41

(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 Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The proposed repeal implements THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.0519, Standard Permit. The proposed repeal also implements Texas Water Code, §5.103, Rules.

§330.41. Types of Municipal Solid Waste Sites.

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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§330.121. General. (a) The approved site development plan, the site operating plan, the final closure plan, the post-closure maintenance plan, the landfill gas management plan, and all other documents and plans required by this chapter shall become operational requirements and shall be considered a part of the operating record of the facility. Any deviation from the permit and incorporated plans or other related documents associated with the permit is a violation of this chapter.

(b) To the extent that a requirement has been changed by the rule amendments that became effective December 2, 2004 (2004 Revisions), the facility may continue to operate under requirements contained in previously issued authorizations, except as provided by this subchapter. The landfill permittee is under an obligation to apply for a permit modification in accordance with §305.70(k) of this title (relating to Municipal Solid Waste Permit and Registration Modifications), as applicable, to incorporate the 2004 Revisions. A permittee’s initial application will be processed as a modification and any subsequent applications will be processed in accordance with Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits). The executive director will determine a schedule for landfill permittees to submit an application to modify their permit to conform to the 2004 Revisions. Timely submission of a request for a permit modification qualifies the owners or operators of existing permits to operate under requirements contained in the existing permit. Landfill permit applications that were pending December 2, 2004, are subject to the former rules unless an applicant elects to proceed under the rules that became effective December 2, 2004.

(c) To the extent that requirements of this subchapter have been changed by the comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions), a landfill permittee may continue to operate under an existing permit and is not required to apply to modify or amend an existing permit to comply with the 2006 Revisions. The requirements of §330.165(d)(4) of this title (relating to Landfill Cover) supersede any inconsistent provisions contained in existing permits.

§330.122. Pre-Operation Notice. The owner or operator shall provide written notice in the form of a soil liner evaluation report as described in §330.341 of this title (relating to Soil Liner Evaluation Report and Geomembrane Liner Evaluation Report) of the final construction and lining of a new disposal area (sector) to the executive director for review 14 days prior to the placement of waste. The executive director has 14 days to provide a verbal or written response. If by the end of the 14th day following the executive director’s receipt of the report no comments are received, the operator may begin placing waste. This provision is not applicable to the initial opening of a municipal solid waste landfill.

§330.125. Recordkeeping Requirements. (a) A copy of the permit, the approved site development plan, the site operating plan, the final closure plan, the post-closure maintenance plan, the landfill gas management plan, and any other required plan or other related document shall be maintained at the municipal solid waste facility, or an alternate location approved by the executive director. This requirement shall be considered a part of the operating record for the facility.

(b) The owner or operator shall within seven working days of completion or receipt of analytical data, as appropriate, record and retain in the operating record the following information:

1. any and all location-restriction demonstrations;
2. inspection records, training procedures, and notification procedures relating to excluding the receipt of prohibited waste;
3. all results from gas monitoring and any remediation plans relating to explosive and other gases;
4. any and all unit design documentation for the placement of leachate or gas condensate in a municipal solid waste landfill;
5. any and all demonstration, certification, findings, monitoring, testing, and analytical data relating to groundwater monitoring and corrective action;
6. closure and post-closure care plans and any monitoring, testing, or analytical data relating to post-closure requirements;
any and all cost estimates and financial assurance documents relating to financial assurance for closure and post-closure;

any and all information demonstrating compliance with the small community exemption criteria;
copies of all correspondence and responses relating to the operation of the facility, modifications to the permit, approvals, and other matters pertaining to technical assistance;
any and all documents, manifests, trip tickets, etc., involving special waste; and
any other document(s) as specified by the approved permit or by the executive director;

The owner or operator shall provide written notification annually to the executive director for each occurrence that documents from subsection (b) of this section are placed into or added to the operating record. All information contained in the operating record must be furnished upon request to the executive director and must be made available for inspection by the executive director.

The owner or operator shall retain all information contained within the operating record and the different plans required for the facility for the life of the facility including the post-closure care period.

The owner or operator shall maintain training records in accordance with §335.586(d) and (e) of this title (relating to Personnel Training).

The owner or operator shall maintain personnel operator licenses issued in accordance with Chapter 30, Subchapter F of this title (relating to Municipal Solid Waste Facility Supervisors), as required.

The executive director may set alternative schedules for recordkeeping and notification requirements as specified in subsections (a) - (l) of this section, except for notification requirements contained in Subchapter M of this chapter (relating to Location Restrictions) for any proposed lateral expansion located within a six-mile radius of any airport runway end used by turbojet or piston-type aircraft or notification relating to landowners whose property overlies any part of the plume of contamination, if contaminants have migrated off site as indicated by groundwater sampling.

The owner or operator shall maintain records to document the annual waste acceptance rate for the facility. Documentation must include maintaining the quarterly solid waste summary reports and the annual solid waste summary reports required by §330.675 of this title (relating to Reports) in the operating record. After an updated site operating plan permit modification under §330.121(b) of this title (relating to General) is approved to comply with the rules that became effective December 2, 2004, if the annual waste acceptance rate exceeds the rate estimated in the landfill permit application and the waste increase is not due to a temporary occurrence, the owner or operator shall file an application to modify the permit application, including the revised estimated waste acceptance rate, in accordance with §305.70(k) of this title (relating to Municipal Solid Waste Permit and Registration Modifications), within 90 days of the exceedance as established by the sum of the previous four quarterly summary reports. The application must propose any needed changes in the site operating plan to manage the increased waste acceptance rate to protect public health and the environment. The increased waste acceptance rate may justify permitting conditions that are different from or absent in the existing permit. This subsection is not intended to make an estimated waste acceptance rate a limiting parameter of a landfill permit.

§330.127  Site Operating Plan.
A site operating plan must include provisions for site management and the site operating personnel to meet the general and site-specific requirements of this subchapter. A site operating plan must be retained during the active life of the facility and throughout the post-closure care maintenance period. A site operating plan must include the following:

(a) description of functions and minimum qualifications for each category of key personnel to be employed at the facility and for the supervisory personnel in the chain of command;
(b) description, including the minimum number, size, type, and function, of the equipment to be utilized at the facility based on the estimated waste acceptance rate and other operational requirements, and a description of the provisions for back-up equipment during periods of breakdown or maintenance of this listed equipment;
(c) a description of the general instructions that the operating personnel shall follow concerning the operational requirements of this subchapter;
(d) identification of applicable training requirements under §335.586(a) and (c) of this title (relating to Personnel Training) that shall be followed;
(e) procedures for the detection and prevention of the disposal of prohibited wastes, including regulated hazardous waste as defined in 40 Code of Federal Regulations (CFR) Part 261, and of polychlorinated biphenyls (PCB) wastes as defined in accordance with 40 CFR Part 761 unless authorized by the United States Environmental Protection Agency. The detection and prevention program must include the following:

(A) procedures to be used by the owner or operator to control the receipt of prohibited waste. The procedures must include the random inspections of incoming loads and must include the inspection of compactor vehicles. In addition to the random inspections, trained staff shall observe each load that is disposed at the landfill;
(B) records of all inspections;
(C) training for appropriate facility personnel responsible for inspecting or observing loads to recognize prohibited waste;
(D) notification to the executive director of any incident involving the receipt or disposal of regulated hazardous waste or PCB waste at the landfill;
(E) provisions for the remediation of the incident; and
(F) general instructions required to be included in the site operating plan by other sections of this subchapter.

§330.129  Fire Protection.

The owner or operator shall maintain a source of earthen material in such a manner that it is available at all times to extinguish any fires. The source must be sized to cover any waste received for disposal not covered with six inches of earthen material. Sufficient on-site equipment must be provided to place a six-inch layer of earthen material to cover any waste not already covered with six inches of earthen material within one hour of detecting a fire. A site operating plan must contain calculations demonstrating the adequacy of the earthen material. The executive director may approve alternative methods of fire protection. The potential for accidental fires must be minimized by use of proper compaction and earthen material cover. A site operating plan must contain a fire protection plan that identifies the fire protection standards to be used at the facility and how personnel are trained. The operator must initiate procedures in accordance with the fire protection plan upon detection of a fire. For any municipal solid waste activity on a landfill that stores or processes combustible materials, such as solidification basins, brush collection areas, construction or demolition waste areas, composting areas, mulching areas, shredding areas, and used oil storage areas, the site operating plan must address fire protection measures specific to each individual activity.
If a fire occurs that is not extinguished within ten minutes of detection, the commission’s regional office must be contacted immediately after detection, but no later than four hours by telephone, and in writing within 14 days with a description of the fire and the resulting response.

§330.131. Access Control.

Public access to all municipal solid waste facilities must be controlled by means of artificial barriers, natural barriers, or a combination of both, appropriate to protect human health and safety and the environment. Uncontrolled access to other operations located at a municipal solid waste facility must be prevented. The provisions for access control must be specified in the site operating plan. The preferred method of landfill access control is fences and gates. Regardless of the access control method, the site operating plan must include an inspection and maintenance schedule, notification to the commission’s regional office of a breach, provisions for temporary and permanent repairs, and notification to the commission’s regional office when a permanent access control breach repair is completed. The commission’s regional office must be notified of the breach within 24 hours of detection. The breach must be temporarily repaired within 24 hours of detection and must be permanently repaired by the time specified to the commission’s regional office when it was reported in the initial breach report. If a permanent repair can be made within eight hours of detection, no notice to the commission’s regional office is required.

§330.133. Unloading of Waste.

(a) The unloading of solid waste must be confined to as small an area as practical. The maximum size of the unloading area must be specified in the site operating plan. The number and types of unloading areas must be identified. A trained staff person shall be provided at all facilities to monitor all incoming loads of waste. A trained staff person shall also be on duty during operating hours at each area where waste is being unloaded to direct and observe the unloading of solid waste. The owner or operator is not required to accept any solid waste that the owner or operator determines will cause or may cause problems in maintaining full and continuous compliance with these sections. Small municipal solid waste landfill facilities may submit a request to receive approval for an alternative plan, if sufficient justification is provided.

(b) The unloading of waste in unauthorized areas is prohibited. Any waste deposited in an unauthorized area must be removed immediately and disposed of properly. Trained staff shall observe each load that is disposed at the landfill. The working face staff shall have the authority and responsibility to reject unauthorized loads, have unauthorized material removed by the transporter, and/or assess appropriate surcharges, and have the unauthorized material removed by on-site personnel or otherwise properly managed by the facility. A record of unauthorized material removal must be maintained in the operating record.

(c) The unloading of prohibited wastes at the municipal solid waste facility must not be listed in §330.15(e) of this title (relating to General Prohibitions). The permit issued to the municipal solid waste facility may also prohibit other wastes. Necessary steps shall be taken by the owner or operator to ensure compliance with this provision. Any prohibited waste must be returned immediately to the transporter or generator of the waste or otherwise properly managed by the landfill.

(d) Any Type for Type IAE landfill facility may establish a brush and construction or demolition waste area on the site, which is designated to receive brush and construction or demolition waste.

(e) At Type IV landfills, only brush and construction or demolition waste and rubbish that are free of putrescible and household waste are allowed.

(f) In addition to the other operating requirements of this subchapter, Type IV landfill operators that accept rubbish shall provide the following during all periods of operation:

(1) A written procedure retained on site to ensure that containers with any putrescible wastes are not accepted. This might include or be a combination of a manifest system, surcharges, contractual agreements with transporters, or other acceptable means. This written procedure must be made available for review by the executive director. The procedure must be followed and must be modified as necessary to accomplish its purpose.

(2) A written procedure retained on site for the removal of any putrescible wastes and other prohibited waste to an approved disposal facility must specify the means to be used for removal of putrescible wastes illegally disposed of at the landfill. In all cases, such wastes must be removed from the working face immediately upon discharge and returned to the offending transporter’s vehicle or placed in suitable collection bins and must not be allowed to remain on the landfill in the collection bins for more than 24 hours. The equipment necessary to meet the chosen alternative must be specified and must be on site and operable during operating hours. This written procedure must be made available for review by the executive director. The procedure must be followed and must be modified as necessary to accomplish its purpose.

(3) A procedure whereby the transporter certifications required by §330.7(c) of this title (relating to Permit Required) must be retained at the landfill and be available for inspection by the executive director.

(g) Type IV landfill owners or operators shall not accept wastes from completely enclosed containers or enclosed vehicles except in accordance with §330.169 of this title (relating to Waste in Enclosed Containers or Enclosed Vehicles Accepted at Type IV Landfills).

(h) In addition to the requirements in §330.137 of this title (relating to Site Sign), Type IV landfill owners or operators shall identify wastes that are not allowed and state the landfill’s requirements for transporters, such as certificates, manifests, and surcharges or other penalties that may be imposed in the event that transporters do not meet the requirements of this chapter.

(i) At Type VIII facilities, only used and scrap tires free of any other type of waste are allowed to be accepted.

§330.135. Facility Operating Hours.

(a) A site operating plan must specify the waste acceptance hours and the operating hours when materials will be transported on or off site, and the hours when heavy equipment may operate. The waste acceptance hours of a municipal solid waste facility may be any time between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, unless otherwise approved in the authorization for the facility. Waste acceptance hours within the 7:00 a.m. to 7:00 p.m. weekday span do not require other specific approval. Transportation of materials and heavy equipment operation must not be conducted between the hours of 9:00 p.m. to 5:00 a.m., unless otherwise approved in the authorization for the facility. Operating hours for other activities do not require other specific approval.

(b) In addition to the requirements of subsection (a) of this section, the executive director may approve alternative operating hours of up to five days in a calendar-year period to accommodate special occasions, special purpose events, holidays, or other special occurrences as specified in §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications).
(c) The commission’s regional offices may allow additional temporary operating hours to address disaster or other emergency situations, or other unforeseen circumstances that could result in the disruption of waste management services in the area.

(d) A facility must record in the site operating record the dates and times when any alternative or additional operating hours are utilized.

§330.137. Site Sign.
Each facility must conspicuously display at all entrances through which wastes are received, a sign measuring at least four feet by four feet with letters at least three inches in height stating the type of the site, the hours and days of operation, an emergency 24-hour contact phone number(s) that reaches an individual with the authority to obligate the facility at all times that the facility is closed, the local emergency fire department phone number, and the permit number or facility number. The facility sign must be readable from the facility entrance. The posting of erroneous or misleading information constitutes a violation of this section.

§330.139. Control of Windblown Solid Waste and Litter.
The working face must be maintained and operated in a manner to control windblown solid waste. Windblown material and litter must be collected and properly managed in accordance with paragraphs (1) and (2) of this section to control unhealthy, unsafe, or unsightly conditions.

(1) Windblown waste and litter at the working face must be controlled by using engineering methods or measures, including portable panels, temporary fencing, and perimeter fencing or comparable engineering controls. A site operating plan must specify the means for confining windblown waste and litter.

(2) Litter scattered throughout the site, along fences and access roads, and at the gate must be picked up once a day on the days the facility is in operation and properly managed. A site operating plan must specify the means for complying with this requirement.

§330.141. Easements and Buffer Zones.
(a) Easement protection. No solid waste unloading, storage, disposal, or processing operations shall occur within any easement, buffer zone, or right-of-way that crosses the site. No solid waste disposal shall occur within 25 feet of the center line of any utility line or pipeline easement, unless otherwise authorized by the executive director. All pipeline and utility easements must be clearly marked with posts that extend at least six feet above ground level, spaced at intervals no greater than 300 feet.

(b) Buffer zones. A minimum separating distance shall be maintained between solid waste processing and disposal activities and the boundary of the facility as determined by the requirements of §330.543 of this title (relating to Easements and Buffer Zones). The buffer zone must provide for safe passage for fire-fighting and other emergency vehicles.

§330.143. Landfill Markers and Benchmark.
(a) All required landfill markers and the benchmark must be maintained so that they are visible during operating hours. Markers that are removed or destroyed must be replaced within 15 days of the removal or destruction. All markers must be maintained to retain visibility. Landfill markers must be inspected on a monthly basis to ensure that they are installed and maintained in compliance with the site operating plan. Records of all inspections must be maintained at the facility. Landfill markers must be repaired or replaced within 15 days of discovering that a marker does not meet regulatory requirements.

(b) Landfill markers must be installed to clearly mark significant features. The executive director may modify specific marker requirements to accommodate unique site-specific conditions.

(1) All markers must be posts extending at least six feet above ground level. Markers must not be obscured by vegetation. Sufficient intermediate markers must be installed to show the required boundary. Markers must be installed at the following locations and color coded as follows:

(A) black - facility boundary markers;
(B) yellow - buffer zone markers;
(C) green - easement and rights-of-way markers;
(D) white - landfill grid system markers;
(E) red - soil liner or geomembrane liner area markers;
(F) blue - 100-year flood protection markers.

(2) Facility boundary markers must be placed at each corner of the facility and along each boundary line at intervals no greater than 300 feet. Fencing may be placed within these markers as required.

(3) Markers identifying the buffer zone must be placed along each buffer zone boundary at all corners and between corners at intervals of no greater than 300 feet. Placement of the landfill grid markers may be made along a buffer zone boundary.

(4) Easement and right-of-way markers must be placed along the centerline of an easement and along the boundary of a right-of-way at each corner within the facility and at the intersection of the facility boundary.

(5) A landfill grid system must be installed at all solid waste landfill facilities unless written approval from the executive director has been received. The grid system must encompass at least the area expected to be filled within the next three-year period. Although grid markers must be maintained during the active life of the facility, post-closure maintenance of the grid system is recommended, but not required. Markers must be spaced no greater than 100 feet apart measured along perpendicular lines. Where markers cannot be seen from opposite boundaries, intermediate markers must be installed, where feasible.

(6) Soil liner or geomembrane liner area markers must be placed so that all areas for which a soil liner evaluation report or geomembrane liner evaluation report has been submitted are readily determinable. Such markers are to provide facility workers immediate knowledge of the extent of constructed disposal areas. These markers must be located so that they are not destroyed during operations until operations extend into the next constructed area. The location of these markers must be tied into the landfill grid system and must be reported on each soil liner evaluation report or geomembrane liner evaluation report submitted. Area markers must not be placed inside constructed areas.

(7) Flood protection markers must be installed for any area within a solid waste disposal facility that is within the 100-year floodplain. The area subject to flooding must be clearly marked by means of permanent posts not more than 300 feet apart or closer if necessary to retain visual continuity.

(8) A permanent benchmark must be established at the facility in an area of the facility that is readily accessible and will not be used for disposal. This benchmark must be a bronze survey marker set in concrete and must have the benchmark elevation and survey date stamped on it. The benchmark elevation must be surveyed from a known United States Coast and Geodetic Survey benchmark or other reliable benchmark.

§330.145. Materials Along the Route to the Site.
A facility owner or operator shall take steps to encourage that vehicles hauling waste to the facility are enclosed or provided with a tarpaulin, net, or other means to effectively secure the load in order to prevent the escape of any part of the load by blowing or spilling. The owner or operator shall take actions such as posting signs, reporting offenders to proper law enforcement agencies, or other measures.
enforcement officers, adding surcharges, or similar measures. On days when the facility is in operation, the owner or operator shall be responsible for at least once per day cleanup of waste materials spilled along and within the right-of- way of public access roads serving the facility for a distance of two miles in either direction from any entrances used for the delivery of waste to the facility. The facility operator shall consult with the Texas Department of Transportation, county, and/or local governments with maintenance authority over the roads concerning cleanup of public access roads and right-of-ways. An alternative clean-up frequency and distance may be approved in the site operating plan.

§330.147. Disposal of Large Items.
(a) Large, heavy, or bulky items, that cannot be incorporated in the regular spreading, compaction, and covering operations at landfills should be recycled. A special area should be established to collect these items. This special collection area must be designated as a large-item salvage area. The owner or operator shall remove the items from the site often enough to prevent these items from becoming a nuisance and to preclude the discharge of any pollutants from the area.

(b) Items that can be classified as large, heavy, or bulky can include, but are not limited to, white goods (household appliances), air conditioner units, metal tanks, large metal pieces, and automobiles.

(c) Refrigerators, freezers, air conditioners, and any other items containing chlorinated fluorocarbon (CFC) must be handled in accordance with 40 Code of Federal Regulations §82.156(f), as amended.

The site operating plan must have an odor management plan that addresses the sources of odors and includes general instructions to control odors or sources of odors. Plans for odor management must include the identification of wastes that require special attention such as septic, grease trap waste, dead animals, and leachate.

§330.151. Disease Vector Control.
A site operator shall control on-site populations of disease vectors using proper compaction and daily cover procedures, and the use of other approved methods when needed. The general methods and performance-based frequencies for disease vector control must be specified in the site operating plan.

(a) All-weather roads must be provided from the facility to access public roads and within the facility to the unloading area(s) designated for wet-weather operation. Tracked mud and associated debris at the access to the facility on the public roadway must be removed at least once per day on days when mud and associated debris are being tracked onto the public roadway. The methods for controlling mud and associated debris tracked onto public roadways must be specified in the site operating plan.

(b) Dust from on-site and other access roadways must not become a nuisance to surrounding areas. A water source and necessary equipment or other means of dust control approved by the executive director must be provided.

(c) All on-site and other access roadways must be maintained in a clean and safe condition. Litter and any other debris must be picked up at least daily and taken to the working face. Access roadways must be graded to minimize depressions, ruts, and potholes. The frequency of re-grading must be specified in the site operating plan.

§330.155. Salvaging and Scavenging.
Salvaging must not be allowed to interfere with prompt sanitary disposal of solid waste or to create public health nuisances. Salvaged materials may be considered as potential recycled materials. The owner or operator shall remove the salvaged items from the facility often enough to prevent the items from becoming a nuisance, to preclude the discharge of any pollutants from the area, and to prevent an excessive accumulation of the material at the facility. Class I industrial and other special wastes received at the disposal facility must not be salvaged. Pesticide, fungicide, rodenticide, and herbicide containers must not be salvaged unless being salvaged through a state-supported recycling program. Scavenging must not be allowed.

A facility and the operation of the facility must not result in the destruction or adverse modification of the critical habitat of endangered or threatened species, or cause or contribute to the taking of any endangered or threatened species. Facilities must be operated in conformance with any endangered or threatened species protection plan required by the commission.

§330.159. Landfill Gas Control.
All landfill gases must be monitored in accordance with a landfill gas management plan in accordance with Subchapter I of this chapter (relating to Landfill Gas Management). The required reports and other submittals must be included in the operating record of the facility and submitted to the executive director.

(a) The facility operator shall provide written notification to the executive director of the location of any and all existing or abandoned water wells situated within the facility upon discovery during the course of facility development. The facility operator shall, within 30 days of such discovery, provide the executive director with such notification and written certification that such wells have been capped, plugged, and closed in accordance with all applicable rules and regulations of the commission or other state agency. Water wells that will be used for supply at the facility may remain in use as long as they are located outside of the groundwater monitoring well network and are not impacted by landfill operations. Water wells that will be used for supply at the landfill that are located inside of the groundwater monitoring network, but outside the landfill unit boundary, may be used if identified and approved in the facility permit.

(b) The facility operator shall provide written notification to the executive director of the location of any and all existing or abandoned on-site crude oil or natural gas wells, or other wells associated with mineral recovery that are under the jurisdiction of the Railroad Commission of Texas. The facility owner or operator shall provide the executive director with written notification of the location of any such well within 30 days after discovery during the course of facility development. Within 30 days after plugging of any such well, the facility operator shall provide the executive director with written certification that these wells have been properly capped, plugged, and closed in accordance with all applicable rules and regulations of the Railroad Commission of Texas. Producing crude oil or natural gas wells that do not affect or hamper landfill operations may be operated within the facility boundary, if identified in the permit for the facility or in a written notification to the executive director.

(c) Any water or other type of wells under the jurisdiction of the commission must be plugged in accordance with all applicable state requirements or additional requirements imposed by the executive director. A copy of the well plugging report required to be submitted to the appropriate state agency must also be submitted to the executive director within 30 days after the well has been plugged.

(d) The facility operator or owner shall submit for executive director approval a permit modification application identifying any proposed changes to the liner installation plan as a result of any well abandonment.

§330.163. Compaction.
Solid waste must be spread and compacted by repeated passages of compaction equipment such that each layer of solid waste is thoroughly compacted. The methods for compaction must be specified in the site operating plan.
§330.165. Landfill Cover.

(a) Daily cover for Type I and Type IAE landfills, Type I and IAE landfills, must apply six inches of well-compact ed earthen material not previously mixed with garbage, rubbish, or other solid waste at the end of each operating day to control disease vectors, flies, odors, windblown litter or waste, and scavenging, unless the executive director requires a more frequent interval to control disease vectors, flies, odors, windblown litter or waste, and scavenging. Landfills that operate on a 24-hour basis must cover the working face or active disposal area at least once every 24 hours. The executive director may require a chemical analysis of any landfill cover material.

(b) Daily cover for Type IV and Type IV AE landfills. All Type IV facilities must follow the requirements of this section except the rate of cover must be no less than weekly, unless the executive director approves another schedule. The executive director may require a chemical analysis of any landfill cover material.

(c) Intermediate cover. All areas that have received waste but will be inactive for longer than 180 days must be covered or final cover. This intermediate cover must include six inches of suitable earthen material that is capable of sustaining native plant growth and must be seeded or sodded following its application in order to control erosion, or must be a material approved by the executive director that will otherwise control erosion. This intermediate cover must not be less than 12 inches of suitable earthen material. The intermediate cover must be graded to prevent ponding of water. Plant growth or other erosion control features must be maintained. Runoff from areas that have intact intermediate cover is not considered as having come into contact with the working face or leachate.

(d) Alternative daily cover. Alternative daily cover may only be allowed by a temporary authorization under §305.70(m) of this title (relating to Municipal Solid Waste Permit and Registration Modifications) followed by a major amendment or a modification in accordance with §305.70(k)(1) of this title. Use of alternative daily cover is limited to a 24-hour period after which either waste or daily cover as defined in subsection (a) of this section must be placed.

(1) An alternative daily cover operating plan must be included in the request for temporary authorization or in a site development plan that includes the following:

(A) a description and minimum thickness of the alternative material to be used;

(B) its effect on vectors, flies, odors, and windblown litter and waste;

(C) the application and operational methods to be utilized at the site when using this alternative material;

(D) chemical analysis of the material and/or the Material Safety Data Sheet(s) for the alternative material; and

(E) any other pertinent characteristic, feature, or other factors related to the use of this alternative material.

(2) A status report on the alternative daily cover must be submitted on a two-month basis to the executive director during the temporary authorization period describing the effectiveness of the alternative material, any problems that may have occurred, and corrective actions required as a result of such problems. If no unresolved problems have occurred within the temporary authorization period, status reports may no longer be required.

(3) Alternative daily cover must not be allowed when the landfill is closed for a period greater than 24 hours, unless the executive director approves an alternative length of time.

(4) For contaminated soil proposed to be used as alternative daily cover in a municipal solid waste landfill, the constituents of concern shall not exceed the concentrations listed in Table 1, Constituents of Concern and Their Maximum Leachable Concentrations, located in §335.521(a)(1) of this title (relating to Appendices). Additionally, the contaminated soil must not contain:

(A) polychlorinated biphenyl wastes that are subject to the disposal requirements of 40 Code of Federal Regulations Part 761; or

(B) total petroleum hydrocarbons in concentrations greater than 1,500 milligrams per kilogram.

(5) Alternative daily cover must not exceed constituent limitations imposed on waste authorized to be disposed at the facility.

(e) Temporary waiver. The executive director may grant a temporary waiver from the requirements of subsections (a) - (d) of this section if the owner or operator demonstrates that there are extreme seasonal climatic conditions that make meeting such requirements impractical.

(f) Final cover. Final cover for the landfill must be in accordance with the site closure plan and Subchapter K of this chapter (relating to Closure and Post-Closure).

(g) Erosion of cover. Erosion of final or intermediate cover must be repaired within five days of detection by restoring the cover material, grading, compacting, and seeding unless the commission's regional office approves otherwise, based on the extent of the damage requiring more time to repair or the repairs are delayed because of weather conditions. The date of detection of erosion and date of completion of repairs, including reasons for any delays, must be documented in the cover inspection record required under subsection (h) of this section. The site operating plan must establish a frequency, and identify other occasions, for conducting inspections of the final and intermediate covers to detect the need for repairs. The periodic inspections and restorations are required during the entire operational life and for the post-closure maintenance period.

(h) Cover inspection record. Each landfill must keep a cover application record on site readily available for inspection by commission representatives and authorized agents or employees of local governments having jurisdiction. This record must specify the date cover (no exposed waste) was accomplished, how it was accomplished, and the last area covered. This applies to daily, intermediate, and alternative daily cover. For final cover, this record must specify the area covered, the date cover was applied, and the thickness applied that date. Each entry must be certified by the signature of the on-site supervisor that the work was accomplished as stated in the record. The cover inspection record must document inspections required under subsection (g) of this section, the findings, and corrective action taken when necessary.

§330.166. Ponded Water.

The ponding of water over waste on a landfill, regardless of its origin, must be prevented. Ponded water that occurs in the active portion of a landfill or on a closed landfill must be eliminated and the area in which the ponding occurred must be filled in and regraded within seven days of the occurrence. A ponding prevention plan must be provided in the site operating plan that identifies techniques to be used at the landfill to prevent the ponding of water over waste, an inspection schedule to identify potential ponding sites, corrective actions to remove ponded water, and general instructions to manage water that has been in contact with waste.

§330.169. Waste in Enclosed Containers or Enclosed Vehicles Accepted at Type IV Landfills.

Acceptance of waste in enclosed containers or enclosed vehicles at Type IV landfills must be in accordance with the following requirements.
(1) Waste in enclosed containers or enclosed vehicles must not be accepted at a Type IV landfill unless all of the following conditions have been met.

(A) The landfill to receive the waste must be participating in the funding program to monitor these activities as detailed in paragraph (2) of this section.

(B) Each enclosed container or enclosed vehicle must have all required approvals and/or permits from the executive director in accordance with §330.7 of this title (relating to Permit Required).

(C) Enclosed containers or enclosed vehicles must only be accepted at their designated time and on the specified day in accordance with this section, commission permits, or other orders of the commission.

(D) A commission inspector shall be on site and shall witness the unloading process to ensure that no putrescible waste or household waste is present. Any waste considered non-allowable by the inspector must be removed from the working face and subsequently from the facility in accordance with §330.133 of this title (relating to Unloading of Waste).

(E) Each transporter delivering waste in enclosed containers or enclosed vehicles must, prior to discharging the load, provide to the landfill operator a transporter trip ticket for the route being delivered. Trip tickets must be maintained as part of the operating record.

(F) The commission may revoke a transporter’s authorization to deliver waste to a Type IV landfill for failure to comply with this chapter.

(2) The executive director shall determine the approximate annual costs of implementing and maintaining the surveillance and enforcement of all the activities associated with the acceptance of enclosed containers or enclosed vehicles at Type IV landfills.

(A) Notification of these costs will be provided to each affected holder of a Type IV landfill permit with notice of public hearing to apportion these costs.

(B) The public hearing will be held at a location to be determined by the commission with at least a 20-day advance notice. Notice will be provided Type IV landfill operators by regular and certified mail.

(C) The public hearing will be for the purpose of establishing the total compensation and expenditures required to administer this program and the apportionment of those costs to the Type IV landfill operators to be reimbursed to the commission.

(D) Unless authorized by the executive director, the apportioned monthly payments will be due by the tenth day of each month.

(E) The apportioned costs to each Type IV landfill may be altered periodically to add or subtract landfills from the program. A 30-day notice will be provided to each participating Type IV landfill and/or proposed additional landfill and a hearing will be held, upon request, by one of the affected parties or on the commission’s own motion.

(3) A Type IV landfill operator who is delinquent in making the monthly payment shall immediately halt acceptance of waste in enclosed containers or enclosed vehicles and may also be subject to other penalties allowable under state law.

(4) Stationary compactors permitted in accordance with §330.7 of this title (relating to Permit Required) and municipalities having transporter routes permitted in accordance with §330.7 of this title are exempt from the requirements of paragraphs (1) - (3) of this section. However, the landfill operator shall obtain from the transporter a hauler trip ticket for a municipal transporter route or stationary compactors, as appropriate, prior to allowing discharge of the material at the landfill. These trip tickets must be maintained as a part of the operating record.

§330.171 Disposal of Special Waste.

(a) Type IV and Type IVIE landfills having permits issued by the commission may accept special wastes consistent with the limitations established in §330.5(a)(2) of this title (relating to Classification of Municipal Solid Waste Facilities) and the waste acceptance plan required by §330.61(b) of this title (relating to Contents of Part II of the Application). Except as specified in subsection (c)(4) of this section, Type IVIE landfills authorized by the permit by rule of §330.7(f) of this title (relating to Permit Required) may not accept special wastes.

(b) The acceptance and/or disposal of a special waste as defined in §330.3 of this title (relating to Definitions), that is not specifically identified in subsection (c) or (d) of this section, or in §330.173 of this title (relating to Disposal of Industrial Wastes), requires prior written approval from the executive director.

(1) Approvals will be waste-specific and/or site-specific and will be granted only to appropriate facilities operating in compliance with this chapter.

(2) Requests for approval to accept special wastes must be submitted by the generator to the executive director or to a facility with an approved plan and must include, but are not limited to, the following:

(A) a complete description of the chemical and physical characteristics of each waste, a statement as to whether or not each waste is a Class I industrial waste as defined in §330.3 of this title, and the quantity and rate at which each waste is produced and/or the expected frequency of disposal; and

(B) for Class I industrial solid waste, a hazardous waste determination as required by §335.6(c) of this title (relating to Notification Requirements);

(C) an operational plan containing the proposed procedures for handling each waste and listing required protective equipment for operating personnel and on-site emergency equipment; and

(D) a contingency plan outlining responsibility for containment and cleanup of any accidental spills occurring during the delivery and/or disposal operation.

(3) A vacuum truck, as used in this section, refers to any vehicle that transports liquid waste to a solid waste disposal or processing facility. A vacuum truck must transport liquid waste to a landfill that has a sludge stabilization and solidification process or to a Type V processing facility for sludge, grease trap, or grit trap waste. The owner or operator shall submit written notification to the executive director of the liquids-processing activity required in §330.11 of this title (relating to Notification Required).

(4) Soils contaminated by petroleum products, crude oils, or chemicals in concentrations of greater than 1,500 milligram per kilogram (mg/kg) total petroleum hydrocarbons; or contaminated by constituents of concern that exceed the concentrations listed in Table 1, Constituents of Concern and Their Maximum Leachable Concentrations in §335.521(a)(1) of this title (relating to Appendices) must be disposed in dedicated cells that meet the requirements of §330.331(c) of this title (relating to Design Criteria).

(5) The executive director may authorize the receipt of special waste with a written concurrence from the owner or operator; however, the facility operator is not required to accept the waste.

(6) The executive director may revoke an authorization to accept special waste if the owner or operator does not maintain compliance.
with these rules or conditions imposed in the authorization to accept special waste.

(c) Receipt of the following special wastes does not specifically require written authorization for acceptance provided the waste is handled in accordance with the noted provisions for each waste.

(1) Medical wastes that have not been treated in accordance with the procedures specified in Subchapter Y of this chapter (relating to Medical Waste Management) must not be accepted at a landfill unless authorized in writing by the executive director. The executive director may provide this authorization when a situation exists that requires disposal of untreated medical wastes in order to protect the human health and the environment from the effects of a natural or man-made disaster.

(2) Treated medical waste that still has a special characteristic or property after the treatment process will still be considered a special waste similar to those items listed in §330.3(150)(A)-(S) of this title, provided the waste is accompanied by a waste shipping document.

(3) Dead animals and/or slaughterhouse waste may be accepted at any Type I or Type IAE landfill without further approval from the executive director provided the carcasses and/or slaughterhouse waste are covered by three feet of other solid waste or at least two feet of earthen material immediately upon receipt.

(4) Regulated asbestos-containing material (RACM) as defined in 40 Code of Federal Regulations Part 61 may be accepted at a Type I or Type IAE landfill in accordance with subparagraphs (A)-(I) of this paragraph provided the landfill has been authorized to accept RACM. The facility operator proposing to accept RACM shall provide written notification to the executive director of the intent to accept RACM.

(A) To receive authorization to accept RACM, the owner or operator shall dedicate a specific area or areas of the landfill to receive RACM and shall provide written notification to the executive director of the area or areas to be designated for receipt of RACM. After initial authorization to receive RACM is issued, additional areas may be designated by providing written notice to the executive director.

(B) The location of the area designated to receive the RACM must be surveyed and marked by a registered professional land surveyor and identified on a current site diagram that is maintained at the landfill. A copy of the current site diagram identifying the RACM area must be submitted to the executive director immediately upon completion of the diagram. The operator shall maintain a record of each load of RACM accepted as to its location, depth, and volume of material.

(C) Upon closure of the unit that accepted RACM, a specific notation that the facility accepted RACM must be placed in the deed records for the facility with a diagram identifying the RACM disposal areas. Concurrently, a notice of the deed recordation and a copy of the diagram identifying the asbestos disposal areas must be submitted to the executive director.

(D) Delivery of the RACM to the landfill unit must be coordinated with the on-site supervisor so the waste will arrive at a time it can be properly handled and covered.

(E) RACM must only be accepted at the facility in tightly closed and unruptured containers or bags or must be wrapped with at least six-mil polyethylene.

(F) The bags or containers holding the RACM must be placed below natural grade level. Where this is not possible or practical, provisions must be made to ensure that the waste will not be subject to future exposure through erosion or weathering of the intermediate and/or final cover. RACM that is placed above natural grade must be located in the landfill unit such that it is, at closure of the landfill unit, not less than 20 feet from any final side slope of the unit and must be at least ten feet below the final surface of the unit.

(G) The bags or containers holding the RACM must be carefully unloaded and placed in the final disposal location. The RACM must be covered immediately with 12 inches of earthen material or three feet of solid waste containing no asbestos. Care must be exercised in the application of the cover so that the bags or containers are not ruptured.

(H) A contingency plan in the event of accidental spills (e.g., ruptured bags or containers) shall be prepared by the owner or operator prior to accepting RACM. The plan must specify the responsible person(s) and the procedure for the collection and disposal of the spilled material.

(I) RACM that has been designated as a Class I industrial waste may be accepted by a Type I landfill authorized to accept RACM. The RACM waste is handled in accordance with the provisions of this paragraph and the landfill operator complies with the provisions of §330.137(g)-(i) of this title (relating to Site Sign).

(5) Nonregulated asbestos-containing materials (non-RACM) may be accepted for disposal at a Type I, Type IAE, Type IV, or Type IV AE landfill provided the wastes are placed on the active working face and covered in accordance with this chapter. Under no circumstances may any material containing non-RACM be placed on any surface or roadway that is subject to vehicular traffic or disposed of by any other means by which the material could be crumbled into a friable state.

(6) Empty containers that have been used for pesticides, herbicides, fungicides, or rodenticides must be disposed of in accordance with subparagraphs (A) and (B) of this paragraph.

(A) These containers may be disposed of at any landfill provided that:

(i) the containers are triple-rinsed prior to receipt at the landfill;

(ii) the containers are rendered unusable prior to or upon receipt at the landfill; and

(iii) the containers are covered by the end of the same working day they are received.

(B) Those containers for which triple-rinsing is not feasible or practical (e.g., paper bags, cardboard containers) may be disposed of under the provisions of paragraph (7) of this subsection or in accordance with §330.173 of this title, as applicable.

(7) Municipal hazardous waste from a conditionally exempt small quantity generator may be accepted at a Type I or Type IAE landfill without further approval from the executive director provided the amount of waste does not exceed 220 pounds (100 kilograms) per month per generator, and provided the landfill owner or operator authorizes acceptance of the waste.

(8) Sludge, grease trap waste, grit trap waste, or liquid wastes from municipal sources can be accepted at a Type I or Type IAE landfill for disposal only if the material has been, or is to be, treated or processed and the treated/processed material has been tested, in accordance with Test Method 9095 (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (United States Environmental Protection Agency Publication Number SW-846), as amended, and is certified to contain no free liquids. Prior to treatment or processing of this waste at the landfill, the owner or operator shall submit written notification to the executive director of the liquids processing activity as required in §330.11 of this title;
(d) Used oil filters from internal combustion engines must not be intentionally and knowingly accepted for disposal at landfills permitted under this chapter except as provided in paragraphs (1) and (2) of this subsection.

(1) Used oil filters must not be offered for disposal by a generator and/or be intentionally and knowingly accepted for landfill disposal unless the filter has been:

(A) crushed to less than 20% of its original volume to remove all free-flowing used oil; or

(B) processed by a method other than crushing to remove all free-flowing used oil. A filter is considered to have been processed if:

(i) the filter has been separated into component parts and the free-flowing used oil has been removed from the filter element by some means of compression in order to remove free-flowing used oil;

(ii) the used filter element of a filter consisting of a replaceable filtration element in a reusable or permanent housing has been removed from the housing and pressed to remove free-flowing used oil; or

(iii) the housing is punctured and the filter is drained for at least 24 hours.

(2) Used oil filters (to include filters that have been crushed and/or processed to remove free-flowing used oil) must not be offered for landfill disposal by any non-household generator and must not be intentionally or knowingly accepted by any landfill permitted and regulated under this chapter.


(a) Except as specified in subsection (c) of this section, Class 1 industrial solid waste shall not be disposed in a Type IAE landfill unit.

(b) Generators shall manifest Class 1 industrial solid waste as required by §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste). Owners or operators of municipal solid waste landfill facilities shall not accept such wastes without prior written approval from the executive director and specific authorization in the permit.

(c) Wastes that are Class 1 only because of asbestos content may be accepted at any Type I or Type IAE landfill that is authorized to accept regulated asbestos-containing material (RACM) as stated in §330.171(c)(3)(A) of this title (relating to Disposal of Special Wastes). Authorization to accept this waste is implied in the authorization to accept RACM unless the acceptance of industrial wastes is prohibited by the permit. All Class 1 industrial asbestos wastes must be manifested and the owner or operator of the landfill facility shall comply with the requirements of subsections (g)–(i) of this section.

(d) Unless the facility permit authorizes the acceptance of a specified type of Class 1 industrial waste, an authorization to accept specific types of Class 1 wastes will be waste-specific and site-specific and will be granted only to appropriate facilities that are operating in compliance with this chapter. Requests for authorization to accept Class 1 solid wastes must be submitted in writing to the executive director and must include, but are not limited to, the following:

(1) a complete description of the chemical and physical characteristics of the waste in accordance with §335.587 of this title (relating to Waste Analysis), a statement as to whether or not the waste is a hazardous waste as defined in §330.3 of this title (relating to Definitions), and the quantity and rate at which the waste is produced and/or the expected frequency of disposal;

(2) an operational plan containing the proposed procedures for handling the waste and a listing of required protective equipment for operating personnel and on-site emergency equipment. This plan must become a part of the site operating plan; and

(e) a written contingency plan meeting the requirements of §335.589 of this title (relating to Contingency Plan). This plan shall become a part of the site operating plan.

(f) Any authorization to accept Class 1 waste is subject to the site operating in compliance with these rules and any specific conditions required under any letter(s) of authorization. Failure to operate the site in compliance with these rules or any special conditions imposed by the executive director may result in revocation of the authorization to accept Class 1 waste.

(g) All shipments of Class 1 waste must be accompanied by a manifest (waste-shipping control ticket) as required by the commission. The facility operator or a designated representative shall sign the manifest for any authorized shipments of Class 1 waste. The facility operator shall not accept or sign for shipments of Class 1 waste for which the authorization to accept has not been granted by the executive director or has not been authorized by permit provisions. The facility operator shall retain a copy of the disposal facility copy of the manifest for a period of three years. This time period is automatically extended if any enforcement action involving the owner, operator, or landfill facility is initiated or pending by the executive director.

(h) A facility that accepts any Class 1 waste must submit to the executive director a written report of Class 1 waste received. This report must be submitted no later than the 25th day of the month following the month in which the waste was received. Reports must be submitted on forms provided by the commission and must include all information required. Monthly reports must be submitted by facilities that have received Class 1 wastes including those months in which no Class 1 waste is received at the facility unless an exception is granted by the executive director. Failure to submit the reports required by this subsection in a timely manner is a violation of these rules.

(i) Class 2 industrial solid waste, except special wastes as defined in §330.3 of this title, may be accepted at any Type I or Type IAE landfill provided the acceptance of this waste does not interfere with facility operation. Type IV and Type IVAE landfills having permits issued by the commission may accept Class 2 industrial solid waste consistent with the limitations established in §330.5(a)(2) of this title (relating to Classification of Municipal Solid Waste Facilities) and the waste acceptance plan required by §330.61(b) of this title (relating to Contents of Part II of the Application). Type IVAE landfills authorized by the permit by rule of §330.7(f) of this title (relating to Permit Required) may not accept Class 2 industrial solid waste.

(j) Class 3 industrial solid waste may be disposed of at a Type I, Type IAE, Type IV, or Type IVAE landfill provided the acceptance of this waste does not interfere with facility operation.


Visual screening of deposited waste materials at a municipal solid waste facility must be provided by the owner or operator for the facility where the executive director determines that screening is necessary as required by the permit.

§330.177. Leachate and Gas Condensate Recirculation.
The owner or operator may recirculate leachate or gas condensate derived from a landfill unit into a Type I landfill unit at the same facility if the Type I landfill unit is designed and constructed with a leachate collection system and a composite liner or an alternative liner with a leachate collection system approved by the executive director. The owner or operator shall make the procedure for leachate or gas condensate recirculation a part of the site operating plan. The owner or operator is not required to characterize leachate and gas condensate which is being recirculated into an approved Type I landfill unit. The owner or operator is not required to characterize leachate and gas condensate sent to a publically owned treatment works or Resource Conservation and Recovery Act authorized facility beyond that required by the treatment facility.

§330.179. Operational Standards for Class I Industrial Solid Waste Management at a Municipal Solid Waste Type I or Type IAE Landfill Facility.

(a) The owner or operator of a municipal solid waste Type I or Type IAE landfill facility managing Class I industrial solid waste shall comply with the following requirements:

1. §335.585 of this title (relating to General Inspection Requirements);
2. §335.586 of this title (relating to Personnel Training);
3. §335.587 of this title (relating to Waste Analysis);
4. §335.588 of this title (relating to General Requirements for Ignitable, Reactive, or Incompatible Wastes);
5. §335.589 of this title (relating to Contingency Plan); and
6. §335.590(25) of this title (relating to Operational and Design Standards).

(b) Nonhazardous industrial waste may be placed above natural grade provided that the conditions in §335.590(24)(F)(i) - (vi) of this title are met, except as provided in §335.590(24)(F)(vii) of this title.

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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For further information, please call: (512) 239-0348

SUBCHAPTER E. PERMIT PROCEDURES

30 TAC §§330.50 - 330.66, 330.70 - 330.73, 330.75

(Reviewer’s note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The proposed repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.0519, Standard Permit. The proposed repeals also implement Texas Water Code, §5.103, Rules.

§330.50. Preapplication Review.

§330.51. Permit Application for Municipal Solid Waste Facilities.


§330.55. Site Development Plan.

§330.56. Attachments to the Site Development Plan.


§330.59. Additional Technical Requirements of the Application for Solid Waste Processing and Experimental Sites (Type V and Type VI).

§330.60. Technical Requirements of an Application for Registration of Solid Waste Facilities (Type V and Type VI).

§330.61. Land-Use Public Hearing.


§330.63. Duration and Limits of Permits.

§330.64. Additional Standard Permit Conditions for Municipal Solid Waste Facilities.

§330.65. Registration for Solid Waste Management Facilities.


§330.70. Registration of Facilities That Recover Gas for Beneficial Use.


§330.72. Registration for Mobile Liquid Waste Processing Units.

§330.73. Registration of Demonstration Projects for Liquid Waste Processing Facilities.

§330.75. Animal Crematory Facility Design and Operational Requirements for Permitting by Rule.

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

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For further information, please call: (512) 239-0348
SUBCHAPTER E. OPERATIONAL STANDARDS FOR MUNICIPAL SOLID WASTE STORAGE AND PROCESSING UNITS

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is proposed under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.0519, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The proposed new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.0519, Standard Permit. The proposed new sections also implement Texas Water Code, §5.103, Rules.

§330.201. Applicability.

(a) This subchapter applies to operation of the municipal solid waste storage and processing units.

(b) Permits and registrations for units that existed before the comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) became effective remain valid, except as provided by this subchapter. The permittee or registrant is under an obligation to apply for a modification within 180 days, unless approved otherwise by the executive director, in accordance with §305.70(k) of this title (relating to Municipal Solid Waste Permit and Registration Modifications), as applicable, to incorporate the 2006 Revisions. The initial application will be processed as a modification requiring public notice and any subsequent applications will be processed in accordance with Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits). Timely submission of a request for a modification qualifies the owners or operators of existing units to operate under requirements contained in the existing authorization.

§330.204. Waste Acceptance and Analysis.

(a) The owner or operator shall identify the sources and characteristics of wastes (i.e., residential, commercial, grease trap, grit trap, solubles sludges, septage, special wastes, Class 2 or Class 3 industrial solid wastes, compost feedstocks, etc.) proposed to be received for storage or processing. Municipal solid waste facilities may not receive regulated hazardous waste, unless authorized in accordance with Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste). If a waste constituent or characteristic could be a limiting parameter that may impact or influence the design and operation of the facility, the owner or operator shall specify parameter limitations of each type of waste to be managed by the facility that may include constituent concentrations and characteristics such as pH, fats, oil and grease concentrations, total suspended solids, chemical oxygen demand, biochemical oxygen demand, organic and metal constituent concentrations, water content, or other constituents.

(b) The owner or operator shall determine types and an estimate of the amount of each waste to be received daily; the maximum amount of waste to be stored at any one point in time; the maximum and average lengths of time that waste is to remain at the facility; the maximum and average waste processing times; and the intended destination of the solids and liquids generated by a facility. If applicable, a narrative must be included that describes how 10% of the incoming waste will be recovered and its intended use.

(c) For solid waste processing and experimental facilities, the following requirements apply:

(1) The owner or operator shall establish the method of sampling and analysis for the effluent discharged to a trap, interceptor, or treatment facility permitted under Texas Water Code, Chapter 26. At a minimum, the method of sampling, the frequency of sampling, and the tests to be made shall be part of the sampling and analysis plan. All sampling and analysis shall be done according to approved United States Environmental Protection Agency (EPA) methods. Records shall be maintained for a three-year period.

(2) At a minimum, analyses for wastes received shall be made for benzene, lead, and total petroleum hydrocarbons (TPH). Grit trap wastes must be analyzed annually for biochemical oxygen demand, total suspended solids, benzene, TPH, and lead. Sludges that are disposed of at a municipal solid waste landfill must be analyzed annually for benzene, lead, and TPH. At a minimum, effluent from the facility must be analyzed annually for TPH, fats, oil and grease, and pH. Records of each analysis shall be maintained at the facility for a minimum of three years. All sampling and analysis shall be done according to EPA-approved methods.

§330.205. Facility-Generated Wastes.

(a) The operator of a storage or processing facility shall specify the characteristics and constituent concentrations of wastes emanating from the facility. The owner or operator must be able to provide documentation that all wastes leaving the facility can be adequately managed by other facilities, licensed or permitted by the appropriate agencies to receive such wastes, at the volumes and concentrations estimated in the facility design.

(b) Wastes generated by a facility must be processed or disposed at an authorized solid waste management facility.

(c) Wastewaters generated by a facility shall be managed in accordance with §330.207 of this title (relating to Contaminated Water Management).
§330.207. Contaminated Water Management.

(a) All liquids resulting from the operation of solid waste facilities shall be disposed of in a manner that will not cause surface water or groundwater pollution. The owner or operator may send wastewater off site to an authorized facility or shall provide for the treatment of wastewaters resulting from the treatment of wastewaters from the collection area or processing and cleaning washing. The owner or operator shall not discharge contaminated water outside of the state in a public sewer system, a septic system, or a wastewater treatment plant. On-site wastewater treatment systems shall comply with Chapter 285 of this title (relating to On-Site Sewage Facilities). The owner or operator shall obtain any permit or other approval required by state or local code for the system installed.

(b) Contaminated water and leachate shall be collected and contained until properly managed. Collection units other than storage tanks shall have a clay or synthetic liner and the liner shall be constructed in accordance with §330.331(b) of this title (relating to Design Criteria). One foot of freeboard for the storm event shall be provided.

(c) The use of leachate and gas condensate in any mining process is prohibited.

(d) Facilities that process grease trap waste, grit trap waste, or septic: mobile liquid waste processing units; and demonstration projects for liquid waste processing facilities shall not discharge to a septic system.

(e) Off-site discharge of contaminated waters shall be made only after approval under the Texas Pollutant Discharge Elimination System authority.

(f) Wastewaters discharged to a treatment facility permitted under Texas Water Code, Chapter 26 must not:

1. interfere with or pass-through the treatment facility processes or operations;
2. interfere with or pass-through its sludge processes, use, or disposal; or
3. otherwise be inconsistent with the prohibited discharge standards, including 40 Code of Federal Regulations Part 403, General Pretreatment Regulations for Existing and New Source Pollution.

(g) The daily effluent design standard for oil and grease concentration leaving the facility and entering a public sewer system shall not exceed 200 milligrams per liter, the concentration established in the wastewater discharge permit pretreatment limit or the concentration established by the treatment facility permitted under Texas Water Code, Chapter 26, the National Pollutant Discharge Elimination System, or the following liquid effluent limits, if the discharge points do not require compliance with locally set limits.

(h) Lagoons, open-top storage tanks, open vessels, and underground storage units are prohibited at liquid waste transfer facilities.

§330.209. Storage Requirements.

(a) All solid waste shall be stored in such a manner that it does not constitute a fire, safety, or health hazard or provide food or harborage for animals and vectors, and shall be contained or bundled so as not to result in litter. It shall be the responsibility of the occupant of a residence or the owner or manager of an establishment to utilize storage containers of an adequate size and strength, and in sufficient numbers, to contain all solid waste that the residence or establishment generates in the period of time between collections.

(b) An on-site storage area for source-separated or recyclable materials should be provided that is separate from a transfer station or process area. Control of odors, vectors, and windblown waste from the storage area shall be maintained.

(c) Unprocessed waste and recycled materials shall be stored in an enclosed building, vessel, or container.

§330.211. Approved Containers.

All solid waste containing food wastes shall be stored in covered or closed containers that are leakproof, durable, and designed for safe handling and easy cleaning.

1. Nonreusable containers. Nonreusable containers shall be of suitable strength to minimize animal scavenging or rupturing during collection operations.

2. Reusable containers. Reusable containers must be maintained in a clean condition so that they do not constitute a nuisance and to retard the harborage, feeding, and propagation of vectors.

(A) All containers to be emptied manually must be capable of being serviced without the collector coming into physical contact with the solid waste.

(B) Containers to be mechanically handled must be designed to prevent spillage or leakage during storage, handling, or transport.

§330.213. Citizen’s Collection Stations.

(a) Citizen’s collection stations shall be provided with the type and quantity of containers compatible with the areas to be served. Rules shall be posted governing the use of the facility to include who may use it, what may or may not be deposited, etc. The responsible person that owns or operates the collection center shall provide for the collection of deposited waste on a scheduled basis and supervise the facility in order to maintain it in a sanitary condition.

(b) A citizen’s collection station may accept sharps from single-family or multi-family dwellings, hotels, motels; or other establishments that provide lodging and related services for the public. In such instances, the sharps will not be considered medical waste.


Operational standards for permitted stationary compactors are as follows.

1. Stationary compactors shall be operated and maintained in such a way as not to create a public nuisance through material loss or spillage, odor, vector breeding or harborage, or other condition.

2. The certificate within the application and the provisions of the permit must be adhered to at all times.

§330.217. Pre-Operation Notice.

(a) Type V mobile liquid waste processing unit demonstration of viability.
(1) The owner or operator shall not initiate operation of each unit until a pre-operation inspection of each mobile unit has been conducted and the executive director gives written authorization to accept waste. The owner or operator shall demonstrate under field conditions that the process works. The demonstration shall be conducted under the supervision of experienced executive director staff and when appropriate, with local government staff. The viability demonstration shall be made by processing three traps in a single day representative of the traps normally serviced. The traps must have been in operation and not have been serviced for at least 30 days prior to the demonstration. The volume of material to be processed before unloading must be consistent with manufacturer’s performance specifications and the operating plan, particularly as to the expected ratios between gross volumes processed and amounts discharged following processing. Multiple grab samples of effluent taken from the discharge outlet of the mobile processing unit must be tested for fats, oils, greases, and pH and be designed and operated to meet the effluent limits imposed by its treatment facility permitted under Texas Water Code, Chapter 26, Texas Pollutant Discharge Elimination System, or the liquid effluent limits specified in §330.207(h) of this title (relating to Contaminated Water Management) if the discharge points do not require compliance with locally set limits.

(2) Waste solids (sludges) produced by the mobile processing unit must be disposed of in a solid waste disposal facility regulated by the State of Texas or other location approved by the executive director. Solids should be dewatered to the point that they pass the United States Environmental Protection Agency (EPA) paint filter test, EPA Test Method 9095, or they should be taken to an authorized facility to be dewatered prior to land filling.

(3) The owner or operator shall remain responsible for making corrections or changes that are necessary to meet requirements prior to operating the mobile unit.

(b) Type VI demonstration projects for liquid waste processing facilities. The operation of the facility shall not begin until a pre-opening inspection has been conducted and written authorization to accept waste has been given by the executive director.

§330.219. Recordkeeping and Reporting Requirements.

(a) A copy of the permit or registration, the approved permit or registration application, and any other required plan or other related document shall be maintained at the municipal solid waste facility at all times during construction. After completion of construction, an as-built set of construction plans and specifications shall be maintained at the facility or at an alternative location approved by the executive director. These plans shall be made available for inspection by agency representatives or other interested parties. These documents shall be considered a part of the operating record for the facility.

(b) The owner or operator shall promptly record and retain in an operating record, the following information:

(1) all location-restriction demonstrations;

(2) inspection records and training procedures;

(3) closure plans and any monitoring, testing, or analytical data relating to closure requirements;

(4) all cost estimates and financial assurance documentation relating to financial assurance for closure;

(5) copies of all correspondence and responses relating to the operation of the facility, modifications to the permit, approvals, and other matters pertaining to technical assistance;

(6) all documents, manifests, trip tickets, etc., involving special waste;

(7) any other document(s) as specified by the approved authorization or by the executive director;

(8) record retention provisions for trip tickets as required by §312.145 of this title (relating to Transporters - Record Keeping); and

(9) recordkeeping provisions to justify, on a quarterly basis, that the relevant percentage of the incoming waste is processed to recover recycled products for applicable facilities. Failure to achieve the relevant percent recycling rate in any two quarters within any one-year period will cause a change in a facility’s status and require the owner or operator of the facility to obtain a registration or permit, as appropriate, to continue facility operations. The owner or operator shall submit an annual report to the executive director by March 1st summarizing the recycling activities and percent of incoming solid waste that was recycled during the past calendar year.

(c) For signatories to reports, the following conditions apply.

(1) The owner or operator shall sign all reports and other information requested by the executive director as described in §305.44(a) of this title (relating to Signatories to Applications) or be an authorized representative of the owner or operator. A person is a duly authorized representative only if:

(A) the authorization is made in writing by the owner or operator as described in §305.44(a) of this title;

(B) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity or for environmental matters for the owner or operator, such as the position of plant manager, environmental manager, or a position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

(C) the written authorization is submitted to the executive director.

(2) If an authorization under this section is no longer accurate because of a change in individuals or position, a new authorization satisfying the requirements of this section must be submitted to the executive director prior to, or together with, any reports, information, or applications to be signed by an authorized representative.

(3) Any person signing a report shall make the certification in §305.44(b) of this title.

(d) For permitted municipal solid waste composting and landfill mining facilities, the operator shall maintain records on-site, available for inspection by the executive director for a period consisting of the two most recent calendar years, except as noted in paragraphs (1)-(3) of this subsection. The records must consist of the following:

(1) a log of abnormal events at the facility, including, but not limited to, hazardous substances uncovered, fires, explosions, process disruptions, extended equipment failures, injuries, and weather damage;

(2) results of final product testing required by §330.613 of this title (relating to Sampling and Analysis Requirements for Final Soil Product) or §332.71 of this title (relating to Sampling and Analysis Requirements for Final Product); and

(3) copies of the annual report for the five most recent calendar years.

(e) All information contained in the operating record shall be furnished upon request to the executive director and shall be made available at all reasonable times for inspection by the executive director.

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(f) The owner or operator shall retain all information contained within the operating record and the different plans required for the facility for the life of the facility.

(g) The executive director may set alternative schedules for recordkeeping and notification requirements as specified in subsections (a) - (e) of this section.

(h) Owners or operators of a Type V processing facility accepting delivery of untreated medical waste for which a shipping document is required under §330.121(f) of this title (relating to Transporters of Untreated Medical Waste) for processing shall ensure each of the following requirements are met:

(1) a shipping document accompanies the shipment, which designates the Type V facility to receive the waste;

(2) the owner or operator signs the shipping document and immediately gives at least one copy of the signed shipping document to the transporter;

(3) the owner or operator retains one copy of the shipping document; and

(4) within 45 days after the delivery, the owner or operator sends a written or electronic copy of the shipping document to the generator.

§330.221. Fire Protection.

(a) An adequate supply of water under pressure must be available for firefighting purposes.

(b) Firefighting equipment must be readily available.

(c) A fire protection plan shall be established, and all employees shall be trained in its contents and use. This fire protection plan shall describe the source of fire protection (a local fire department, fire hydrants, fire extinguishers, water tanks, water well, etc.), procedures for using the fire protection source, and employee training and safety procedures. The fire protection plan shall comply with local fire codes.

§330.222. Access Control.

(a) Public access to all municipal solid waste facilities shall be controlled by means of artificial barriers, natural barriers, or a combination of both, appropriate to protect human health and safety and the environment. Uncontrolled access to other operations located at a municipal solid waste facility shall be prevented.

(b) The facility access road from a publicly owned roadway must be at least a two-lane gravel or paved road, designed for the expected traffic flow. Safe on-site access for commercial collection vehicles and for residents must be provided. The access road design must include adequate turning radii according to the vehicles that will utilize the facility and avoid disruption of normal traffic patterns. Vehicle parking must be provided for equipment, employees, and visitors. Safety bumpers at hoppers must be provided for vehicles. A positive means to control dust and mud must be provided.

(c) Access to the facility must be controlled by a perimeter fence, consisting of a four-foot barbed wire fence or a six-foot chain-link fence or equivalent, and have lockable gates. An attendant shall be on-site during operating hours. The operating area and transport unit storage area shall be enclosed by walls or fencing.


(a) The unloading of solid waste shall be confined to as small an area as practical. An attendant shall be provided at all facilities to monitor all incoming loads of waste. Appropriate signs shall also be used to indicate where vehicles are to unload. The use of forced access lanes, identified by ditches, dikes, fences, or other means, shall be used in conjunction with signs for the prevention of indiscriminate dumping. The owner or operator is not required to accept any solid waste that he/she determines will cause or may cause problems in maintaining full and continuous compliance with these sections.

(b) The unloading of waste in unauthorized areas is prohibited. The owner or operator shall ensure that any waste deposited in an unauthorized area will be removed promptly and disposed of properly.

(c) The unloading of prohibited wastes at the municipal solid waste facility shall not be allowed. The owner or operator shall ensure that any prohibited waste will be returned promptly to the transporter or generator of the waste.


Storage and processing areas shall be designed to control and contain spills and contaminated water from leaving the facility. The design shall be sufficient to control and contain a worst case spill or release. Unenclosed containment areas shall also account for precipitation from a 25-year, 24-hour storm.


(a) The waste acceptance hours of a municipal solid waste facility may be any time between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, unless otherwise approved by the executive director or commission for a permit. Waste acceptance hours within the 7:00 a.m. to 7:00 p.m. weekday span do not require other specific approval. Transportation of materials and heavy equipment operation must not be conducted between the hours of 9:00 p.m. to 5:00 a.m., unless otherwise approved by the executive director. Operating hours for other activities do not require other specific approval. For facilities that do not require a permit or registration, the owner or operator will notify adjacent landowners by first-class mail concurrently with filing the request for expanded hours of operation with the commission’s regional office 30 days prior to the proposed implementation of the expanded hours. The notice will contain instructions for adjacent landowners to contact the commission’s regional office in writing of any concerns regarding the requested expanded waste acceptance or operating hours. The owner or operator may not begin operating during the expanded hours unless written approval is received by the regional office.

(b) In addition to the requirements of subsection (a) of this section, the executive director may approve alternative operating hours of up to five days in a calendar-year period to accommodate special occasions, special purpose events, holidays, or other special occurrences as specified in §305.70(f) of this title (relating to Municipal Solid Waste Permit and Registration Modifications).

(c) The commission’s regional offices may allow additional temporary operating hours to address disaster or other emergency situations, or other unforeseen circumstances that could result in the disruption of waste management services in the area.

(d) The facility must record the dates and times when any alternative or additional operating hours are utilized in the site operating record.

§330.231. Facility Sign.

Each facility shall conspicuously display at all entrances to the facility through which wastes are received, a sign measuring at least four feet by four feet with letters at least three inches in height stating the facility name; type of facility; the hours and days of operation; the permit number or facility number, if applicable; and facility rules. The posting of erroneous or misleading information shall constitute a violation of this section.


(a) Windblown material and litter shall be collected as necessary, at least once per day, to minimize unhealthy, unsafe, or unsightly conditions.
(1) A portable fence may be employed to confine windblown material resulting from unloading. If a portable fence is not practical, other suitable practices shall be employed to control windblown material.

(2) Litter scattered throughout the facility, along fences and access roads, and at the rate must be picked up once a day on the days the facility is in operation and properly managed.

(b) If a facility is not completely enclosed, the owner or operator shall provide a wire or other type fencing or screening when necessary to minimize windblown materials.

§330.235 Materials Along the Route to the Facility.

The facility owner or operator shall take steps to encourage that vehicles hauling waste to the facility are enclosed or provided with a tarpaulin, net, or other means to effectively secure the load in order to prevent the escape of any part of the load by blowing or spilling. The owner or operator shall take actions such as posting signs, reporting offenders to proper law enforcement officers, adding surcharges, or similar measures. On days when the facility is in operation, the owner or operator shall be responsible for at least once per day cleanup of waste materials spilled along and within the right-of-way of primary public access roads serving the facility for a distance of two miles in either direction from any entrances used for the delivery of waste to the facility. The facility operator shall consult with the Texas Department of Transportation, county, and/or local governments with maintenance authority over the roads concerning cleanup of primary public access roads and right-of-ways. An alternative clean-up frequency and distance may be approved by the executive director.


(a) All weather roads shall be provided within the facility to the unloading area(s) designated for wet-weather operation. The tracking of mud and debris on public roads from the facility shall be minimized.

(b) Dust from on-site and other access roads shall not become a nuisance to surrounding areas. A water source and necessary equipment or other means of dust control shall be provided.

(c) All on-site and other access roads shall be maintained on a regular basis. Access roads shall be regraded as necessary to minimize depressions, ruts, and potholes.

§330.239 Noise Pollution and Visual Screening.

The owner or operator of a transfer station shall provide screening or other measures to minimize noise pollution and adverse visual impacts.

§330.241 Overloading and Breakdown.

(a) The design capacity of a solid waste processing or experimental facility shall not be exceeded during operation. The facility shall not accumulate solid waste in quantities that cannot be processed within such time as will preclude the creation of odors, insect breeding, or harborage of other vectors. If such accumulations occur, additional solid waste shall not be received until the adverse conditions are abated.

(1) For facilities that process grease trap waste, grit trap waste, or septage, and demonstration projects for liquid waste processing facilities, the maximum time allowed for storage of unprocessed waste is 72 hours.

(2) For mobile liquid waste processing facilities, the maximum time allowed for storage of unprocessed waste is four days.

(b) If a significant work stoppage should occur at a solid waste processing or experimental facility due to a mechanical breakdown or other causes, the facility shall accordingly restrict the receiving of solid waste. Under such circumstances, incoming solid waste shall be diverted to an approved backup processing or disposal facility. If the work stoppage is anticipated to last long enough to create objectionable odors, insect breeding, or harborage of vectors, steps shall be taken to remove the accumulated solid waste from the facility to an approved backup processing or disposal facility.

(c) The owner or operator shall have alternative processing or disposal procedures for the solid waste in the event that the facility becomes inoperable for periods longer than 24 hours.

§330.243 Sanitation.

(a) At processing facilities, all working surfaces that come in contact with wastes shall be washed down on a weekly basis at the completion of processing. Processing facilities that operate on a continuous basis shall be swept daily and washed down at least two times per week.

(b) Wash waters shall not be allowed to accumulate on site without proper treatment to prevent the creation of odors or an attraction to vectors.

(c) All wash waters shall be collected and disposed of in an authorized manner.

§330.245 Ventilation and Air Pollution Control.

(a) Air emissions from municipal solid waste facilities must not cause or contribute to a condition of air pollution as defined in the Texas Clean Air Act.

(b) All facilities and constructed air pollution abatement devices must obtain authorization, under Chapter 116 of this title (relating to Control of Air Pollution By Permits for New Construction or Modifications) or Subchapter U of this chapter, as applicable, from the Air Permits Division prior to the start of construction.

(c) All liquid waste and solid waste shall be stored in odor-retaining containers and vessels.

(d) The facility shall be designed and operated to provide adequate ventilation for odor control and employee safety. The owner or operator shall prevent nuisance odors from leaving the boundary of the facility. If nuisance odors are found to be passing the facility boundary, the facility owner or operator may be required to suspend operations until the nuisance is abated.

(e) All air pollution emission capture and abatement equipment or equivalent technology shall be properly maintained and operated during the facility operation. Cleaning and maintenance of the abatement equipment shall be performed as recommended by the manufacturer and as necessary so that the equipment efficiency can be adequately maintained.

(f) The owner or operator shall employ one or more of the following measures:

1. air scrubber units for odor control;

2. on-site buffer zones for odor control. Consideration should be given to additional buffer zones within the facility property boundary for odor control;

3. additional waste handling procedures, storage procedures, and clean-up procedures for odor control when accepting putrescible waste; or

4. alternative ventilation and odor control measures.

(g) Process areas that recover material from solid waste that contains putrescibles shall be maintained totally within an enclosed building. Openings to the process area shall be controlled to prevent releases of nuisance odors from leaving the property boundary of the facility.

(h) The facility shall be designed to allow a minimal time of exposure of liquid waste to the air. Openings to processing buildings shall
be controlled to prevent release of nuisance odors to the atmosphere. The facility design must minimize waste contact with air during unloading of liquid waste into the facility.

(i) Cleaning and maintenance of mobile waste processing unit equipment shall be performed each day of operation to reduce odors.

(j) Reporting of emissions events shall be made in accordance with §101.201 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements) and reporting of scheduled maintenance shall be made in accordance with §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements).

(k) The owner or operator shall ensure that any unit of the municipal solid waste facility does not violate any applicable requirement of the approved state implementation plan developed under the federal Clean Air Act, §110, as amended, and §330.15(d) of this title (relating to General Prohibitions), which prohibits the open burning of waste at any municipal solid waste landfill unit.

(l) Any ponded water at the facility shall be controlled to avoid its becoming a nuisance. In the event that objectionable odors do occur, appropriate measures shall be taken to alleviate the condition.

The facility will comply with applicable federal, state, or local worker health and safety requirements in all operations. The facility health and safety plan is separate from and independent of the site operating plan.

The owner or operator shall provide potable water and sanitary facilities for all employees and visitors.

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

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SUBCHAPTER F. OPERATIONAL STANDARDS FOR SOLID WASTE LAND DISPOSAL SITES

30 TAC §§330.111 - 330.139

(EDITOR’S NOTE: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The proposed repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed repeals also implement Texas Water Code, §5.103, Rules.

§330.111. General.
§330.112. Pre-Operation Notice.
§330.113. Recordkeeping Requirements.
§330.114. Site Operating Plan
§330.117. Unloading of Waste.
§330.118. Facility Operating Hours.
§330.119. Site Sign.
§330.120. Control of Windblown Solid Waste and Litter.
§330.121. Easements and Buffer Zones.
§330.122. Landfill Markers and Benchmark.
§330.123. Materials Along the Route to the Site.
§330.124. Disposal of Large Items.
§330.125. Air Criteria.
§330.126. Disease Vector Control.
§330.128. Salvaging and Scavenging.
§330.130. Landfill Gas Control.
§330.131. Oil, Gas, and Water Wells.
§330.132. Compaction.
§330.133. Landfill Cover.
§330.135. Waste in Enclosed Containers or Enclosed Vehicles Accepted at Type IV Landfills.
§330.137. Disposal of Industrial Wastes.
§330.139. Contaminated Water Discharge.

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

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SUBCHAPTER F. ANALYTICAL QUALITY ASSURANCE AND QUALITY CONTROL


STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is proposed under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The proposed new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed new sections also implement Texas Water Code, §5.103, Rules.

§330.263. Laboratory Analyses.

(a) The operator or owner shall identify the laboratory analyses to be performed on the samples collected for analysis. The analytical methods must be noted within the data package that is to be submitted to the executive director.

(b) The owner or operator shall describe the practical quantitation limits for the constituents of concern, which must be below the maximum contaminant level values or as low as practicably feasible.

§330.265. Reporting Requirements.

(a) Sample analytical results must be reported to the executive director in a data package that contains, at a minimum, the analytical test reports documenting the analytical results and methods for each sample and analyte. The test reports must include the method-required quality control information needed to evaluate the analytical results of sampling and analysis with comparison to quality control standards and corrective action upon failure.

(b) The owner or operator shall ensure that the results of each test analysis carried out by the laboratory shall be reported accurately, clearly, unambiguously, and objectively, and in accordance with any specific instruction in the test method, work plan, permit, or program.

(c) The results shall be reported in a test report and include all the information requested in this chapter and necessary for the interpretation of the test results and all information required by the method used, project quality objectives, or permit.

(d) Unless otherwise specified by project objectives, all analytical results reported for soil and sediment samples must be reported on a dry weight basis with the percent solids (or percent moisture) also reported on the test reports, to allow back calculation of the result to a wet weight basis.

(e) The owner or operator shall ensure that each test report include at least the following information, unless the laboratory has valid reasons for not doing so:

(1) a title (e.g., “Test Report”);
(2) the name and address of the laboratory or facility and the location where the test and calibrations were carried out;
(3) a unique identification of the test report, and on each page an identification in order to ensure that the page is recognized as a part of the test report;
(4) name and address of the owner or operator;
(5) identification of the analytical method used;
(6) dates of measurements, as well as the report date;

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(7) reference to the sampling plan and procedures used by the laboratory where these are relevant to the validity or application of the results;

(8) the test results and units of measurement;

(9) the names, functions, and signatures or equivalent identification of persons authorizing the test report; and

(10) where necessary for the interpretation of the test results, a laboratory case narrative in accordance with §330.289 of this title (relating to Laboratory Case Narrative).

§330.267. Records Control.
The owner or operator must ensure that all quality assurance/quality control records be legible and stored and maintained in such a way that the records are readily retrievable and stored in an acceptable environment to prevent damage, deterioration, or loss. At a minimum, analytical records retention shall meet the commission requirement for a five-year record retention schedule.

(a) The owner or operator shall ensure that matrix spikes and matrix spike duplicate sample recovery percentages and relative percent differences for each matrix and analyte are included in the data package. If analytes are not specified for a project or if only a subset of the project analytes are evaluated with matrix spikes and matrix spike duplicates, the owner or operator shall ensure that the subset include analytes representative of the chemical properties of the project analytes of concern.

(b) The owner or operator shall ensure that each matrix spike and matrix spike duplicate test report include the spike concentration added to the sample for each matrix spike, the measured concentration of the analyte in the unspiked sample, the measured concentration of the analyte in both the matrix spike and matrix spike duplicate, the calculated percentage matrix spike/matrix spike duplicate recoveries and relative percent difference, and the laboratory and/or method quality control limits (acceptance criteria) for both matrix spike/matrix spike duplicate recovery and relative percent difference. The data set must also include the laboratory batch number and the laboratory identification number of the sample spiked.

(c) The owner or operator shall ensure that the laboratory perform matrix spikes at a minimum frequency of one out of every 20 samples per matrix type, except for analytes for which spiking solutions are not available (e.g., total dissolved solids, total volatile solids, total solids, pH, color, temperature, dissolved oxygen, or turbidity).

(d) When results of the matrix spikes and matrix spike duplicate are outside of the acceptable limits, the owner or operator shall arrange for the laboratory to check other quality control results (e.g., laboratory control sample), and if appropriate, have the laboratory qualify the results or use another analytical method. The results of the matrix spikes and matrix spike duplicate are sample and matrix-specific and may not normally be used to determine the validity of the entire batch of samples.

The owner or operator shall ensure that the laboratory reprocess any sample associated with the contaminated blank that exceeds a concentration greater than one-tenth of the measured concentration of any sample in the associated batch or exceeds the concentration present in the samples and is greater than one-tenth of a specified regulatory limit for analysis or the results reported with appropriate data-qualifying codes and submitted in the data package. These are minimum criteria to be used in cases where blank acceptance criteria are not defined in the referenced methodology used for analysis.

§330.273. Laboratory Control Samples and Laboratory Control Sample Duplicates.
(a) The laboratory control sample and laboratory control sample duplicate are composed of a sample matrix that is free from analytes of interest and spiked with known amounts of analytes or material containing known and verified amounts of analytes. The laboratory control sample and laboratory control sample duplicate are used to establish intra-laboratory or analyst-specific precision and accuracy of certain parts of the analytical methodology.

(b) The owner or operator shall ensure that the laboratory analyze laboratory control samples at a minimum of one of each per batch of 20 samples or less, per matrix type, except for analytes for which spiking solutions are not available as referenced in §330.269(c) of this title (relating to Matrix Spikes and Matrix Spike Duplicates). A laboratory control sample duplicate will be processed with the batch where needed to demonstrate precision.

(c) The owner or operator shall ensure that the laboratory calculate the results of the laboratory control sample to assess precision based on the recovery percentages of the analytes of interest within the analytical methodology.

§330.275. Surrogates.
The owner or operator shall have the laboratory review the surrogate recoveries used to measure method efficiency. The laboratory can, with qualifications, estimate the overall method efficiency.

§330.277. Data Reduction, Evaluation, and Review.
(a) The owner or operator shall ensure that a data reviewer consider the project data quality objectives to determine if the sample test results meet the project needs with regard to completeness, representativeness, and accuracy (bias and precision).

(b) The owner or operator shall review all data prior to submittal for commission review. The data review must include examination of the quality control results and other supporting data, including any data review by the laboratory, and must identify any potential impacts such as bias on the quality of the data using qualifiers in the test reports tied to explanations in footnotes and in the laboratory case narrative.

(c) The criteria used to evaluate each quality control parameter must be defined in the owner or operator’s groundwater sampling and analysis plan, project quality objectives, and/or other reference(s) of documented analytical laboratory or method criteria.

(d) The owner or operator shall ensure that the recordkeeping system allow historical reconstruction of all laboratory activities used in the data reduction, validation, and review of the analytical data, as the history of each sample must be readily understood throughout documentation, including intra-laboratory and inter-laboratory transfers of samples and sample extracts.

§330.279. Matrix Interferences and Sample Dilutions.
(a) The owner or operator shall ensure that the laboratory document and report problems and anomalies observed during analysis that might have an impact on the quality of the data. The laboratory must document any evidence of matrix interference or any situation where the analysis is out of control (quality control results outside of laboratory or method limits), as well as the measures taken to eliminate or reduce the interference or corrective action to bring the analysis back into control.

(b) The owner or operator shall ensure that if a laboratory dilutes a sample medium to minimize matrix interferences or to bring an analysis back into control, that the dilution factor used by the laboratory be the smallest needed to overcome the problem of matrix interference.

§330.281. Chain of Custody.
(a) Chain of custody forms are used to document custody of the samples during collection, transport, and initial receipt of samples.
at the analytical laboratory. A laboratory may also use chain of custody forms to document the movement and analysis of samples within the laboratory. The owner or operator shall ensure that the laboratory submit all data packages with completed field chain of custody forms and other documentation, including the following:

1. field sample identification;
2. date and time of sample collection;
3. preservation type;
4. analytical methods requested and/or analytes requested;
5. signatures of all personnel with custody prior to receipt by the laboratory;
6. signature of laboratory personnel taking custody samples; and
7. date and time of custody transfers.

(b) The owner or operator shall ensure that the laboratory document f samples are received outside of the recommended holding times for a particular analyte or method.

c. The owner or operator shall ensure that upon receipt, the condition of the sample, including any abnormalities or departures from standard conditions as prescribed in the relevant test method be recorded.

d. All samples that require thermal preservation shall be considered acceptable if the arrival temperature is either within 20 degrees Celsius of the required temperature or the method specified range. For samples requiring thermal preservation to 40 degrees Celsius, a temperature ranging from just above the freezing temperature of water to 60 degrees Celsius shall be acceptable.

e. The owner or operator shall ensure that the laboratory have procedures for checking the chemical preservation using readily available techniques prior to or during sample preparation or analysis.

(f) The owner or operator shall ensure that the laboratory store samples according to the conditions specified by preservation protocols.

§330.283 Sample Collection and Preparation.

(a) When possible, the owner or operator shall collect adequate sample volumes for all analytical needs for subsequent testing or analyses.

(b) The owner or operator shall base sampling plans, whenever reasonable, on appropriate statistical methods. Sampling procedures should describe the selection, sampling plan, collection, and preparation of a sample or samples from a waste or medium.

(c) The owner or operator shall collect representative samples of the waste or medium. The concentration of the analyses of interest, the types of analyses, and the sample media will determine the sample volume requirements.

(d) The owner or operator shall ensure that the method and federal regulatory program requirements for these sample management aspects be followed for all methods of testing and, if violated, have the data flagged and qualified.

(e) The owner or operator shall ensure that field personnel have procedures for recording relevant characteristics and other data relating to the sampling operations that form part of the testing or measurement that is undertaken. Chain of custody records and field notes shall include the sampling procedure used, the identification of the sample, environmental conditions (if relevant), diagrams or other equivalent means to identify the sampling location, and all associated sample identification numbers.


(a) The owner or operator shall ensure that the laboratory determine detection limits by the protocol in the mandated test method or applicable federal or state regulation. The owner or operator shall ensure that the laboratory utilize a test method that provides a detection limit that is appropriate and relevant for the intended use of the data and establish procedures to relate method detection limits with the practical quantitation limits.

(b) The owner or operator shall ensure that all samples are analyzed according to methods specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (United States Environmental Protection Agency Publication Number SW-846) (September 1986) 3rd Edition, as revised and updated, or by other methods approved by the executive director. If the protocol for determining detection limits is not specified in the test method, the selection of a procedure must reflect instrument limitations and the intended application of the test method. Whenever possible, analytical methods must have method detection levels that are one-fifth to one-third of the regulatory action level.

(c) The owner or operator shall take particular care to review all quality control data within the data package for compliance with the municipal solid waste program. All laboratory data and analyses submitted for use in commission decisions regarding any matter under the executive director’s jurisdiction must include information regarding precision, bias, and accuracy. The executive director shall evaluate compliance with the quality assurance objectives on a case-by-case basis.

(d) Maximum quality control acceptance limits for organic analyses are limits that represent the level of quality control data necessary to support decision making by the owner or operator with regard to sample results. Data with quality control results outside of the quality control limits shall be flagged in the data package with explanation of problems encountered by the laboratory and the corrective action(s) attempted to resolve the analytical problems.

(e) Failure to meet the quality control goals in accordance with the data quality standards of the study does not necessarily mean the data are unusable. The owner or operator shall ensure that the laboratory document all corrective action associated with the analysis and maintain all records.


(a) The owner or operator shall ensure that the laboratory maintain equipment in proper working order and calibrate equipment and devices that may not be the actual test instrument, but are necessary to support laboratory operations and measurements as often as recommended by the manufacturer, using National Institute of Standards and Technology (NIST) traceable references when available, over the entire range of their use. These include, but are not limited to: balances, ovens, refrigerators, freezers, incubators, water baths, and temperature measuring devices. Calibration results shall be within the specifications required for each application or measurement for which this equipment is used.

(b) The owner or operator shall ensure that the laboratory maintain records of corrective actions implemented to correct all measurements.

(c) Standards used for the calibration of field instruments shall be, when available, traceable to certified standards or reference material. The owner or operator shall ensure that laboratory equipment be calibrated or standardized against NIST traceable reference materials and standards. Documentation of the certificate of analysis and traceability of the standards and reagents must be maintained by field or laboratory personnel.

(d) The owner or operator shall ensure that calibration of field instruments and equipment be performed at approved intervals as specified by the manufacturer or more frequently as conditions dictate.
Calibrations may also be performed at the start and completion of each test run. Records of calibration, repair, or replacement must be filed and maintained by the designated field staff. Calibration and standardization of laboratory equipment must be based on procedures described in each contract laboratory quality assurance plan or standard operating procedure. It is the responsibility of the person validating the data to ensure that the proper calibration protocols were used. Records of calibration, repair, or replacement must be filed and maintained by the designated laboratory personnel performing quality control activities in accordance with manufacturer requirements. Calibration records must be filed and maintained at the laboratory location where the work is performed and must be subject to commission review during a quality assurance audit.

§330.289 Laboratory Case Narrative.

(a) The owner or operator shall ensure that reporting quality control (QC) results (precision and accuracy) within the laboratory case narrative (LCN) explain each failed precision and accuracy measurement determined to be outside of the laboratory and/or method control limits, and the effect of the failure on the results (positive or negative bias).

(b) The owner or operator shall ensure that the LCN state the exact number of samples, identification numbers, testing parameters, and sample matrix, as well as the name(s) of the laboratory(ies) involved in the analysis. A statement of the test objective regarding the samples must be included. The LCN must also identify the applicable quality assurance (QA) and QC samples that require special attention by the reviewer, including:

1. field trip, and laboratory blank(s);
2. duplicate(s);
3. QA spike(s);
4. QA audit sample(s); and
5. laboratory control samples.

(c) The owner or operator shall ensure that an acknowledgment and reference to current standards regarding sample holding, extraction, and analytical times be included within the LCN along with a statement explaining whether the standards were met. If samples are not analyzed within the prescribed holding times, the owner or operator shall ensure that the laboratory describe the extent of the delay and if possible, provide an estimate of the bias within the data.

(d) The owner or operator shall ensure that the laboratory conducting the analyses for environmental decision making have a QA program run by a QA officer.

1. This program may include, but is not limited to, the following:

   A. system audits of field and/or laboratory operations using field surrogate samples;
   B. instrument calibration check samples used to determine the accuracy of the instrumentation;
   C. blind spikes of blanks, where the concentration of the blind spike is known only to the QA officer;
   D. verification of calibration accuracy via calibration check standard;
   E. internal surrogate spikes for determination of analytical extraction recovery; and
   F. overall assessment of the data quality based upon the reported QC data.

2. The owner or operator shall ensure that all QC results included in each data set submitted to the executive director that affect the quality of the data be included within the LCN. The owner or operator shall ensure that the laboratory describe the bias within each data set as either positive or negative, when QC results are outside the method established and/or data quality objectives of the facility groundwater sampling and analysis plan.

3. The owner or operator shall ensure that the precision and accuracy determinations are clearly presented with all results calculated. The LCN must explain each failed precision and accuracy measurement determined to be outside of the method control limits, and the effect of the failure on the results.

(f) The owner or operator shall ensure that the LCN review includes comments that identify the problems associated with the sample results and explains the limitations on data usability.

(g) The owner or operator shall ensure that when appropriate and/or requested, the LCN includes a statement on the estimated uncertainty of analytical results of the samples involved and/or within the QC of the analytical method of the permit, project, and/or program required analytical recoveries information.

(h) The owner or operator shall ensure that the LCN includes all deviations from, additions to, or exclusions from the test method, and information on specific test conditions.

(i) The owner or operator shall ensure that where relevant, the LCN includes a statement of compliance/noncompliance with requirements and/or specifications (e.g., holding times, dilutions, matrix interferences).

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

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SUBCHAPTER G. OPERATIONAL STANDARDS FOR SOLID WASTE PROCESSING AND EXPERIMENTAL SITES

30 TAC §§330.150 - 330.159, 330.171

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

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061,
which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The proposed repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed repeals also implement Texas Water Code, §5.103, Rules.

§330.150. General.
§330.151. Overloading and Breakdown.
§330.152. Sanitation.
§330.153. Water Pollution Control.
§330.154. Ventilation and Air Pollution Control.
§330.155. Litter Control.
§330.156. Safety.
§330.158. Employee Sanitation Facilities.
§330.159. Facility Completion and Closure Procedures.
§330.171. Recordkeeping Requirements Applicable to Owners or Operators of Type V Processing Facilities.

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

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SUBCHAPTER G. SURFACE WATER DRAINAGE


STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The standard air permit is proposed under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The proposed new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed new sections also implement Texas Water Code, §5.103, Rules.

§330.301. Applicability.

Permits and registrations for units that existed before the comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) to this subchapter became effective remain valid, except as provided by this subchapter. If existing authorizations contain any provisions inconsistent with the 2006 Revisions, the permittee or registrant is under an obligation to apply for a modification not subject to public notice in accordance with §305.70(d) of this title (relating to Municipal Solid Waste Permit and Registration Modifications) within 180 days to incorporate any inconsistent provisions. Timely submission of an application to modify qualifies the owners or operators of existing units to operate under requirements contained in the existing authorization until a final decision is made on the application.


(a) A facility must be constructed, maintained, and operated to manage run-on and runoff during the peak discharge of a 25-year rainfall event and must prevent the off-site discharge of waste and feedstock material, including, but not limited to, in-process and/or processed materials.

(b) Surface water drainage in and around a facility shall be controlled to minimize surface water running onto, into, and off the treatment area.

§330.305. Surface Water Drainage for Landfills.

(a) Existing or permitted drainage patterns must not be adversely altered.

(b) The owner or operator shall design, construct, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during the peak discharge from at least a 25-year rainfall event.

(c) The owner or operator shall design, construct, and maintain a runoff management system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(d) The facility design must provide effective erosional stability to top dome surfaces and embankment side slopes during all phases of facility operation, closure, and post-closure care in accordance with the following:

(1) Estimated peak velocities for top surfaces and embankment slopes should be less than the permissible non-erodible velocities under similar conditions.

(2) The top surfaces and embankment slopes of municipal solid waste landfill units must be designed to minimize erosion and soil

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loss through the use of appropriate side slopes, vegetation, and other structural and nonstructural controls, as necessary. Soil erosion loss (tons/acre) for the top surfaces and embankment slopes may be calculated using the Soil Conservation Service of the United States Department of Agriculture's Universal Soil Loss Equation, in which case the potential soil loss should not exceed the permissible soil loss for comparable soil-slope lengths and soil-cover conditions.

(e) Dikes, embankments, drainage structures, or diversion channels sized and graded to handle the design runoff must be provided. The slopes of the sides and toe will be graded in such a manner as to minimize the potential for erosion. The surface water protection and erosion control practices must maintain low non-erodible velocities, minimize soil erosion losses below permissible levels, and provide long-term, low maintenance geotechnical stability to the final cover.

(1) The owner or operator shall maintain the collection, drainage, and/or storage units as designed, and shall restore and repair the drainage system in the event of washout or failure; and

(2) The owner or operator shall control erosion and sedimentation, including having interim controls for phased development.

(f) The owner or operator shall assess the existing and proposed drainage characteristics of the facility using the following methods:

(1) Calculations for areas of 200 acres or less must follow the rational method and utilize appropriate surface runoff coefficients, as specified in the Texas Department of Transportation (TxDOT) Bridge Division Hydraulic Design Manual. Time of runoff concentration as defined within the manual generally will not be less than ten minutes for rainfall intensity determination purposes. The owner or operator may use equivalent or better methods approved by the executive director.

(2) Calculations for discharges from areas greater than 200 acres must be computed by using United States Geological Survey/Department of Transportation Federal Highway Administration hydraulic equations compiled by the United States Geological Survey and the TxDOT (TxDOT Administrative Circular 36-86); the Hydrologic Engineering Center-Hydrologic Modeling System, Hydraulic Engineering Center-River Modeling System, or legacy computer programs developed through the Hydrologic Engineering Center of the United States Army Corps of Engineers; or equivalent or better methods approved by the executive director.

(g) The owner or operator shall handle, store, treat, and dispose of surface or groundwater that has become contaminated by contact with the working face of the landfill or with leachate in accordance with §330.207 of this title (relating to Contaminated Water Management). Storage areas for this contaminated water must be designed with regard to size, locations, and methods.


(a) The facility shall be protected from flooding by suitable levees constructed to provide protection from a 100-year frequency flood and in accordance with the rules of the commission relating to levee improvement districts and approval of plans for reclamation projects or the rules of the county or city having jurisdiction under Texas Water Code, §16.236, as implemented by Chapter 301, Subchapter C of this title (relating to Approval of Levees and Other Improvements).

(b) Flood protection levees must be designed and constructed to prevent the washout of solid waste from the facility.

(1) A freeboard of at least three feet must be provided except in those cases where a greater freeboard is required by the agency having jurisdiction under Texas Water Code, §16.236.

(2) Such levees must not significantly restrict the flow of a 100-year frequency flood nor significantly reduce the temporary water storage capacity of the 100-year floodplain.

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

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SUBCHAPTER H. GROUNDWATER PROTECTION DESIGN AND OPERATION

30 TAC §§330.200 - 330.206

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

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW, §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The proposed repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission's Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.0519, Standard Permit. The proposed repeals also implement Texas Water Code, §5.103, Rules.

§330.201. Leachate Collection System.
§330.203. Special Conditions (Liner Design Constraints).
§330.204. Geological Faults.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

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**SUBCHAPTER H. LINER SYSTEM DESIGN AND OPERATION**


**STATUTORY AUTHORITY**

The new sections are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is proposed under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The proposed new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed new sections also implement Texas Water Code, §5.103, Rules.

§330.331. **Design Criteria.**

(a) New permits for Type I landfill units, lateral expansions, vertical expansions of Type I landfills over landfills that do not meet the design criteria under paragraph (1) or (2) of this subsection and expansions of existing Type IAE landfills that subsequently no longer satisfy the conditions specified in §330.35(b)(1) of this title (relating to Classification of Municipal Solid Waste Facilities) must be constructed in accordance with one of the following provisions approved by the executive director.

(1) a design that ensures that the concentration values listed in Table 1 of this paragraph will not be exceeded in the uppermost aquifer at the point of compliance, as determined in §330.403 of this title (relating to Groundwater Monitoring Systems); or

(2) a composite liner, as defined in subsection (b) of this section, and a leachate collection system that is designed and constructed to maintain less than a 30-centimeter depth of leachate over the liner.

(b) For purposes of this section, “composite liner” means a system consisting of two components; the upper component must consist of a minimum 30-mil geomembrane liner and the lower component must consist of at least a two-foot layer of re-compacted soil with a hydraulic conductivity of no more than $1 \times 10^{-2}$ centimeters per second (cm/sec). Geomembrane liner components consisting of high density polyethylene (HDPE) must be at least 60-mil thick. The geomembrane liner component must be installed in direct and uniform contact with the compacted soil component.

(c) When approving a design that complies with subsection (a)(1) of this section, the executive director may consider, but is not limited to, the following factors:

(1) the hydrogeologic characteristics of the facility and surrounding land;

(2) the climatic factors of the area;

(3) the volume and physical and chemical characteristics of the leachate;

(4) the quantity, quality, and direction of flow of groundwater;

(5) the proximity and withdrawal rate of the groundwater users;

(6) the availability of alternative drinking water supplies;

(7) the existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater and whether groundwater is currently used or reasonably expected to be used for drinking water;

(8) public health, safety, and welfare effects; and

(9) practicable capability of the owner or operator.

(d) Type IV landfills must meet one of the following groundwater protection requirements:

(1) there must exist at least four feet of in-situ soil between the deposited waste and groundwater. This in-situ soil must constitute an in-situ liner and must meet all the physical properties for a constructed liner as detailed in §330.339(c)(5) of this title (relating to Liner Quality Control Plan). In-situ liners must not exhibit primary or secondary physical features such as jointing, fractures, bedding planes, solution cavities, root holes, desiccation shrinkage cracks etc., that have a coefficient of permeability greater than $1 \times 10^{-5}$-cm/sec;

(2) there must be at least a three-foot thick, re-compacted clay liner between the deposited waste and groundwater. The constructed liner must meet all the criteria detailed in §330.339 of this title and must at a minimum have one foot of protective cover overlying the re-compacted liner after all quality control testing and final thickness determinations are complete; or

(3) an alternative liner design, in accordance with §330.335 of this title (relating to Alternative Liner Design).
(e) Municipal solid waste landfill facilities that accept Class 1 industrial solid wastes, other than asbestos-containing material, must have dedicated cells that meet the following requirements.

(1) The cells designated for Class 1 industrial solid wastes must have a composite liner system consisting of two components. The upper component must consist of a minimum of a 30-mil geomembrane liner and the lower component must consist of at least a three-foot layer of re-compactsed soil with a hydraulic conductivity of no more than 1 x 10^-8 cm/sec. Geomembrane liner components consisting of HDPE must be at least 60-mil thick. The geomembrane liner component must be installed in direct and uniform contact with the compacted soil component. The liner system installed for Class 1 industrial solid waste cells is subject to the requirements of §330.339 of this title. These cells must be designated on facility layout maps.

(2) The cells designated for Class 1 industrial solid wastes must have a leachate-collection system designed and constructed to maintain less than a 30-cm depth of leachate over the liner. The leachate-collection and leachate-removal system must be:

(A) constructed of materials that are chemically resistant to the leachate expected to be generated;

(B) of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

(C) designed and operated to function through the scheduled closure and post-closure period of the landfill.

(3) Unless the executive director approves an engineered design that the applicant has demonstrated will provide equal or greater protection to human health and the environment, a new landfill cell or an area expansion of an existing landfill cell must be located in areas allowed by §335.584(b)(1) and (2) of this title (relating to Location Restrictions).

§330.333. Leachate Collection System.

Leachate-collection and associated leachate-removal systems shall be:

(1) constructed of materials that are chemically resistant to the leachate expected to be generated;

(2) of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

(3) designed and operated to function through the scheduled closure and post-closure care period of the landfill considering the following factors:

(A) estimated rate of leachate removal;

(B) capacity of sumps;

(C) pipe material and strength, if used;

(D) pipe network spacing and grading, if used;

(E) collection sump materials and strength;

(F) drainage media specifications and performance; and

(G) demonstration that pipes and perforations will be resistant to clogging and can be cleaned.


Alternative liner designs, which for Type 1 landfills must include a leachate management system, may be authorized by the executive director if the owner or operator provides a demonstration by computerized design modeling that the maximum contaminant levels detailed in §330.331 of this title (relating to Design Criteria), Table 1 will not be exceeded at the point of compliance. At the discretion of the executive director, a field demonstration may be required to prove the practicality and performance capabilities of an alternative liner design.

§330.337. Special Liner Design Constraints.

(a) At the discretion of the executive director, owners or operators of Type IV landfill excavations that extend below the seasonal high water table may be required to meet one or more provisions in this section.

(b) The owner or operator of a Type I landfill shall demonstrate that the liner system will not undergo uplift from hydrostatic forces during its construction by using one or more of the following methods:

(1) providing calculations satisfactory to the executive director that the weight of the liner system, including any ballast, is sufficient to offset by a factor of 1.2 any otherwise unbalanced upward or inward hydrostatic forces on the liner; or

(2) incorporating an active or passive dewatering system in the design to reduce upward or inward hydrostatic forces on the liner by a factor of 1.2 and by providing calculations satisfactory to the executive director that the dewatering system will perform to adequately reduce those forces; or

(3) providing evidence satisfactory to the executive director that the soil surrounding the landfill is so poorly permeable that groundwater cannot move sufficiently to exert force that would damage the liner; or

(4) providing evidence that the seasonal high water table is below the deepest planned excavation.

(c) The owner or operator shall ensure that the liner is stable during the filling and operation of the landfill through a suitable combination of dewatering and/or ballast, if determined to be required in subsection (b) of this section. These methods shall not be used without prior approval of the executive director.

(d) Any required leachate collection system shall be designed to handle both the leachate generated and the groundwater inflow from materials beneath and lateral to the liner system. The maximum volume of groundwater inflow shall be calculated based on determination of the permeability and potentiometric conditions of the liner system and of the materials surrounding the liner system.

(e) Prior to excavating any unit below the seasonal high water table, the owner or operator shall perform a preliminary foundation evaluation satisfactory to the executive director. The foundation evaluation shall consider stability, settlement, and constructability.

(f) The liner quality control plan as required in §330.339 of this title (relating to Liner Quality Control Plan) shall include the following information for landfills to which subsection (b) of this section is applicable:

(1) the methods and tests to be used to verify that the liner will not undergo uplift during construction and until ballast placement, if required, is complete; and

(2) the measures and tests that will be used to verify that any required ballast meets the criteria established, including, but not limited to, inspections, compaction, weight and density of material, thickness, and top elevations.

(g) Any dewatering systems used to ensure liner stability during construction and filling shall be operated until the executive director determines that such systems are no longer required.

(h) The executive director may determine on a site-specific basis that waste can be used as ballast. If so, the facility operating plan for the landfill shall contain the following requirements.
(1) The first five feet or the total thickness of the ballast, whichever is less, placed on the liner system shall be free of brush and large bulky items, which would damage the underlying parts of the liner system or which cannot be compacted to the required density.

(2) If waste is used for ballast, a wheeled compactor having a minimum weight of 40,000 pounds, or equivalent equipment, shall be properly utilized to reach a compaction density of at least 1,200 pounds per cubic yard. For purposes of determining the required ballast thickness, a density of compacted waste of 1,200 pounds per cubic yard shall be used. The weight of the liner system, including any ballast, must be sufficient to offset any unbalanced upward or inward hydrostatic forces on the liner by a factor of 1.5 when waste is used for ballast.

(3) The liner quality control plan shall also include the method(s) to be used to verify that compaction of waste used for ballast is to a density of not less than 1,200 pounds per cubic yard. If a compactor having a minimum weight of 40,000 pounds is used, no compaction density verification will be required.

(4) If waste is used for ballast, the ballast evaluation report shall also include verification that a compactor having a minimum weight of 40,000 pounds was used or, if not, that compaction was at least 1,200 pounds per cubic yard.

(i) The seasonal high water table shall be adjusted upward, if necessary, as additional data becomes available after a permit is issued.

(j) If ballasting or dewatering is used, the owner or operator shall submit a ballast evaluation report in a format specified by the executive director in duplicate to the executive director when the owner or operator determines that ballasting or dewatering is no longer necessary. If the executive director provides no response within 14 days of the date of receipt, the owner or operator may discontinue dewatering or ballasting operations. The ballast evaluation report shall include:

(1) verification that the liner did not undergo uplift during construction, using the method identified in the liner quality control plan;

(2) certification that ballast met the criteria established in this section and in the liner quality control plan; and

(3) signature and seal of an independent licensed professional engineer performing the evaluation and signature of the facility operator or his authorized representative.


(a) A landfill must have an approved liner quality control plan prepared under the direction of a licensed professional engineer, and it shall be the basis for the type and rate of quality control testing performance and reported in the soil liner evaluation report as required in §330.341 of this title (relating to Soil Liner Evaluation Report and Geomembrane Liner Evaluation Report). The plan must be included in the site development plan to provide operating personnel adequate procedural guidance for assuring continuous compliance with groundwater protection requirements. The plan must specify construction methods employing good engineering practices for compaction of clay soils to form a liner. Unless alternative construction procedures are approved in writing by the executive director, all constructed liners shall be keyed into an underlying formation of sufficient strength to ensure stability of the constructed lining. The plan shall address the installation and testing of a geomembrane liner, if used. Proposed dewatering plans shall be included. The plan shall include the following information:

(1) constructed liner details, where applicable, shall be depicted on cross-sections of a typical cell showing the slope, widths, and thicknesses for compaction lifts. The amount of compaction shall be expressed as a percentage of a predetermined laboratory density; and

(2) soil and liner quality-control testing procedures, to include sampling frequency, shall be included in the plan. All field sampling and testing, both during construction and after completion, shall be performed by a person acting in compliance with the provisions of the Texas Engineering Practice Act and other applicable state laws and regulations. The professional record who signs the soil liner evaluation report or his representative shall be on site during all liner construction. Quality control of construction and quality assurance of sampling and testing procedures shall follow the latest technical guidelines of the executive director.

(b) The liner quality control plan shall also:

(1) provide guidance needed for testing and reporting evaluation procedures to the professional who will prepare the soil liner evaluation reports for the facility;

(2) specify materials, equipment, and construction methods for the compaction of clay soils to form impermeable liners for the conditions to include the following information:

(A) details for the overexcavation and recompaction of the in-situ soils, or the compaction of soils from a borrow source, shall be depicted on cross-sections of a typical cell showing the slope, widths, and thicknesses for compaction lifts;

(B) procedures to be followed when excavations, cells, or disposal areas extend into or have the potential to extend into the groundwater shall be in accordance with the provisions provided in §330.337 of this title (relating to Special Liner Design Constraints); and

(3) describe installation methods and quality control testing and reporting following placement for any geomembrane liner that may be required or authorized by the executive director.

(c) Soil liner quality control testing frequencies and procedures shall be in accordance with the executive director’s most recent guidelines and the following:

(1) All field sampling and testing, both during construction and after completion of the lining, shall be performed by a qualified professional experienced in geotechnical engineering and/or engineering geology, or under his direct supervision.

(2) All liners should have continuous on-site inspection during construction by the professional of record or his designated representative.

(3) The amount of compaction of clay liners shall be expressed as a percentage of a maximum dry density based on a compaction test specified by a licensed professional engineer. The compaction of the clay liner shall have been proven by soils laboratory testing to provide a coefficient of permeability of 1 x 10⁻⁸ centimeters per second (cm/sec) or less.

(4) The liner quality control plan shall define the frequency of testing for each of the test procedures listed in subparagraphs (A) - (F) of this paragraph. These frequencies shall be expressed in numbers of tests per specific area of liner per lift or specific thickness of liner, unless an alternative frequency is approved by the executive director. In addition, unless otherwise approved by the executive director, all soil tests performed on any in-situ or constructed soil liners shall be in accordance with the standards in subparagraphs (A) - (E) of this paragraph:

(A) laboratory permeability tests. Permeability tests shall be run using tap water or 0.5 Normal (N) solution of calcium sulfate (CaSO₄) and not distilled water. All test data must be submitted on permeability tests regardless of test method used. At a minimum, the calculations of the last data set reported for each sample and the resultant coefficient of permeability shall be reported as supporting data.

(B) sieve analysis +1, 200, -200 sieves; (ASTM D422 or ASTM D1140, as applicable);

(C) Atterberg limits (ASTMD4318);

(D) moisture-density relationships (ASTM D698 or any executive director approved modified test whose compactive effort matches the on site-construction equipment);

(E) moisture content (ASTMD2216); and

(F) thickness verification.

(5) All soils used as constructed liners must have the following minimum values verified by testing in a soils laboratory:

(A) plasticity index - equal to or greater than 15;

(B) liquid limit - equal to or greater than 30;

(C) percent passing 200 mesh sieve (-200) equal to or greater than 30%;

(D) percent passing one-inch screen - 100%.

(E) coefficient of permeability less than or equal to 1 x 10^-6 cm/sec.

(6) Permeability tests for proving the suitability of soils to be used in constructing clay liners shall be performed in the laboratory using the procedures and guidance of paragraph (4)(A) of this subsection. Field quality control must be provided by field density tests based on predetermined moisture-density compaction curves, Atterberg limits, and laboratory permeabilities of undisturbed field samples of compacted liner soils, unless an alternative plan is approved by the executive director.

(7) Field permeability testing of in-situ soils or constructed soil liners shall be in accordance with ASTM D5093 for those soil liners that are in the floor of the excavation and a variation of the Boutwell STEI field permeability test approved by the executive director for the sidewalls, or in accordance with guidance furnished by the executive director.

(8) All quality control testing of soil liners shall be performed during the construction of the liner. In no instance shall any quality control field or laboratory testing be undertaken after completion of liner construction, except for that testing which is required of the final constructed lift, confirmation of liner thickness, or cover material thickness.

(9) All soil testing and evaluation of either in-situ soil or constructed soil liners shall be complete prior to installing the leachate collection system or, if no leachate collection system is required, prior to adding the one foot of protective cover on the area under evaluation.

(d) Soil and liner density shall be expressed as a percentage of the maximum dry density and at the corresponding optimum moisture content specified as appropriate by a licensed professional engineer experienced in geotechnical engineering. These soils so compacted must upon testing either in the laboratory or as a test pad in the field demonstrate a coefficient of permeability no greater than 1 x 10^-6 cm/sec.

(e) Unless alternative construction procedures have prior written approval by the executive director, all constructed soil liners shall be keyed into an underlying formation of sufficient strength to ensure stability of the constructed lining.

(f) Each soil liner evaluation report shall be prepared in accordance with the approved liner quality control plan. Any deviation from the approved plan must have prior written approval from the executive director.

(g) Soil liners shall not be compacted with a bulldozer or any track-mobilized equipment unless it is used to pull a pad-footed roller. All soil liners shall be compacted with a pad-footed or prong-footed roller only. The maximum closs size of the compacted liner soils shall be approximately one inch in diameter. In all cases soil closs shall be reduced to the smallest size necessary to achieve the coefficient of permeability reported by the testing laboratory and to destroy any macrostructure evidenced after the compaction of the closs under density-controlled conditions.

(h) The liner soil material shall contain no rocks or stones larger than one inch in diameter or that total more than ten percent by weight. Rock content shall not be detrimental to the integrity of the overlying geomembrane.


(a) Prior to the disposal of solid waste in any cell, or on any area, excavation, or unprotected surface, a soil liner evaluation report and a geomembrane liner evaluation report shall be submitted to the executive director. If the approved design does not require a synthetic liner, a geomembrane liner evaluation report is not required.

(b) Each soil liner evaluation report and geomembrane liner evaluation report shall be submitted in triplicate (including all attachments) to the executive director and shall be prepared in accordance with the methods and procedures contained in the approved liner quality control plan. If the executive director provides no response, either written or verbal, within 14 days of receipt, the owner or operator may continue facility construction or operation.

(c) If the executive director determines that a report is incomplete or that the test data provided are insufficient to support the evaluation conclusions, additional test data or other information may be required, and use of the cell or disposal area will not be allowed until such additional data are received, reviewed, and accepted. Each report must be signed and, where applicable, sealed by the individual performing the evaluation and counter-signed by the facility operator or an authorized representative.

(d) The surface of a constructed soil liner should be covered or otherwise protected within a period of six months to mitigate the effects of desiccation, surface erosion, and rutting due to traffic. Linner surfaces not covered within six months shall be checked by the soil liner evaluation report evaluator, who shall then submit a letter report on the findings to the executive director. Any required repairs shall be performed promptly. A new report shall be submitted on the new construction for all liners that need repair due to damage.

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

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SUBCHAPTER I. GROUNDWATER MONITORING AND CORRECTIVE ACTION

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

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The proposed repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose: §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed repeals also implement Texas Water Code, §5.103, Rules.

§330.234. Detection and Analysis Requirements.
§330.235. Assessment and Monitoring Program.
§330.236. Assessment and Monitoring Program.
§330.237. Selection of Remedy.
§330.239. Groundwater Monitoring at Type IV Landfills.
§330.240. Groundwater Monitoring at Other Types of Landfills and Facilities.

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

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SUBCHAPTER I. LANDFILL GAS MANAGEMENT
30 TAC § 330.371

STATUTORY AUTHORITY

The new section is proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The standard air permit is proposed under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The proposed new section implements THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose: §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed new section also implements Texas Water Code, §5.103, Rules.


(a) Owners or operators of all landfill units shall ensure that:

(1) the concentration of methane gas generated by the facility does not exceed 1.25% by volume in facility structures (excluding gas control or recovery system components); and

(2) the concentration of methane gas does not exceed 5% by volume in monitoring points, probes, subsurface soils, or other matrices at the facility boundary defined by the legal description in the permit or permit by rule.

(b) Owners or operators of all landfill units shall implement a routine methane monitoring program to ensure that the standards of subsection (a) of this section are met.

(1) The type and frequency of monitoring shall be determined based on the following factors:

(A) soil conditions;

(B) the hydrogeologic conditions surrounding the facility;

(C) the hydraulic conditions surrounding the facility;
(D) the location of facility structures and property boundaries; and

(E) the location of any utility lines or pipelines that cross the MSW landfill facility.

(2) The minimum frequency of monitoring shall be quarterly.

(c) If methane gas levels exceeding the limits specified in subsection (a) of this section are detected, the owner or operator shall:

(1) immediately take all necessary steps to ensure protection of human health and notify the executive director, local and county officials, emergency officials, and the public;

(2) within seven days of detection, place in the operating record the concentration of methane gas levels detected and a description of the steps taken to protect human health; and

(3) within 60 days of detection, implement a remediation plan for the methane gas releases, place a copy of the plan in the operating record, provide a copy to the executive director, and notify the executive director that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy. After review, the executive director may require additional remedial measures.

(d) The executive director may establish alternative schedules for demonstrating compliance with subsections (b) and (c) of this section.

(e) The owner or operator shall continue the gas monitoring and control program for a period of 30 years after certification of final closure of the facility for Type I and Type IAE landfill units and five years after certification of final closure for Type IV and Type IVAE landfill units or until the owner or operator receives written authorization to reduce the program. Authorization to reduce gas monitoring and control shall be based on a demonstration by the owner or operator that there is no potential for gas migration beyond the property boundary or into on-site structures. Demonstration of this proposal shall be supported by data collected and additional studies as required.

(f) Gas monitoring and control systems shall be revised as needed to maintain current and effective gas monitoring and control systems. Post-closure land use at the site shall not interfere with the function of gas monitoring and control systems. Any underground utility trenches that cross the landfill facility boundary shall be vented and monitored regularly.

(g) A landfill gas management plan shall be prepared that includes the following:

(1) a description of how landfill gases will be managed and controlled;

(2) a description of the proposed system(s), including installation procedures and time lines for installation, monitoring procedures, and procedures to be used during maintenance; and

(3) a backup plan to be used if the main system breaks down or becomes ineffective.

(h) The owner or operator shall install a perimeter monitoring network in accordance with the following provisions:

(1) initial monitoring at Type IAE and Type IVAE landfills and larger landfills that have no habitable structures within 3,000 feet of the waste placement boundary may consist of subsurface monitoring around the perimeter of the facility using portable equipment and probes. If test results show the presence of methane gas above a concentration of 0.5% by volume, a permanent monitoring system shall be installed; and

(2) permanent monitoring systems shall be installed on all other landfills.

(i) The monitoring network design shall include provisions for monitoring on-site structures, including, but not limited to, buildings, subsurface vaults, utilities, or any other areas where potential gas buildup would be of concern.

(j) All monitoring probes and on-site structures shall be sampled for methane during the monitoring period. Sampling for specified trace gases may be required by the executive director when there is a possibility of acute or chronic exposure due to carcinogenic or toxic compounds.

(k) Monitoring frequency shall be determined as follows.

(1) As a minimum, quarterly monitoring is required. The executive director may require more frequent monitoring based upon the factors listed in this section. When more frequent monitoring is necessary, the executive director shall notify the owner or operator.

(2) The owner or operator shall monitor more frequently those locations where monitoring results indicate that landfill gas migration is occurring or is accumulating in structures.

(l) The comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) to this subchapter supersede any conflicting provisions contained in any existing permits upon the effective date of the 2006 Revisions.

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

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SUBCHAPTER J. CLOSURE AND POST-CLOSURE

30 TAC §§330.250 - 330.256

(Emailer’s note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW: §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.
The proposed repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed repeals also implement Texas Water Code, §5.103, Rules.

§330.250. Applicability.


§330.253. Closure Requirements for MSWLF Units That Receive Waste on or after October 9, 1993, and MSW Sites.


§330.255. Post-Closure Land Use.

§330.256. Completion of Post-Closure Care Maintenance.

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

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SUBCHAPTER J. GROUNDWATER MONITORING AND CORRECTIVE ACTION

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is proposed under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The proposed new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed new sections also implement Texas Water Code, §5.103, Rules.

§330.401. Applicability.

(a) Facilities that have closed in accordance with §§330.453, 330.455, or 330.457 of this title (relating to Closure Requirements for Municipal Solid Waste Landfill Units that Stop Receiving Waste Prior to October 9, 1991, Type IV Landfills, and Municipal Solid Waste Sites; Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1991, but Stop Receiving Waste Prior to October 9, 1993; or Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1993) prior to the effective date of the comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) may continue to monitor groundwater using the well location requirements contained in previously issued authorizations, as allowed by §330.1(a)(1) of this title (relating to Purpose and Applicability) unless the owner or operator determines a statistically significant change for the unit in accordance with §330.407(b) of this title (relating to Detection Monitoring Program for Type I Landfills) or determines a release of contaminants from the unit in accordance with §330.417(b)(5) of this title (relating to Groundwater Monitoring at Type IV Landfills). If the owner or operator of a closed unit determines a statistically significant change or release has occurred, then the owner or operator shall apply for a modification not subject to public notice in accordance with §305.701 of this title (relating to Municipal Solid Waste Permit and Registration Modifications) within 180 days of that determination to comply with the 2006 Revisions to this subchapter. Timely submission of a request for a modification qualifies the owners or operators of existing units to operate under requirements contained in the existing authorization until a final decision is made on the application. Closed facilities shall comply with the other 2006 Revisions to this subchapter, other than well location requirements, within 120 days. The 2006 Revisions to this subchapter, other than well location requirements, supersede any inconsistent provisions contained in existing authorizations.

(b) Owners and operators of landfill units that do not close before the comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) to this subchapter become effective, shall comply with the 2006 Revisions to this subchapter, except for the well spacing requirements, within 120 days. Owners and operators shall comply with the revised well spacing requirements by applying for a permit modification without public notice in accordance with §305.701 of this title within two years from the effective date of the 2006 Revisions. The requirements in this subchapter apply to all municipal solid waste landfill units, except as provided in §330.5(c) of this title (relating to Applicability). Additionally, the executive director may establish groundwater monitoring requirements for solid waste management units other than Type I or Type IV landfills where site-specific conditions and operations have the potential for groundwater contamination.
(c) Composting operations that require a permit are subject to the groundwater monitoring requirements of §332.476(C)(ii) of this title (relating to Permit Application Preparation).

(d) Groundwater monitoring requirements under §330.403 of this title (relating to Groundwater Monitoring Systems), §330.405 of this title (relating to Groundwater Monitoring Requirements), §330.407 of this title (relating to Monitoring Program for Type I Landfills), and §330.409 of this title (relating to Assessment Monitoring Program) may be suspended by the executive director for a solid waste management unit if the owner or operator can demonstrate that there is no potential for migration of hazardous constituents from that solid waste management unit to the uppermost aquifer as defined in §330.3 of this title (relating to Definitions) during the active life and the closure and post-closure care period of the unit. This demonstration shall be certified by a qualified groundwater scientist and approved by the executive director, and must be based on:

(1) site-specific field-collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport; and

(2) contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and the environment.

(e) Owners or operators of new solid waste management units must submit to the executive director a documented certification signed by a qualified groundwater scientist that the facility is in compliance with the groundwater monitoring requirements specified in §330.403, 330.405, 330.407, and 330.409 of this title before waste can be placed in the unit.

(f) Once established at a solid waste management unit, groundwater monitoring must be conducted throughout the active life and any required post-closure care period of that solid waste management unit as specified in §330.463 of this title (relating to Post-Closure Care Requirements).


(a) A groundwater monitoring system must be installed that consists of a sufficient number of monitoring wells, installed at appropriate locations and depths, to yield representative groundwater samples from the uppermost aquifer as defined in §330.3 of this title (relating to Definitions).

(1) Background monitoring wells shall be installed to allow determination of the quality of background groundwater that has not been affected by leakage from a unit. Background monitoring wells may be placed in locations that are not hydraulically upgradient of the waste management area if hydrogeologic conditions do not allow the owner or operator to determine which wells are hydraulically upgradient or if sampling at other wells will provide a better indication of background groundwater quality than is possible from upgradient wells.

(2) The point of compliance monitoring system must include monitoring wells installed with a well spacing no greater than 300 feet to allow determination of the quality of groundwater passing the point of compliance as defined in §330.3 of this title and to ensure the detection of groundwater contamination in the uppermost aquifer. The owner or operator may provide a demonstration for other well spacings using an applicable multi-dimensional fate and transport numerical flow model. The owner or operator must install a groundwater monitoring system at the point of compliance, as required by 40 Code of Federal Regulations §258.51(a)(2). When physical obstacles preclude installation of the groundwater monitoring wells at existing units, the wells may be installed at the closest practicable distance to the point of compliance as defined in §330.3 of this title that will ensure detection of groundwater contamination of the uppermost aquifer.

(b) The executive director may approve a multi-unit groundwater monitoring system instead of separate groundwater monitoring systems for each municipal solid waste management unit when the facility has several units, provided the multi-unit system meets the requirement of subsection (a) of this section and will be as protective of human health and the environment as individual monitoring systems for each unit, based on the following factors:

(1) number, spacing, and orientation of the solid waste management units within an overall waste management area;

(2) hydrogeologic setting;

(3) site history;

(4) engineering design of the units; and

(5) type of waste accepted at the units.

(c) The executive director may approve an alternative design for a groundwater monitoring system that uses other means in conjunction with monitoring wells to ensure detection of groundwater contamination in the uppermost aquifer from a solid waste management unit. The alternative design shall be at least as protective of human health and the environment as a monitoring-well system as specified in §330.403(a) of this title (relating to Groundwater Monitoring Systems).

(d) All parts of a groundwater monitoring system shall be operated and maintained so that they perform at least to design specifications through the life of the groundwater monitoring program.

(e) A groundwater monitoring system, including the number, spacing, and depths of monitoring wells or other sampling points, shall be designed and certified by a qualified groundwater scientist. Within 14 days of the certification, the owner or operator shall submit the certification to the executive director and place a copy of the certification in the operating record. The plan for the monitoring system and all supporting data must be submitted to the executive director for review and approval prior to construction.

(1) The design of a monitoring system shall be based on site-specific technical information that must include a thorough characterization of: aquifer thickness; groundwater flow rate; groundwater flow direction, including seasonal and temporal fluctuations in flow; effect of site construction and operations on groundwater flow direction and rates; and thickness, stratigraphy, lithology, and hydraulic characteristics of saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials of the uppermost aquifer, and materials of the lower confining unit of the uppermost aquifer. A geologic unit is any distinct or definable native rock or soil stratum.

(2) Groundwater modeling may be used to supplement the determination of the spacing of monitoring wells or other sampling points and shall consider site-specific characteristics of groundwater flow as well as dispersion and diffusion of possible contaminants in the materials of the uppermost aquifer. Any model used shall:

(A) have supporting documentation that establishes its ability to represent groundwater flow and contaminant transport, as needed;

(B) have a sound set of equations based on accepted theory representing groundwater movement and contaminant transport;

(C) have numerical solution methods that are based on sound mathematical principles and supported by verification and checking techniques;

(D) be calibrated against site-specific field data;


(E) have a sensitivity analysis to measure its response to changes in the values of major parameters, error tolerances, and other parameters;

(F) show mass-balance calculations, where necessary; and

(G) be based on actual field or laboratory measurements, or equivalent methods, that document the validity of chosen parameter values.

(3) The owner or operator shall promptly notify the executive director in writing of changes in facility construction or operation or changes in adjacent property that affect or are likely to affect the direction and rate of groundwater flow and the potential for detecting groundwater contamination from a solid waste management unit and that may require the installation of additional monitoring wells or sampling points. Such additional wells or sampling points require a modification of the site development plan.

§330.405. Groundwater Sampling and Analysis Requirements.

(a) The groundwater monitoring program shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and point of compliance wells, or other monitoring system, installed in compliance with §330.403(a) - (c) of this title (relating to Groundwater Monitoring Systems).

(b) The owner or operator shall submit a groundwater sampling and analysis plan to the executive director for review and approval prior to commencement of sampling and shall maintain a current copy in the operating record. The groundwater sampling and analysis plan shall:

(1) include procedures and techniques for sample collection, sample preservation and shipment, analytical procedures, chain of custody controls, and quality assurance and quality control;

(2) provide for measurement of groundwater elevations at each sampling point prior to bailing or purging; measurement at an event shall be accomplished over a period of time short enough to avoid temporal variations in water levels; sampling at each event shall proceed from the point with the highest water-level elevation to those with successively lower elevations unless contamination is known to be present, in which case wells not likely to be contaminated shall be sampled prior to those that are known to be contaminated unless an alternative procedure is approved by the executive director; and

(3) include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents and other monitoring parameters in groundwater samples.

(A) For Type I landfills, the owner or operator shall collect an appropriate number of samples necessary to establish groundwater quality data consistent with the appropriate statistical procedures determined in accordance with subsection (f) of this section. The sampling procedures for Type I landfills shall be those specified under §330.407(a) of this title (relating to Detection Monitoring Program for Type I Landfills) for detection monitoring, §330.409(b) - (f) of this title (relating to Assessment Monitoring Program) for assessment monitoring, and §330.411(b) of this title (relating to Assessment of Corrective Measures) for corrective action.

(B) For Type IV landfills, the owner or operator shall sample the groundwater monitoring parameters at the frequency specified in §330.417 of this title (relating to Groundwater Monitoring at Type IV Landfills).

(C) For other solid waste management units that will have a groundwater monitoring program in accordance with §330.401(a), of this title (relating to Applicability) of the executive director will specify groundwater monitoring parameters and frequencies appropriate to the facility conditions;

(c) Groundwater samples shall not be field-filtered prior to laboratory analysis.

(d) The owner or operator shall establish background groundwater quality that has not been affected by leakage from a solid waste management unit in hydraulically upgradient wells or in background wells for each of the monitoring parameters or constituents required in the groundwater monitoring program for a solid waste management unit, as determined under §330.419 of this title (relating to Constituents for Detection Monitoring). A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area if hydrogeologic conditions do not allow the owner or operator to determine which wells are hydraulically upgradient or if sampling at other wells will provide a better indication of background groundwater quality than is possible from upgradient wells. Point of compliance groundwater data shall not be adjusted by subtracting background groundwater data.

(e) The owner or operator shall specify in the groundwater sampling and analysis plan one or more of the following statistical methods to be used in evaluating groundwater monitoring data for each parameter or constituent analyzed as required under §330.407 of this title and §330.409 of this title. The statistical test(s) chosen shall be conducted separately for each tested constituent in each well or sampling point:

(1) a parametric analysis of variance followed by multiple-comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each point of compliance well’s mean and the background mean levels for each constituent;

(2) an analysis of variance based on ranks followed by multiple-comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each point of compliance well’s median and the background median levels for each constituent;

(3) a tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data and the level of each constituent in each point of compliance well is compared to the upper tolerance or prediction limit;

(4) a control-chart approach that gives control limits for each constituent; and

(5) another statistical test method that meets the performance standards of subsection (f) of this section. The owner or operator shall submit to the executive director satisfactory justification for this alternative test.

(f) Any statistical method chosen under subsection (e) of this section shall comply with the following performance standards, as appropriate.

(1) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of tested constituents. If the distribution of a tested constituent is shown by the owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well (or sampling point) comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple-comparisons procedure is used,
each testing period shall be no less than 0.05, but the Type I error of no less than 0.01 for individual well comparisons shall be maintained. This performance standard does not apply to tolerance intervals, prediction interval, or control charts.

(3) If a control-chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background database, the data distribution, and the range of the concentration values for each constituent of concern.

(4) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence, and for tolerance intervals the percentage of the population that the interval must contain, shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

§330.407. Detection Monitoring Program for Type 1 Landfills.

(a) The monitoring frequency for all constituents listed in §330.419 of this title (relating to Constituents for Detection Monitoring) shall be at least semianual during the active life of the facility and the closure and post-closure care period.

(1) A minimum of four statistically independent samples from each background and each point of compliance well shall be collected and analyzed for the constituents listed in §330.419 of this title during the first semianual sampling event. The independence of the four samples shall be achieved by bailing or purging at least three well volumes (or to dryness, if less) from each well before each of the four samples is collected. The executive director may authorize alternative procedures for slow-recharging monitoring wells. At least one sample from each background and point of compliance well shall be collected and analyzed during each subsequent semianual sampling event.

(2) The executive director may specify an appropriate alternative frequency for repeated sampling and analysis of the constituents listed in §330.419 of this title during the active life and the closure and post-closure care period. The alternative frequency shall be no less than annual and shall be based on factors such as lithology and hydraulic conductivity of the aquifer and unsaturated zone, groundwater flow rates, minimum distance of travel from waste to monitoring wells, and resource value of the uppermost aquifer.

(3) For the purpose of establishing background groundwater quality, the executive director may agree to consider analytical data acquired prior to the effective date of this chapter in addition to the data required in this subsection and in §330.409(b) of this title (relating to Assessment Monitoring Program).

(b) Not later than 60 days after each sampling event, the owner or operator shall determine whether there has been a statistically significant change from background of any tested constituent at any monitoring well. If there has been a statistically significant change, the owner or operator shall notify the executive director in writing within seven days of this determination.

(1) If a statistically significant change from background of any tested constituent at any monitoring well has occurred, the owner or operator shall immediately place a notice in the operating record describing the increase and shall establish an assessment monitoring program meeting the requirements of §330.409 of this title within 90 days of the date of the notice to the executive director required under this subsection, except as provided for in paragraph (2) of this subsection.

(2) If a statistically significant change from background of any tested constituent at any monitoring well has occurred, the owner or operator may submit the results of resampling as appropriate for the statistical method being used within 60 days of determining the statistically significant change. The resample data may be used to statistically confirm or disprove the determination made in this subsection.

(3) If a statistically significant change from background of any tested constituent at any monitoring well has occurred and the owner or operator has reasonable cause to think that a source other than a landfill unit caused the contamination or that the statistically significant change resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality, then the owner or operator may submit a report providing documentation to this effect. In making a demonstration under this paragraph, the owner or operator must:

(A) notify the executive director in writing within seven days of determining statistically significant evidence of contamination at the compliance point that the owner or operator intends to make a demonstration under this paragraph;

(B) within 90 days of determining a statistically significant change, submit a report to the executive director that demonstrates that a source other than a monitored landfill unit caused the contamination or that the statistically significant change resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. The report must be prepared and certified by a qualified groundwater scientist;

(C) not filter the groundwater sample for constituents addressed by the demonstration prior to laboratory analysis. The executive director may also require the owner or operator to provide analyses of the landfill leachate to support the demonstration;

(D) if appropriate, within 90 days of determining a statistically significant change, submit to the executive director an application for a permit amendment or modification to make any necessary changes to the detection monitoring program at the facility; and

(E) continue to monitor in accordance with the detection monitoring program established under this section.

(4) If the owner or operator does not make a demonstration satisfactory to the executive director within 90 days after the date of the notice to the executive director required under this subsection, the owner or operator shall initiate an assessment monitoring program as required in paragraph (1) of this subsection.

(5) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, the owner or operator shall, within 90 days, submit an application for a permit amendment or modification to make any appropriate changes to the program.

(c) The owner or operator shall submit an annual detection monitoring report within 60 days after the facility's last groundwater monitoring event in a calendar year that must include the following information determined since the previously submitted annual report:
(1) a statement regarding whether a statistically significant change has occurred over background values in any well during the previous calendar year period and the status of any statistically significant changes;

(2) the results of all groundwater monitoring, testing, and analytical work obtained or prepared under the requirements of this permit, including a summary of background groundwater quality values, groundwater monitoring analyses, statistical calculations, graphs, and drawings;

(3) the groundwater flow rate and direction in the uppermost aquifer. The groundwater flow rate and direction of groundwater flow shall be established using the data collected during the preceding calendar year’s sampling events from the monitoring wells of the detection monitoring program. The owner or operator shall also include in the report all documentation used to determine the groundwater flow rate and direction of groundwater flow;

(4) a contour map of piezometric water levels in the uppermost aquifer based at a minimum upon concurrent measurement in all monitoring wells. All data or documentation used to establish the contour map should be included in the report;

(5) recommendation for any changes; and

(6) any other items requested by the executive director.

§330.409 Assessment Monitoring Program

(a) Assessment monitoring is required whenever the owner or operator determines there has been a statistically significant change from background for one or more of the constituents listed in §330.419 of this title (relating to Constituents for Detection Monitoring).

(b) Within 90 days of determining that a statistically significant change has occurred in accordance with §330.407(b) of this title (relating to Detection Monitoring Program for Type I Landfills), and not less than annually thereafter, the owner or operator shall sample and analyze the groundwater monitoring system for the full set of constituents listed in Appendix II to 40 Code of Federal Regulations (CFR) Part 258 40 CFR Part 258, Appendix II, effective July 14, 2005, as adopted by reference. A minimum of one sample shall be collected from each point of compliance well and analyzed for the 40 CFR Part 258, Appendix II constituents during each sampling event. For any new constituent(s) detected in the point of compliance wells as a result of the complete Appendix II analysis, a minimum of four statistically independent samples from each background well shall be collected and analyzed to establish background levels for the additional constituent(s). After sampling all point of compliance wells for Appendix II constituents, the executive director may specify an appropriate subset of wells to be sampled and analyzed for the Appendix II constituents during assessment monitoring and may delete any of the Appendix II constituents for a municipal solid waste management unit if the owner or operator can document that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

(c) The executive director may specify an appropriate alternative frequency for repeated sampling and analysis for the full set of 40 CFR Part 258, Appendix II constituents required by subsection (b) of this section during the active life and the closure and post-closure care period of the unit considering the following factors:

(1) lithology and hydraulic conductivity of the aquifer and unsaturated zone;

(2) groundwater flow rates;

(3) minimum distance of travel from the waste nearest to any point of compliance monitoring well

(4) resource value of the uppermost aquifer; and

(5) nature ( fate and transport) of any constituents detected in response to this section.

(d) Not later than 60 days after each sampling event, the owner or operator shall submit to the executive director the results from the initial and subsequent sampling events required in subsection (b) of this section and also place them in the operating record. The owner or operator shall also:

(1) within 90 days of submittal of the results from a sampling event and on at least a semiannual basis thereafter, resample all wells specified by §330.403(a) of this title (relating to Groundwater Monitoring Systems) and conduct analyses for all constituents in §330.419 of this title and for those additional constituents in 40 CFR Part 258, Appendix II that are detected in response to subsection (b) of this section. The results must be submitted to the executive director not later than 60 days after the sampling event and shall also be placed in the operating record. At least one sample must be collected and analyzed from each background and point of compliance well at each sampling event. The executive director may specify an alternative monitoring frequency during the active life and the closure and post-closure care period for the constituents referred to in this paragraph. The alternative frequency during the active life and the closure and post-closure care period shall be not less than annual. The alternative frequency shall be based on consideration of the factors described in subsection (c) of this section;

(2) establish background concentrations for any additional Appendix II constituents detected in accordance with subsection (b) of this section or paragraph (1) of this subsection; and

(3) establish groundwater protection standards for all constituents in point of compliance wells detected in accordance with subsection (b) of this section or paragraph (1) of this subsection. The groundwater protection standards shall be established in accordance with subsection (h) or (i) of this section.

(e) If the concentrations of all 40 CFR Part 258, Appendix II constituents are shown to be at or below background values, using the statistical procedures in §330.405(f) of this title (relating to Groundwater Sampling and Analysis Requirements) for two consecutive sampling events, the owner or operator must notify the executive director in writing and return to detection monitoring if approved.

(f) If the concentrations of any 40 CFR Part 258, Appendix II constituents are above background values, but all concentrations are below the groundwater protection standard established under subsection (h) or (i) of this section, using the statistical procedures in §330.405(f) of this title, the owner or operator shall continue assessment monitoring in accordance with this section.

(g) Not later than 60 days after each sampling event, the owner or operator shall determine whether any 40 CFR Part 258, Appendix II constituents were detected at statistically significant levels above the groundwater protection standard established under subsection (h) or (i) of this section in any sampling event. If the groundwater protection standard has been exceeded, the owner or operator shall notify the executive director and appropriate local government officials in writing within seven days of this determination.

(1) The owner or operator shall also:

(A) characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(B) install at least one additional monitoring well between the monitoring well with the statistically significant concentration and the next adjacent wells along the point of compliance before the
next sampling event and sample these wells in accordance with subsection(d)(1) of this section;

(C) notify in writing all persons that own or occupy the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site as indicated by sampling of wells in accordance with subsection(d)(1) of this section; and

(D) initiate an assessment of corrective measures as required by §330.411 of this title (relating to Assessment of Corrective Measures) all within 90 days of the notice to the executive director.

(2) The owner or operator may demonstrate that a source other than the monitored solid waste management unit caused the contamination or that the statistically significant change resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. In making a demonstration under this paragraph, the owner or operator must:

(A) notify the executive director in writing within seven days of determining statistically significant evidence of contamination at the point of compliance that the owner or operator intends to make a demonstration under this paragraph;

(B) within 90 days of determining a statistically significant level above the groundwater protection standard, submit a report to the executive director that demonstrates that a source other than the monitored solid waste management unit caused the contamination or that the statistically significant change resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. The report shall be prepared and certified by a qualified groundwater scientist;

(C) not filter the groundwater samples for constituents addressed by the demonstration prior to laboratory analysis. The executive director may also require the owner or operator to provide analysis of landfill leachate to support the demonstration; and

(D) continue to monitor in accordance with the assessment monitoring program established under this section.

(3) If a successful demonstration is made, the owner or operator shall continue monitoring in accordance with the assessment monitoring program required by this section and may return to detection monitoring if the 40 CFR Part 258, Appendix II constituents are at or below background as specified in subsection(e) of this section. Until a successful demonstration is made, the owner or operator shall comply with paragraph (1) of this subsection, including initiating an assessment of corrective measures.

(4) If the owner or operator determines that the assessment monitoring program no longer satisfies the requirements of this section, the owner or operator must, within 90 days, submit an application for a permit amendment or modification to make any appropriate changes to the program.

(h) The owner or operator shall establish a groundwater protection standard for each 40 CFR Part 258, Appendix II constituent detected in the point of compliance monitoring wells. The groundwater protection standard must be:

(1) for constituents for which a maximum contaminant level (MCL) has been promulgated under 40 CFR Part 141, Safe Drinking Water Act (codified), §1412, the MCL for that constituent;

(2) for constituents for which MCLs have not been promulgated, the background concentration for the constituent established from wells in accordance with §330.405(d) of this title; or

(3) for constituents for which the background level is higher than the MCL identified under paragraph (1) of this subsection or health-based levels identified under subsection(i) of this section, the background concentration.

(i) The executive director may establish an alternative groundwater protection standard for 40 CFR Part 258, Appendix II constituents for which MCLs have not been established. These groundwater protection standards shall be appropriate health-based levels that satisfy either the criteria of paragraph (1)–(4) of this subsection, inclusive or comply with paragraph (5) of this subsection:

(1) the level is derived in a manner consistent with United States Environmental Protection Agency guidelines for assessing the health risks of environmental pollutants (51 FR 33992, 34006, 34014, 34028, September 24, 1986);

(2) the level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 CFR Part 792) or equivalent;

(3) for carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level (due to continuous lifetime exposure) with the $1 \times 10^{-6}$ to $1 \times 10^{-3}$ range; and

(4) for systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed to on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes of this subchapter, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation; or

(5) the level is developed in accordance with Chapter 350 of this title (relating to Texas Risk Reduction Program).

(j) In establishing groundwater protection standards under subsection(i) of this section, the executive director may consider multiple constituents in the groundwater, exposure threats to sensitive environmental receptors, and other site-specific exposure or potential exposure to groundwater.

(k) The owner or operator shall submit an annual assessment monitoring report within 60 days after the facility’s second semiannual groundwater monitoring event that includes the following information determined since the previously submitted report:

(1) a statement whether an statistically significant change has exceeded a groundwater protection standard established in subsection(h) or(i) of this section in any well during the previous calendar year period and the status of any statistically significant change events;

(2) the results of all groundwater monitoring, testing, and analytical work obtained or prepared in accordance with the requirements of this chapter, including a summary of background groundwater quality values, groundwater monitoring analyses, statistical calculations, graphs, and drawings;

(3) the groundwater flow rate and direction in the uppermost aquifer. The groundwater flow rate and direction of groundwater flow shall be established using the data collected during the preceding calendar year’s sampling events from the monitoring wells of the Assessment Monitoring Program. The owner or operator shall also include in the report all documentation used to determine the groundwater flow rate and direction of groundwater flow;

(4) a contour map of piezometric water levels in the uppermost aquifer based, at a minimum, upon concurrent measurement in all monitoring wells. All data or documentation used to establish the contour map should be included in the report;

(5) recommendation for any changes; and

(6) any other items requested by the executive director.

(a) Within 90 days of finding that any of the 40 Code of Federal Regulations Part 258, Appendix II constituents have been detected at a statistically significant level exceeding the groundwater protection standards defined under §330.409(b), (i), or (j) of this title (relating to Assessment Monitoring Program), the owner or operator shall initiate an assessment of corrective measures. Such an assessment shall be completed within 180 days of initiating the assessment.

(b) The owner or operator shall continue to monitor in accordance with the assessment monitoring program as specified in §330.409 of this title.

(c) The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under §330.413 of this title (relating to Selection of Remedy), addressing at least the following:

1. performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;
2. time required to begin and complete the remedy;
3. costs of remedy implementation; and
4. institutional requirements such as state or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy or remedies.

(d) The owner or operator shall discuss the results of the corrective measures assessment, prior to the selection of a remedy, in a public meeting with interested and affected parties. The owner or operator shall arrange for the meeting and provide notice in accordance with the provisions of §39.501(e)(3) of this title (relating to Application for Municipal Solid Waste Permit).

§330.413. Selection of Remedy.

(a) Based on the results of the corrective measures assessment conducted under §330.411 of this title (relating to Assessment of Corrective Measures), the owner or operator shall select a remedy that, at a minimum, meets the standards listed in subsection (b) of this section and is in accordance with rules of the commission. Within 30 days of completing the assessment of corrective measures described in §330.411 of this title, the owner or operator shall submit a report to the executive director for review and approval and place it in the operating record. The report shall describe the remedy or remedies proposed for selection and the way it or they meet the standards in subsection (b) of this section.

(b) Remedies shall:
1. be protective of human health and the environment;
2. attain the groundwater protection standard as specified in accordance with §330.409(b), (i), or (j) of this title (relating to Assessment Monitoring Program).
3. control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of 40 Code of Federal Regulations Part 238, Appendix II constituents into the environment that may pose a threat to human health or the environment; and
4. comply with standards for management of wastes as specified in §330.415(d) of this title (relating to Implementation of the Corrective Action Program).

(c) In selecting a remedy that meets the standards of subsection (b) of this section, the owner or operator shall consider the following evaluation factors:

1. long- and short-term effectiveness and protectiveness of the potential remedy, along with the degree of certainty that the remedy will prove successful based on consideration of:
   A. magnitude of reduction of existing risks;
   B. magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;
   C. type and degree of long-term management required, including monitoring, operation, and maintenance;
   D. short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, disposal, or containment;
   E. time until full protection is achieved;
   F. potential for exposure of humans and environmental receptors to remaining wastes, considering potential threats to human health and the environment associated with excavation, transportation, disposal, or containment;
   G. long-term reliability of the engineering and institutional controls; and
   H. potential need for replacement of the remedy;
   2. effectiveness of the remedy in controlling the source to reduce further releases based on the extent to which containment practices will reduce further releases and the extent to which treatment technologies may be used;
   3. ease or difficulty of implementing a potential remedy based on consideration of:
   A. degree of difficulty associated with constructing the technology;
   B. expected operational reliability of the technologies;
   C. need to coordinate with and obtain necessary approvals and permits from other agencies and regulatory bodies;
   D. availability of necessary equipment and specialists;
   E. available capacity and location of needed treatment, storage, and disposal services;
   4. practicable capability of the owner or operator, including a consideration of the technical and economic capability; and
   5. degree to which community concerns are addressed by a potential remedy.

(d) The owner or operator shall specify as part of the selected remedy a schedule for initiating and completing remedial activities. The schedule shall require the initiation of remedial activities within a reasonable time approved by the executive director, taking into consideration the following factors:

1. extent and nature of contamination;
2. practical capabilities of remedial technologies in achieving compliance with groundwater protection standards established under §330.409(b), (i), or (j) of this title and other objectives of the remedy;
3. availability of treatment or disposal capacity for wastes managed during implementation of the remedy;
4. desirability of utilizing technologies that are not currently available but that may offer significant advantages over available
technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;

(5) potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;

(6) resource value of the aquifer, including current and future uses; proximity and withdrawal rate of users; groundwater quantity and quality; potential damage to wildlife, crops, vegetation, and physical structures from exposure to waste constituents; hydrogeologic characteristics of the facility and adjacent land; groundwater removal and treatment costs; and cost and availability of alternative water supplies;

(7) practicable capability of the owner or operator; and

(8) other relevant factors.

(e) The executive director may determine that remediation of a release of a 40 Code of Federal Regulations Part 258, Appendix II constituent from a solid waste management unit is not necessary if the owner or operator demonstrates to the satisfaction of the executive director that:

(1) the groundwater is additionally contaminated by substances that have originated from a source other than a solid waste management unit and those substances are present in concentrations such that cleanup of the release from the solid waste management unit would provide no significant reduction in risk to actual or potential receptors; or

(2) the constituent is present in groundwater that is not currently or reasonably expected to be a source of drinking water and is not hydraulically connected with waters to which the constituent is migrating or is likely to migrate in a concentration that would exceed the groundwater protection standards established under §330.409(h), (i), or (j) of this title; or

(3) remediation of the release is technically impracticable; or

(4) remediation of the release results in unacceptable cross-media impacts.

(f) A determination by the executive director in accordance with subsection (e) of this section shall not affect the authority of the state to require the owner or operator to undertake source-control measures or other measures that may be necessary to eliminate or minimize further releases to the groundwater, to prevent exposure to the groundwater, or to remediate the groundwater to concentrations that are technologically practicable and that significantly reduce threats to human health or the environment.

§330.413 Implementation of the Corrective Action Program

(a) Based on the schedule established under §330.413(d) of this title (relating to Selection of Remedy) for initiation and completion of remedial activities, the owner or operator shall:

(1) establish and implement a corrective action groundwater monitoring program that:

(A) at least meets the requirements of an assessment monitoring program under §330.409 of this title (relating to Assessment Monitoring Program);

(B) indicates the effectiveness of the corrective action remedy; and

(C) demonstrates compliance with groundwater protection standards under subsection (f) of this section;

(2) implement the corrective action remedy selected under §330.413 of this title; and

(3) take any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required under §330.413 of this title. The following factors shall be considered by an owner or operator in determining if interim measures are necessary:

(A) time required to develop and implement a final remedy;

(B) actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;

(C) actual or potential contamination of drinking water supplies or sensitive ecosystems;

(D) further degradation of the groundwater that may occur if remedial action is not initiated expeditiously;

(E) weather conditions that may cause hazardous constituents to migrate or be released;

(F) risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and

(G) other situations that may pose threats to human health and the environment.

(b) An owner or operator may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of §330.413(b) of this title are not being achieved through the remedy selected. In such cases, the owner or operator shall, with approval of the executive director, implement other methods or techniques that could practically achieve compliance with the requirements unless the owner or operator makes the determination under subsection (c) of this section and if it is approved by the executive director. Failure to obtain approval from the executive director for the other methods and techniques does not relieve the owner or operator of the burden to implement an acceptable remedy.

(c) If the owner or operator determines that compliance with requirements under §330.413(b) of this title cannot be practically achieved with any currently available methods, the owner or operator shall:

(1) present to the executive director certification by a qualified groundwater scientist that compliance with requirements under §330.413(b) of this title cannot be practically achieved with any currently available methods;

(2) implement alternative measures, with the approval of the executive director, to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment;

(3) implement alternative measures, with the approval of the executive director, for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are technologically practicable and consistent with the overall objective of the remedy; and

(4) place a copy of all approved alternative measures in the operating record.

(d) All solid wastes that are managed in accordance with a remedy required under §330.413 of this title, or an interim measure required under subsection (a) of this section, shall be managed in a manner that is protective of human health and the environment and that complies with applicable Resource Conservation and Recovery Act requirements.

(e) The owner or operator shall submit an annual assessment monitoring report by March 1st every year that includes the following information determined since the previously submitted report:
(1) a statement regarding whether a statistically significant change has exceeded a groundwater protection standard established in §330.409(h), (i), or (j) of this title in any well during the previous calendar year period and the status of any statistically significant change events;

(2) the results of all groundwater monitoring, testing, and analytical work obtained or prepared in accordance with the requirements of this chapter, including a summary of background groundwater quality values, groundwater monitoring analyses, statistical calculations, graphs, and drawings;

(3) the groundwater flow rate and direction in the uppermost aquifer. The groundwater flow rate and direction of groundwater flow shall be established using the data collected during the preceding calendar year’s sampling events from the monitoring wells of the Corrective Action Program. The owner or operator shall also include in the report all documentation used to determine the groundwater flow rate and direction of groundwater flow;

(4) a contour map of piezometric water levels in the uppermost aquifer based at a minimum upon concurrent measurement in all monitoring wells. All data or documentation used to establish the contour map should be included in the report;

(5) recommendation for any changes; and

(6) any other items requested by the executive director.

(f) Remedies selected under §330.413 of this title shall be considered complete when:

(1) the owner or operator complies with the groundwater protection standards established under §330.409(h), (i), or (j) of this title at all points within the plume of contamination that lies beyond the groundwater monitoring system established under §330.403 of this title (relating to Groundwater Monitoring Systems);

(2) compliance with the groundwater protection standards established under §330.409(h), (i), or (j) of this title has been achieved by demonstrating that concentrations of 40 Code of Federal Regulations Part 258, Appendix II constituents have not exceeded the groundwater protection standards for a period of three consecutive years, using the statistical procedures in §330.405(1) of this title (relating to Groundwater Sampling and Analysis Requirements) and performance standards in §330.409(h), (i), or (j) of this title. The executive director may specify an alternative length of time during which the owner or operator shall demonstrate that concentrations of 40 Code of Federal Regulations Part 258, Appendix II constituents have not exceeded the groundwater protection standards. The alternative length of time shall be based on:

(A) extent and concentration of the release;

(B) behavior characteristics of the hazardous constituents in the groundwater;

(C) accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and

(D) characteristics of the groundwater; and

(3) all actions required to complete the remedy have been satisfied.

(g) Within 15 days of completion of the remedy, the owner or operator shall submit to the executive director and also place in the operating record a certification by a qualified groundwater scientist that the remedy has been completed in compliance with the requirements of subsection (a) of this section.

(h) Upon submittal of satisfactory certification of the completion of the corrective action remedy, the executive director may release the owner or operator from the requirements for financial assurance for corrective action under §330.509 of this title (relating to Corrective Action Cost Estimates for Landfills).

§330.417. Groundwater Monitoring at Type IV Landfills.

(a) The requirements in this section apply to Type IV landfills, as defined in §330.5(b)(2) of this title (relating to Classification of Municipal Solid Waste Facilities), except as provided in §330.5(c) of this title and in subsection (b) of this section.

(b) At the discretion of the executive director, the owner or operator of a Type IV landfill may be required to install groundwater monitoring systems and to monitor on a regular basis the quality of groundwater at the point of compliance.

(1) The factors to be considered by the executive director in determining the need for groundwater monitoring shall include: relationship of the facility to drinking water intakes (both surface and subsurface); hydrogeology of the shallow water-bearing zones in the facility area; use of shallow groundwater in the facility area; type of waste being or to be taken; types of liner; likelihood of leakage of contaminants from the facility; and protection of human health and the environment.

(2) A groundwater monitoring system shall be installed in accordance with §330.403 of this title (relating to Groundwater Monitoring Systems):

(3) Groundwater sampling and analysis requirements shall be in accordance with §330.405(a) - (d) of this title (relating to Groundwater Sampling and Analysis Requirements).

(4) Each monitoring well or other sampling point shall be sampled and analyzed annually, or on some other schedule but not less frequently than annually as determined by the executive director, for the following constituents: chloride, iron, manganese, cadmium, zinc, total dissolved solids, specific conductance (field and laboratory measurements), pH (field and laboratory measurements), and non-purgeable organic compounds.

(5) Not later than 60 days after each sampling event, the owner or operator shall determine whether the landfill has released contaminants to the uppermost aquifer. The owner or operator shall provide an annual detection monitoring report within 60 days after the facility’s annual groundwater monitoring event that includes the following information determined since the previously submitted report:

(A) the results of all monitoring, testing, and analytical work obtained or prepared in accordance with the requirements of this permit, including a summary of background groundwater quality values, groundwater monitoring analyses, any statistical calculations, graphs, and drawings;

(B) the groundwater flow rate and direction in the uppermost aquifer. The groundwater flow rate and direction of groundwater flow shall be established using the data collected during the preceding calendar year’s sampling events from the monitoring wells of the Detection Monitoring Program. The owner or operator shall also include in the report all documentation used to determine the groundwater flow rate and direction of groundwater flow;

(C) a contour map of piezometric water levels in the uppermost aquifer based at a minimum upon concurrent measurement in all monitoring wells. All data or documentation used to establish the contour map should be included in the report;

(D) recommendation for any changes; and

(E) any other items requested by the executive director.

(6) The executive director may require additional sampling, analyses of additional constituents, installation of additional monitoring.
wells or other sampling points, and/or other hydrogeological investigations if the facility appears to be contaminating the uppermost aquifer.

(7) If the owner or operator finds the facility to have contaminated or be contaminating the uppermost aquifer, the executive director may order corrective action appropriate to protect human health and the environment up to and including that in §330.411, 330.413, and 330.415 of this title (relating to Assessment of Corrective Measures; Selection of Remedy; and Implementation of the Corrective Action Program).

§330.419 Constituents for Detection Monitoring.

(a) The owner or operator shall sample and analyze the groundwater monitoring system for the constituents listed in 40 Code of Federal Regulations (CFR) Part 258, Appendix I, effective July 14, 2005, herein adopted by reference.

(b) The executive director may delete any of the constituents listed in 40 CFR Part 258, Appendix I for a municipal solid waste management unit if it can be documented that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

(c) The executive director may establish an alternative list of inorganic indicator constituents for a municipal solid waste management unit in lieu of some or all of the heavy metals (constituents (1) - (15) in the table located in 40 CFR Part 258, Appendix I) if the alternative constituents provide a reliable indication of inorganic releases from the municipal solid waste management unit to the groundwater. The executive director may also add inorganic or organic constituents to those to be tested if they are reasonably expected to be in or derived from the waste contained in the unit or if they are likely to provide a useful indication of releases from the municipal solid waste management unit to the groundwater. In determining alternative or additional constituents, the executive director shall consider the following factors:

1. the types, concentrations, quantities, and persistence of waste constituents in wastes at the municipal solid waste management unit;

2. the mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated and saturated zones adjacent to or beneath the municipal solid waste management unit;

3. the detectability of indicator constituents, waste constituents, and reaction products in the groundwater; and

4. the concentrations and coefficients of variation of monitoring parameters or constituents in the groundwater background.

§330.421 MonitorWell Construction Specifications.

(a) Monitoring well construction. Monitoring well construction shall provide for maintenance of the integrity of the bore hole, collection of representative groundwater samples from the water-bearing zone(s) of concern, and prevention of migration of groundwater and surface water within the bore hole. The following specifications must be used for the installation of groundwater monitoring wells at municipal solid waste landfills. Equivalent alternatives to these specifications may be used if prior written approval is obtained in advance from the executive director.

1. Drilling.

   (A) Monitoring wells must be drilled by a Texas-licensed driller who is qualified to drill and install monitoring wells. The installation and development shall be supervised by a licensed professional geoscientist or engineer who is familiar with the geology of the area.

   (B) The well shall be drilled by a method that will allow installation of the casing, screen, etc., and that will not introduce contaminants into the borehole or casing. Drilling techniques used for boring shall take into account the materials to be drilled, depth to groundwater, total depth of the hole, adequate soil sampling, and other such factors that affect the selection of the drilling method. If any fluids are necessary in drilling or installation, then clean, treated city water shall be used; other fluids must be approved in writing by the executive director before use. If city water is used, a current chemical analysis of the city water shall be provided with the monitor-well report.

   (C) The diameter of the boring shall be at least four inches larger than the diameter of the casing. When the boring is in hard rock, a smaller annulus may be approved by the executive director.

   (D) A log of the boring shall be made by or under the supervision of a licensed professional geoscientist or engineer who is familiar with the geology of the area, and shall be sealed, signed, and dated by the licensed professional.

2. Casing, screen, filter pack, and seals.

   (A) The well casing shall be: two to four inches in diameter; National Science Foundation-certified polyvinyl chloride (PVC) Schedule 40 or 80 pipe, flush-thread, screw joint (no glue or solvents); polytetrafluoroethylene (PTFE, such as Teflon) tape or O-rings in the joints; no collar couplings. The top of the casing shall be at least two feet above ground level. Where high levels of volatile organic compounds or corrosive compounds are anticipated, stainless steel or PTFE casing and screen may be used, subject to approval by the executive director. Four-inch diameter casing is recommended because it allows larger volume samples to be obtained and provides easier access for development, pumps, and repairs. The casing shall be cleaned and packaged at the place of manufacture; the packaging shall include a PVC wrapping on each section of casing to keep it from being contaminated prior to installation. The casing shall be free of ink, labels, or other markings. The casing (and screen) shall be centered in the hole to allow installation of a good filter pack and annular seal, using appropriately placed centralizers. The top of the casing shall be protected by a threaded or slip-on top cap or by a sealing cap or screw-plug seal inserted into the top of the casing. The cap shall be vented to prevent buildup of methane or other gases and shall be designed to prevent moisture from entering the well.

   (B) The screen shall be compatible with the casing and shall generally be of the same material. The screen shall not involve the use of any glues or solvents for construction. A wire-wound screen is recommended to provide maximum inflow area. Field-cut slots are not permitted for well screen. Filter cloth shall not be used. A blank-pipe sediment trap, typically one to two feet, should be installed below the screen. A bottom cap is typically placed on the bottom of the sediment trap. The sediment trap shall not extend through the lower confining layer of the water-bearing zone being tested. Screen sterilization methods are the same as those for casing. Selection of the size of the screen opening should be done by a person experienced with such work and shall include consideration of the distribution of particle sizes both in the water-bearing zone and in the filter pack surrounding the screen. The screen opening shall not be larger than the smallest fraction of the filter pack.

   (C) The filter pack, placed between the screen and the well bore, shall consist of prepackaged, inert, clean silica sand or glass beads; it shall extend from one to four feet above the top of the screen. Open stockpile sources of sand or gravel are not permitted. The filter pack usually has a 30% finer grain size that is about four to ten times larger than the 30% finer grain size of the water-bearing zone; the filter pack should have a uniformity coefficient less than 2.5. The filter pack should be placed with a tremie pipe to ensure that the material completely surrounds the screen and casing without bridging. The tremie pipe shall be steam cleaned prior to the first well and before each subsequent well.

   (D) The annular seal shall be placed on top of the filter pack and shall be at least two feet thick. It should be placed in the zone.
of saturation to maintain hydration. The seal should be composed of coarse-grain sodium bentonite, coarse-grit sodium bentonite, or bentonite grout. Special care should be taken to ensure that fine material or grout does not plug the underlying filter pack. Placement of a few inches of prepackaged clean fine sand on top of the filter pack will help to prevent migration of the annular seal material into the filter pack. The seal should be placed on top of the filter pack with a steam-cleaned tremie pipe to ensure good distribution and should be tamped with a steam-cleaned rod to determine that the seal is thick enough. The bentonite shall be hydrated with clean water prior to any further activities on the well and left to stand until hydration is complete (eight to 12 hours, depending on the grain size of the bentonite). If a bentonite-grout (without cement) casing seal is used in the well bore, then it may replace the annular seal described in this paragraph.

(E) A casing seal shall be placed on top of the annular seal to prevent fluids and contaminants from entering the borehole from the surface. The casing seal shall consist of a commercial bentonite grout or a cement-bentonite mixture. Drilling spoil, cuttings, or other native materials are not permitted for use as a casing seal. Quick-setting cements are not permitted for use because contaminants may leach from them into the groundwater. The top of the casing seal shall be between five and two feet from the surface.

(3) Concrete pad. High-quality structural-type concrete shall be placed from the top of the casing seal (two to five feet below the surface) continuously to the top of the ground to form a pad at the surface. This formed surface pad shall be at least six inches thick and not less than four feet square or five feet six inches square in diameter, whichever is smaller. The pad shall contain sufficient reinforcing steel to ensure its structural integrity in the event that soil support is lost. The top of the pad shall slope away from the well bore to the edges to prevent ponding of water around the casing or collar.

(4) Protective collar. A steel protective pipe collar shall be placed around the casing “stickup” to protect it from damage and unwanted entry. The collar shall be set at least one foot into the surface pad during its construction and should extend at least three inches above the top of the well casing (and top cap, if present). The top of the collar shall have a lockable hinged top flap or cover. A sturdy lock shall be installed, maintained in working order, and kept when the well is not being bailed/purged or sampled. The well number or other designation shall be marked permanently on the protective steel collar; it is useful to mark the total depth of the well and its elevation on the collar.

(5) Protective barrier. Where monitoring wells are likely to be damaged by moving equipment or are located in heavily traveled areas, a protective barrier shall be installed. A typical barrier is three or four six- to 12-inch diameter pipes set in concrete just off the protective pad. The pipes can be joined by pipes welded between them, but consideration must be given to well access for sampling and other activities. Separation of such a pipe barrier from the pad means that the barrier can be damaged without risk to the pad and well. Other types of barriers may be approved by the executive director.

(b) Unusual conditions. Where monitoring wells are installed in unusual conditions, all aspects of the installation shall be approved in writing in advance by the executive director. Such aspects include, for example, the use of cellar-type enclosures for the top-well equipment or multiple completions in a single hole.

(c) Development. After a monitoring well is installed, it shall be developed to remove artifacts of drilling (clay films, bentonite pellets in the casing, etc.) and to open the water-bearing zone for maximum flow into the well. Development should continue until all of the water used or affected during drilling activities has been removed and field measurements of pH, specific conductance, and temperature have stabilized. Failure to develop a well properly may mean that it is not properly monitoring the water-bearing zone or may not yield adequate water for sampling even though the water-bearing zone is prolific.

(d) Location and elevation. Upon completion of a monitoring well, the location of the well and all appropriate elevations associated with the top-well equipment shall be surveyed by a registered professional surveyor. The elevation shall be surveyed to the nearest 0.01 foot above mean sea level (with year of the sea-level datum shown). The point on the well casing for which the elevation was determined shall be permanently marked on the casing. The location shall be given in terms of the latitude and longitude at least to the nearest tenth of a second or shall be accurately located with respect to the land fill grid system described in §330.143(b)(5) of this title (relating to Landfill Markers and Benchmark).

(e) Reporting. Monitoring well installation and construction details must be submitted on forms available from the commission and must be completed and submitted within 60 days of well completion. A copy of the detailed geologic log of the boring, a description of development procedures, any particle size or other sample data from the well, and a site map drawn to scale showing the location of all monitoring wells and the point of compliance must be submitted to the executive director at the same time. The licensed driller should be familiar with the forms required by other agencies; a copy of those forms must also be submitted to the commission.

(f) Damaged wells. Any monitoring well that is damaged to the extent that it is no longer suitable for sampling shall be reported to the executive director, who may make a determination about whether to repair or replace the well.

(g) Plugging and abandonment. Any monitoring well that is no longer used shall be properly abandoned and plugged in accordance with 16 TAC §76.702 (relating to Responsibilities of the Licensee and Landowner—Well Drilling, Completion, Capping and Plugging) and §76.1004 (relating to Technical Requirements—Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones). No abandonment shall take place without prior authorization in writing by the executive director.

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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For further information, please call: (512) 239-0348

<< SUBCHAPTER K. CLOSURE, POST-CLOSURE, AND CORRECTIVE ACTION >>

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(Editor’s note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)
STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The proposed repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed repeals also implement Texas Water Code, §5.103, Rules.

§330.280. Applicability.
§330.283. Post-Closure Care for Landfills.

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

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SUBCHAPTER K. CLOSURE AND POST-CLOSURE


STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The standard air permit is proposed under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The proposed new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed new sections also implement Texas Water Code, §5.103, Rules.

(a) The requirements in this subchapter apply to all municipal solid waste (MSW) landfill units or MSW facilities as defined in §330.5 of this title (relating to Classification of Municipal Solid Waste Facilities).
(b) The owner or operator of all existing MSW landfill units or lateral expansions at a facility who is unable to comply with §330.545 of this title (relating to Airport Safety), §330.547 of this title (relating to Floodplains), or §330.559 of this title (relating to Unstable Areas), as applicable, shall complete final closure of the unit or facility by October 9, 1996, and conduct post-closure activities in accordance with §330.463(a) of this title (relating to Post-Closure Care Requirements).
(c) The deadline for closure required by subsection (b) of this section may be extended up to two years if the owner or operator of the MSW landfill unit or MSW facility submits to the executive director for review and approval a request for an extension of the closure deadline that demonstrates to the satisfaction of the executive director that there is no alternative disposal capacity and there is no immediate threat to human health and the environment from the unlined or unlined MSW landfill unit or MSW facility.
(d) Permits that existed before the comprehensive rule revisions of this chapter adopted in 2006 became effective remain valid subject to the requirements of §330.401(a) of this title (relating to Applicability).

(a) The final cover system shall be composed of no less than two feet of soil. The first 18 inches or more of cover shall be of clayey soil, classification sand clayey (SC) or low plasticity clayey (CL) as defined in the “Unified Soils Classification System” developed by the United States Army Corps of Engineers, compacted in layers of no more than six inches to minimize the potential for water infiltration. A high plasticity clayey (CH) soil may be used; however, this soil may experience excessive cracking and shall therefore be covered by a minimum of 12 inches of topsoil to retain moisture. Other types of soil may be used with prior written approval from the executive director.
(b) The final six inches of cover shall be of suitable topsoil that is capable of sustaining native plant growth and shall be seeded or sodded immediately following the application of the final cover in order to minimize erosion.
(c) Side slopes of the final cover for all above-ground disposal areas (aerial fills) shall not exceed a 25% grade (four feet horizontal to one foot vertical). Side slopes for the final cover in excess of 25% may be authorized by the executive director, provided that controlled drainage such as flumes, diversion terraces, spillways, or other acceptable methods are incorporated into the final cover system design in the site development plan and submitted to the executive director for review and approval. The final cover for the topmost portion of a unit or facility shall have a gradient of not less than 2.0% and not greater than 6.0%, and shall possess a sufficient minimum grade to preclude ponding of surface water when total fill height and expected subsidence are taken into consideration.

(d) The executive director may approve an alternative final cover design that:

(1) achieves an equivalent reduction in infiltration as the clacey soil cover infiltration layer specified in subsection (a) of this section; and

(2) provides equivalent protection from wind and water erosion as the topsoil layer specified in subsection (b) of this section.

(e) No later than 60 days prior to the initiation of closure activities, the owner or operator shall submit the design and specifications for the closure of these municipal solid waste (MSW) landfill units or MSW sites to the executive director for review and approval. The final cover shall be installed no later than October 9, 1993.

(f) After completion of closure, the owner or operator of these MSW landfill units or MSW sites shall comply with the post-closure care requirements for this final cover, as detailed in §330.463(a) of this title for the duration of the post-closure period for these units or sites.

§330.455 Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1991, but Stop Receiving Waste Prior to October 9, 1993.

(a) The owner or operator of these units shall comply with all final cover requirements as specified in §330.457 of this title (relating to Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1993).

(b) The final cover shall be completed by October 9, 1994. Owners or operators of municipal solid waste landfill units that fail to complete final cover installation within this 180-day period will be subject to all requirements of §330.463(b) of this title (relating to Post-Closure Care Requirements) unless otherwise specified.

(c) After completion of closure, the owner or operator of these municipal solid waste landfill units or facilities shall comply with all post-closure care requirements for the final cover of these units or facilities as specified in §330.463(a) of this title.

§330.457 Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1993.

(a) The owner or operator shall install a final cover system for the unit that is designed and constructed to minimize infiltration and erosion. The final cover system shall be composed of no less than two feet of soil and consist of a clay-rich soil cover layer overlain by an erosion layer as follows.

(1) For municipal solid waste landfill (MSW) units with a synthetic bottom liner, a synthetic membrane that has a permeability less than or equal to the permeability of any bottom liner system overlain by a clay-rich soil cover layer consisting of a minimum of 18 inches of earthen material with a coefficient of permeability no greater than 1 x 10⁻⁴ centimeters/second (cm/sec). The minimum thickness of the synthetic membrane shall be 20 mils, or 60 mils in the case of high-density polyethylene, in order to ensure proper seaming of the synthetic membrane.

(2) For MSW landfill units with no synthetic bottom liner, the clay-rich soil cover layer shall consist of a minimum of 18 inches of earthen material with a coefficient of permeability less than or equal to the permeability of any constructed bottom liner or natural subsoil present. The coefficient of permeability of the infiltration layer shall be in no case exceed 1 x 10⁻⁴ cm/sec, even though the coefficient of permeability of the constructed bottom liner or natural subsoil is greater than 1 x 10⁻³ cm/sec or no data exist for the value(s) of the coefficient of permeability of the constructed bottom liner or natural subsoil.

(3) For all MSW landfill units, the erosion layer shall consist of a minimum of six inches of earthen material that is capable of sustaining native plant growth and shall be seeded or sodded immediately following the application of the final cover in order to minimize erosion.

(b) The final cover placed over a dedicated Class 1 industrial solid waste cell must consist of a minimum of 18 inches of uncontaminated topsoil overlying four feet of compacted clay-rich soil material with a coefficient of permeability no greater than 1 x 10⁻³ cm/sec unless waste is to be placed on top of the Class 1 industrial solid wastes. If waste is to be placed above Class 1 industrial solid wastes, the Class 1 industrial solid waste must first be covered with a four-foot layer of compacted clay-rich soil. The final cover over the aerial fill must meet the requirements of this subchapter and must include a flexible membrane component.

(c) Quality control testing documentation is as follows. The owner or operator shall test the 18 inches of compacted clay-rich soil cover for its coefficient of permeability at a frequency of no less than one test per surface acre of final cover. Permeability data shall be submitted to the executive director.

(d) The executive director may approve an alternative final cover design that:

(1) a cover achieves an equivalent reduction in infiltration as the clay-rich soil cover layer specified in subsection (a)1) or (2) of this section; and

(2) provides equivalent protection from wind and water erosion as the erosion layer specified in subsection (a)3) of this section.

(e) The owner or operator of all MSW landfill units or lateral expansions at a facility shall prepare a written closure plan that describes the steps necessary to close all MSW landfill units at any point during the active life of the unit. The closure plan, at a minimum, shall include the following information:

(1) a description of the final cover design, methods, and procedures to be used to install the cover;

(2) an estimate of the largest area of the MSW landfill unit or MSW facility ever requiring a final cover at any time during the active life of the unit or MSW facility;

(3) an estimate of the maximum inventory of wastes ever on-site over the active life of the unit or MSW facility;

(4) a schedule for completing all activities necessary to satisfy the closure criteria;

(5) a final contour map depicting the proposed final contours, establishing top slopes and side slopes, proposed surface drainage features, and protection of any 100-year floodplain; and

(6) a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of all MSW landfill units ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure most expensive, as indicated by the closure plan and that satisfies the requirements specified.
in Subchapter L of this chapter (relating to Closure, Post-Closure, and Corrective Action Cost Estimates).

(f) Implementation of the closure plan is as follows.

(1) The owner or operator shall place a copy of the closure plan in the operating record by the initial receipt of waste.

(2) No later than 45 days prior to the initiation of closure activities for an MSW landfill unit, the owner or operator of the unit shall provide written notification to the executive director of the intent to close the unit and place this notice of intent in the operating record.

(3) The owner or operator of all MSW landfill units at a facility shall begin closure activities for each unit no later than 30 days after the date on which the unit receives the known final receipt of wastes or, if the unit has remaining capacity and there is a reasonable likelihood that the unit will receive additional wastes, no later than one year after the most recent receipt of wastes. A request for an extension beyond the one-year deadline for the initiation of closure may be submitted to the executive director for review and approval and shall include all applicable documentation necessary to demonstrate that the unit has the capacity to receive additional waste and that the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the MSW landfill unit.

(4) The owner or operator of an MSW landfill unit shall complete closure activities for the unit in accordance with the approved closure plan within 180 days following the initiation of closure activities as specified in paragraph (3) of this subsection. A request for an extension for the completion of closure activities may be submitted to the executive director for review and approval and shall include all applicable documentation necessary to demonstrate that closure will, of necessity, take longer than 180 days and all steps have been taken and will continue to be taken to prevent threats to human health and the environment from the unclosed MSW landfill unit.

(5) Following completion of all closure activities for the MSW landfill unit, the owner or operator shall comply with the post-closure care requirements specified in §330.463(b) of this title (relating to Post-Closure Care Requirements). The owner or operator shall submit to the executive director by registered mail for review and approval a certification, signed by an independent licensed professional engineer, verifying that closure has been completed in accordance with the approved closure plan. The submittal to the executive director shall include all applicable documentation necessary for certification of closure. Once approved, this certification shall be placed in the operating record.

(6) Following receipt of the required closure documents, as applicable, and an inspection report from the agency’s regional office verifying proper closure of the MSW landfill unit according to the approved closure plan, the executive director may acknowledge the termination of operation and closure of the unit and deem it properly closed.

(g) Within ten days after closure of all MSW landfill units, the owner and operator shall submit to the executive director by registered mail a certified copy of an “affidavit to the public” in accordance with the requirements of §330.19 of this title (relating to Deed Recordation) and place a copy of the affidavit in the operating record. In addition, the owner or operator shall record a certified notification of the deed to the facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that the land has been used as a landfill facility and use of the land is restricted according to the provisions specified in §330.465 of this title (relating to Certification of Completion of Post-Closure Care). The owner or operator shall submit a certified copy of the modified deed to the executive director and place a copy of the modified deed in the operating record within the time frame specified in this subsection.

§330.459. Closure Requirements for Municipal Solid Waste Storage and Processing Units.

(a) The owner or operator shall remove all waste, waste residues, and any recovered materials. Facility units shall either be dismantled and removed off-site or decontaminated.

(b) The owner or operator shall evacuate all material on-site (feedstock, in process, and processed) to an authorized facility and disinfect all leachate handling units, tipping areas, processing areas, and post-processing areas.

(c) If there is evidence of a release from a municipal solid waste unit, the executive director may require an investigation into the nature and extent of the release and an assessment of measures necessary to correct an impact to groundwater.

(d) A recycling facility that stores combustible material outdoors, or that poses a significant risk to public health and safety as determined by the executive director, must comply with the following closure requirements.

(1) Closure must include collecting processed and unprocessed materials, and transporting the materials to an authorized facility for disposition unless otherwise approved or directed in writing by the executive director.

(2) Closure of the facility must be completed within 180 days following the most recent acceptance of processed or unprocessed materials unless otherwise directed or approved in writing by the executive director.


(a) No later than 90 days prior to the initiation of a final facility closure, the owner or operator shall, through a public notice in the newspaper(s) of largest circulation in the vicinity of the facility, provide public notice for final facility closure. This notice shall provide the name, address, and physical location of the facility, the permit, registration, or notification number, as appropriate; and the last date of intended receipt of waste. The owner or operator shall also make available an adequate number of copies of the approved final closure and post-closure plans for public access and review. The owner or operator shall also provide written notification to the executive director of the intent to close the facility and place this notice of intent in the operating record.

(b) Upon notification to the executive director as specified in subsection (a) of this section, the owner or operator of a municipal solid waste management facility shall post a minimum of one sign at the main entrance and all other frequently used points of access for the facility notifying all persons who may utilize the facility of the date of closing for the entire facility and the prohibition against further receipt of waste materials after the stated date. Further, suitable barriers shall be installed at all gates or access points to adequately prevent the unauthorized dumping of solid waste at the closed facility.

(c) Within ten days after completion of final closure activities of a facility, the owner and operator shall submit to the executive director by registered mail the following:

(1) if wastes will remain at the closed facility, a certified copy of an “affidavit to the public” in accordance with the requirements of §330.19 and §330.457(g) of this title (relating to Deed Recordation and Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1993). In addition, the owner or operator of the closed facility shall record a certified notification on the deed to the facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that the land has been used as a landfill facility and use of the land is restricted according to the provisions specified...
in §330.465 of this title (relating to Certification of Completion of Post-Closure Care). The owner or operator shall submit a certified copy of the modified deed to the executive director and place a copy of the modified deed in the operating record within the time frame specified in this paragraph:

(2) a certification, signed by an independent licensed professional engineer, verifying that final facility closure has been completed in accordance with the approved closure plan. The submittal to the executive director shall include all applicable documentation necessary for certification of final facility closure; and

(3) for a facility that does not require post-closure care, a request for voluntary revocation of the facility permit or registration, as applicable.

(d) The owner or operator of the facility may request permission from the executive director to remove the notation from the deed if all wastes are removed from the facility in accordance with §330.7(a) of this title (relating to Permit Required).

§330.463. Post-Closure Care Requirements.

(a) Post-closure care maintenance requirements for municipal solid waste management units subject to the applicable requirements of this subsection.

(1) For a minimum of the first five years after professional engineer certification of the completion of closure as accepted by the executive director, the owner or operator shall retain the right of entry to and maintain all rights-of-way of a closed municipal solid waste management unit in order to conduct periodic inspections of the closed unit. The owner or operator shall correct, as needed, erosion of cover material, lack of vegetative growth, leachate or methane migration, and subsidence or ponding of water on the unit. If any of these problems occur after the end of the five-year post-closure period or persist for longer than the first five years of post-closure care, the owner or operator shall be responsible for their correction until the executive director determines that all problems have been adequately resolved. The executive director may reduce the post-closure period for the unit if all wastes and waste residues have been removed during closure.

(2) Any monitoring programs (groundwater monitoring, resistivity surveys, methane monitoring, etc.) in effect during the life of the unit shall be continued during the post-closure care period.

(3) If there is evidence of a release from a municipal solid waste unit, the executive director may require an investigation into the nature and extent of the release and an assessment of measures necessary to correct an impact to groundwater.

(b) Post-closure care requirements for municipal solid waste management units subject to the requirements of this subsection.

(1) After professional engineer certification of the completion of closure requirements for a municipal solid waste management unit as accepted by the executive director, the owner or operator shall conduct post-closure care for the unit for 30 years, except as specified by paragraph (2)(A) or (B) of this subsection. Post-closure care shall consist, at a minimum, of the following.

(A) The owner or operator shall retain the right of entry to the closed unit and shall maintain all rights-of-way and conduct maintenance and/or remediation activities, as needed, in order to maintain the integrity and effectiveness of all final cover, facility vegetation, and drainage control system(s), to correct any effects of settlement, subsidence, ponded water, erosion, or other events or failures detrimental to the integrity of the closed unit and to prevent any surface run-on and run-off from eroding or otherwise damaging the final cover system.

(B) The owner or operator shall maintain and operate the leachate collection system in accordance with the requirements in §330.331 and §330.333 of this title (relating to Design Criteria and Leachate Collection System, respectively). The executive director may allow the owner or operator to stop managing leachate if the owner or operator demonstrates to the approval of the executive director that leachate no longer poses a threat to human health and the environment.

(C) The owner or operator shall monitor groundwater in accordance with the requirements of Subchapter J of this chapter (relating to Groundwater Monitoring and Corrective Action) and maintain the groundwater monitoring system, if applicable.

(D) The owner or operator shall maintain and operate the gas monitoring system in accordance with the requirements of Subchapter I of this chapter (relating to Landfill Gas Management).

(E) The owner or operator shall continue earth electrical resistivity surveys at the frequency stated in the approved site development plan.

(2) The length of the post-closure care period may be:

(A) decreased by the executive director if the owner or operator submits to the executive director for review and approval a documented certification, signed by a licensed professional engineer and including all applicable documentation necessary to support the certification, that demonstrates that the reduced period is sufficient to protect human health and the environment; or

(B) increased by the executive director if it is determined that the lengthened period is necessary to protect human health and the environment. If there is evidence of a release from a municipal solid waste unit, the executive director may require an investigation into the nature and extent of the release and an assessment of measures necessary to correct an impact to groundwater.

(3) The owner or operator shall place a copy of the post-closure plan in the operating record by the initial receipt of waste. The post-closure plan shall include, at a minimum, the following information:

(A) a description of the monitoring and maintenance activities required in paragraph (1) of this subsection for each unit, and the frequency at which these activities will be performed;

(B) the name, address, and telephone number of the office or person responsible for overseeing and/or conducting the post-closure care activities at the closed unit or facility during the post-closure period;

(C) a description of the planned uses of any portion of the closed unit during the post-closure period in accordance with §330.465 of this title (relating to Certification of Completion of Post-Closure Care); and

(D) a detailed written estimate, in current dollars, of the cost of post-closure care maintenance and any corrective action as described in the post-closure care plan or required by the executive director or the commission which satisfies the requirements specified in Subchapter L of this chapter (relating to Closure, Post-Closure, and Corrective Action Cost Estimates).

§330.465. Certification of Completion of Post-Closure Care.

(a) Following completion of the post-closure care maintenance period for each municipal solid waste landfill unit, the owner or operator shall submit to the executive director for review and approval a certification, signed by an independent licensed professional engineer, verifying that post-closure care has been completed in accordance with the approved post-closure plan. The submittal to the executive director shall include all applicable documentation necessary for the certification of completion of post-closure care.

PROPOSED RULES September 9, 2005 30 TexReg 5669
(b) Upon completion of the post-closure care period for the final unit at a facility, the owner and operator shall submit to the executive director a request for voluntary revocation of the facility permit.

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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For further information, please call: (512) 239-0348

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SUBCHAPTER L. LOCATION RESTRICTIONS

30 TAC §§330.300 - 330.305

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

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The proposed repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed repeals also implement Texas Water Code, §5.103, Rules.

§330.300. Airport Safety.

§330.301. Floodplains.


§330.303. Fault Areas.


§330.305. Unstable Areas.

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

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SUBCHAPTER L. CLOSURE, POST-CLOSURE, AND CORRECTIVE ACTION COST ESTIMATES


STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is proposed under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The proposed new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed new sections also implement Texas Water Code, §5.103, Rules.


The closure, post-closure, or corrective action cost estimate requirements of this section apply to owners and operators of any municipal solid waste facility authorized under this chapter required to have financial assurance and any municipal solid waste process facility as defined in §330.5(a) of this title (relating to Classification of Municipal Solid Waste Facilities) that stores combustible material outdoors, or that poses a significant risk to public health and safety as determined by the executive director.


(a) The owner or operator shall provide a detailed written cost estimate, in current dollars, showing the cost of hiring a third party to close the largest waste fill area that could potentially be open in the year to follow and those areas that have not received final cover in accordance with
the final closure plan. For any landfill this means the completion of the final closure requirements for active and inactive fill areas. The owner or operator shall submit the cost estimate for financial assurance with any new permit application, with any application for a permit transfer, and as a modification for all existing municipal solid waste permits that remain in effect after October 9, 1993.

(1) The cost estimate shall equal the cost of closing the largest area of all landfill units ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan. The owner or operator shall review the facility’s permit conditions on an annual basis and verify that the current active areas match the areas on which closure cost estimates are based.

(2) An increase in the closure cost estimate and the amount of financial assurance provided under subsection (b) of this section shall be made if changes to the final closure plan or the landfill conditions increase the maximum cost of closure at any time during the remaining active life of the unit.

(3) A reduction in the closure cost estimate and the amount of financial assurance provided under subsection (b) of this section may be approved if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the unit and the owner or operator has provided written notice to the executive director of the situation that includes a detailed justification for the reduction of the closure cost estimate and the amount of financial assurance. The owner or operator may request a reduction in the cost estimate and the financial assurance as a permit modification.

(b) The owner or operator of any municipal solid waste unit shall establish financial assurance for closure of the unit in accordance with Chapter 37, Subchapter R of this title (Relating to Financial Assurance for Municipal Solid Waste Facilities). Continuous financial assurance coverage for closure shall be provided until the facility is officially placed under the post-closure maintenance period and all requirements of the final closure plan have been approved as evidenced in writing by the executive director.


(a) The owner or operator shall provide a detailed written cost estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care activities for the municipal solid waste unit, in accordance with the post-closure care plan. The post-closure care cost estimate used to demonstrate financial assurance in subsection (b) of this section shall account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure care plan over the entire post-closure care period. The cost estimate for financial assurance shall be submitted with any new permit application, with any application for a permit transfer, and as a modification for all existing municipal solid waste permits that remain in effect after October 9, 1993.

(1) The cost estimate for post-closure care shall be based on the most expensive costs of post-closure care during the post-closure care period.

(2) An increase in the post-closure care cost estimate and the amount of financial assurance provided under subsection (b) of this section shall be made if changes in the post-closure care plan or the unit conditions increase the maximum costs of post-closure care.

(3) A reduction in the post-closure care cost estimate and the amount of financial assurance provided under subsection (b) of this section may be allowed if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period and the owner or operator has provided written notice to the executive director of the detailed justification for the reduction of the post-closure cost estimate and the amount of financial assurance. The owner or operator may request a reduction in the cost estimate and the financial assurance as a permit modification.

(b) The owner or operator of any municipal solid waste landfill unit shall establish financial assurance for the costs of post-closure care of the unit in accordance with Chapter 37, Subchapter R of this title (Relating to Financial Assurance for Municipal Solid Waste Facilities). Continuous financial assurance coverage for post-closure care shall be provided until the facility is officially released in writing by the executive director from the post-closure care period in accordance with all requirements of the post-closure care plan.


(a) The owner or operator of a municipal solid waste management unit required to undertake a corrective action program under
§330.415 of this title (relating to Implementation of the Corrective Action Program) shall prepare a detailed written cost estimate, in current dollars, of the cost of hiring a third party to perform the corrective action program. The corrective action cost estimate shall account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator shall submit the cost estimate for financial assurance with the corrective action plan. Financial assurance shall be required for each separate corrective action program established for a municipal solid waste unit.

(1) The corrective action cost estimate and the amount of financial assurance provided under subsection (b) of this section shall be increased if changes in the corrective action program or unit conditions increase the maximum costs of corrective action.

(2) A reduction in the cost estimate and the amount of financial assurance for corrective action provided under subsection (b) of this section may be approved if the cost estimate exceeds the maximum remaining costs of corrective action at any time during the remaining corrective action period and the owner or operator has provided written notice to the executive director that includes a detailed justification for the reduction of the corrective action cost estimate and the amount of financial assurance. The owner or operator may request a reduction in the cost estimate and the financial assurance as a modification to the corrective action plan.

(b) The owner or operator of any municipal solid waste management unit required to undertake a corrective action program established under §330.415 of this title shall establish financial assurance for the costs of the most recent corrective action program in accordance with Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities). Continuous financial assurance coverage for each corrective action program shall be provided until the facility is officially released in writing by the executive director from all requirements of the corrective action program after completion of all work specified in the corrective action plan.

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

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SUBCHAPTER M. LOCATION RESTRICTIONS

STATUTORY AUTHORITY
The new sections are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is proposed under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.0519, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The proposed new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.0519, Standard Permit. The proposed new sections also implement Texas Water Code, §5.103, Rules.

§330.541. Applicability.
This subchapter applies in accordance with the conditions specified in §330.1 and §330.451 of this title (relating to Purpose and Applicability; and Applicability).

§330.543. Easements and Buffer Zones.

(a) Easement protection. No solid waste unloading, storage, disposal, or processing operations shall occur within any easement, buffer zone, or right-of-way that crosses the facility. No solid waste disposal shall occur within 25 feet of the center line of any utility line or pipeline easement but no closer than the easement, unless otherwise authorized by the executive director. All pipeline and utility easements shall be clearly marked with posts that extend at least six feet above ground level, spaced at intervals no greater than 300 feet.

(b) Buffer zones.

(1) Except for facilities that are authorized by a notification or permit by rule, the owner or operator shall maintain a minimum separating distance of 50 feet between feedstock or final product storage areas; solid waste storage; processing, Type IAE landfill units, and Type IVAE landfill units permitted by rule and the boundary of the facility. The buffer zone shall not be narrower than that necessary to provide for safe passage for fire fighting and other emergency vehicles. The executive director may consider alternatives to buffer zone requirements for permitted and registered storage and processing municipal solid waste facilities.

(2) For landfill permits that existed before the comprehensive rule revisions of this chapter as adopted in 2006 became effective, the owner or operator is subject to the former rules and shall establish and maintain a buffer zone in compliance with the permit. For new Type I and Type IV landfills, vertical or lateral expansions of existing Type I and Type IV landfills, and existing Type IAE and Type IVAE landfills that subsequently no longer satisfy the conditions specified in §330.5(b)(1) of this title (relating to Classification of Municipal Solid Waste Facilities), the owner or operator shall establish a 125-foot buffer zone. All buffer zones must be within property owned or controlled by the operator.
(3) The executive director may consider alternatives to buffer zone requirements in paragraph (2) of this subsection. Alternatives may be approved where the owner or operator demonstrates that:

(A) the prescribed buffer zone standard is not feasible; and

(B) there is a specific engineered design alternative that:

(i) is consistent with the performance goal of providing a visual screening of solid waste processing and disposal activities;

(ii) affords ready access for emergency response, maintenance, and monitoring;

(iii) affords equivalent control of odors and windblown waste as the prescribed buffer zone; and

(iv) provides sufficient distance to meet the drainage and sediment control requirements applicable to the facility.

§330.545. Airport Safety.

(a) Owners or operators of new municipal solid waste landfill units, existing municipal solid waste landfill units, lateral expansions, and landfill mining operations that are located within 10,000 feet of any airport runway end used by turbojet aircraft or within 5,000 feet of any airport runway end used by only piston-type aircraft shall demonstrate that the units are designed and operated so that the municipal solid waste landfill unit does not pose a bird hazard to aircraft.

(b) Owners or operators proposing to site new municipal solid waste landfill units and lateral expansions located within a six-mile radius of any airport runway end used by turbojet or piston-type aircraft shall notify the affected airport and the Federal Aviation Administration.

(c) The owner or operator shall submit the demonstration in subsection (a) of this section with a permit application or a permit amendment application. The demonstration will be considered a part of the operating record once approved.

(d) Landfills disposing of putrescible waste shall not be located in areas where the attraction of birds can cause a significant bird hazard to low-flying aircraft. Guidelines regarding location of landfills near airports can be found in Federal Aviation Administration Order 5200.5(A), January 31, 1990. All landfill facilities within six miles of an airport shall be critically evaluated to determine if an incompatibility exists.

§330.547. Floodplains.

(a) No solid waste disposal operations shall be permitted in areas that are located in a 100-year floodway as defined by the Federal Emergency Management Administration.

(b) New municipal solid waste management units, existing municipal solid waste units, and lateral expansions located in 100-year floodplains shall not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment.

(c) Municipal solid waste storage and processing facilities shall be located outside of the 100-year floodplain unless the owner or operator can demonstrate that the facility is designed and will operate to prevent washout during a 100-year storm event, or obtains a conditional letter of map amendment from the Federal Emergency Management Administration administrator.


(a) If located over the recharge zone of the Edwards Aquifer, a municipal solid waste facility is subject to Chapter 213 of this title (relating to Edwards Aquifer). The Edwards Aquifer Recharge Zone is specifically that area delineated on maps maintained by the executive director.

In accordance with §213.8(a)(5) of this title (relating to Prohibited Activities), a Type I or Type IAE landfill is prohibited on the recharge zone of the Edwards Aquifer.

(b) Unless the executive director approves an engineered design that the applicant has demonstrated will provide equal or greater protection to human health and the environment, a new landfill cell or an area expansion of an existing landfill cell managing Class I industrial solid waste may not be located in areas described in §335.584(b)(1) and (2) of this title (relating to Location Restrictions).

§330.551. Endangered or Threatened Species.

(a) A facility and the operation of a facility shall not result in the destruction or adverse modification of the critical habitat of endangered or threatened species, or cause or contribute to the taking of any endangered or threatened species.

(b) The following words and terms have the following meanings, unless the context clearly indicates otherwise.

(1) Harassing--An intentional or negligent act or omission that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns that include, but are not limited to, breeding, feeding, or sheltering.

(2) Harming--An act of omission that actually injures or kills wildlife, including acts that annoy it to such an extent as to significantly disrupt essential behavioral patterns, that include, but are not limited to, breeding, feeding, or sheltering; significant environmental modification or degradation that has such effects is included within the meaning of harming.

(3) Taking--Harassing, harming, pursuing, hunting, wounding, trapping, capturing, or collecting an endangered or threatened species or attempting to engage in such conduct.

§330.553. Wetlands.

(a) Municipal solid waste storage or processing facilities shall not be located in wetlands unless the owner or operator makes each of the demonstrations identified in subsection (b)(1) - (5) of this section.

(b) New municipal solid waste landfill units, lateral expansions, and material recovery operations from a landfill shall not be located in wetlands, unless the owner or operator makes each of the demonstrations identified in paragraphs (1) - (5) of this subsection to the executive director. The owner or operator shall submit the demonstrations with a permit application, a permit major amendment application, or a registration application, as appropriate. The demonstration shall become part of the operating record once approved.

(1) Where applicable under Clean Water Act, §404 or applicable state wetlands laws, the presumption that a practicable alternative to the proposed landfill or recovery operation is available that does not involve wetlands shall be clearly rebutted.

(2) The construction and operation of the municipal solid waste landfill unit or recovery operation shall not:

(A) cause or contribute to violations of any applicable state water quality standard;

(B) violate any applicable toxic effluent standard or prohibition under the Clean Water Act, §307;

(C) jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973; and

(D) violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary.
(3) The municipal solid waste landfill unit or recovery operation shall not cause or contribute to significant degradation of wetlands. The owner/operator shall demonstrate the integrity of the landfill unit and its ability to protect ecological resources by addressing the following factors:

(A) erosion, stability, and migration potential of native wetland soils, muds, and deposits used to support the landfill unit;

(B) erosion, stability, and migration potential of dredged and fill materials used to support the landfill unit;

(C) the volume and chemical nature of the waste managed in the landfill unit;

(D) impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(E) the potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(F) any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.

(4) To the extent required under Clean Water Act, §404 or applicable state wetlands laws, steps have been taken to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by paragraph (1) of this subsection, then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands).

(5) Sufficient information shall be made available to the executive director to make a reasonable determination with respect to these demonstrations.

§330.555. Fault Areas.

(a) New municipal solid waste landfill units and lateral expansions shall not be located within 200 feet of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the executive director that an alternative setback distance of less than 200 feet will prevent damage to the structural integrity of the landfill unit and will be protective of human health and the environment. The owner or operator shall submit the demonstration with a permit application or a permit amendment application.

(b) Applications submitted for the operation of sites located within areas that may be subject to differential subsidence or active geological faulting must include detailed fault studies. When an active fault is known to exist within 1/2 mile of the site, the site must be investigated for unknown faults. Areas experiencing withdrawal of crude oil, natural gas, sulfur, etc., or significant amounts of groundwater must be investigated in detail for the possibility of differential subsidence or faulting that could adversely affect the integrity of landfill liners. Studies of differential subsidence or faulting shall be conducted under the direct supervision of a licensed professional engineer experienced in geotechnical engineering or a licensed professional geoscientist qualified to evaluate conditions of differential subsidence or faulting. The studies must establish the limits (both upthrown and downthrown) of the zones of influence of all active faulted areas within the site vicinity. Unless the owner or operator can provide substantial evidence that the zone of influence will not affect the site, no solid waste disposal shall be accomplished within a zone of influence of active geological faulting or differential subsidence because active faulting results in slippage along failure planes, thus creating preferred seepage paths for liquids. The studies must include information or data on the items in paragraphs (1) - (12) of this subsection, as applicable:

(1) structural damage to constructed facilities (roadways, railways, and buildings);

(2) scarp in natural ground;

(3) presence of surface depressions (sag ponds and ponded water);

(4) lineations noted on aerial maps and topographic sheets;

(5) structural control of natural streams;

(6) vegetation changes;

(7) crude oil and natural gas accumulations;

(8) electrical spontaneous potential and resistivity logs (correlation of subsurface strata to check for stratigraphic offsets);

(9) earth electrical resistivity surveys (indications of anomalies that may represent fault planes);

(10) open cell excavations (visual examinations to detect changes in subsoil textureing and/or weathering indicating stratigraphic offsets);

(11) changes in elevations of established benchmarks; and

(12) references to published geological literature pertaining to area conditions.


For the purposes of this section, a seismic impact zone is defined as an area with a 10% or greater probability that the maximum horizontal acceleration in lifthied earth material, expressed as a percentage of the earth’s gravitational pull, will exceed 0.10g in 250 years. Maximum horizontal acceleration is defined as the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment. Lifthied earth material is defined as all rocks, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface. New municipal solid waste landfill units and lateral expansions shall not be located in seismic impact zones, unless the owner or operator demonstrates to the executive director that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lifthied earth material for the site. The owner or operator shall submit the demonstration with a permit application or a permit amendment application. The demonstration must become part of the operating record once approved.

§330.559. Unstable Areas.

For the purposes of this section, an unstable area is defined to be a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of a landfill’s structural components responsible for preventing releases from the landfill; unstable areas can include poor foundation conditions, areas susceptible to mass movement, and karst terrains. Owners or operators of new municipal solid waste landfill units, existing landfill units, and lateral expansions located in an unstable area shall demonstrate that engineering measures have been incorporated into the landfill unit’s design to ensure that the integrity of the structural components of the landfill unit will not be disrupted. The owner or operator shall submit the demonstration with a permit application or a permit amendment application. The demonstration must become part of the operating record once approved. The owner
or operator shall consider the following factors, at a minimum, when determining whether an area is unstable:

(1) on-site or local soil conditions that may result in significant differential settling;

(2) on-site or local geologic or geomorphologic features; and

(3) on-site or local human-made features or events (both surface and subsurface);

§330.561. Coastal Areas.
A new landfill cell or an areal expansion of an existing landfill cell managing Class I industrial solid waste may not be located in areas described in §§335.584(b)(3) and (4) of this title (relating to Location Restrictions).

§330.563. Type I and Type IV Landfill Permit Issuance Prohibited.
(a) The commission may not issue a permit for a Type IV landfill that is subject to the conditions specified in Texas Health and Safety Code, §361.122, Denial of Certain Landfill Permits.

(b) The commission may not issue a permit for a Type I or Type IV landfill that is subject to the conditions specified in Texas Health and Safety Code, §361.123, Limitation on Location of Municipal Solid Waste Landfills.

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

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SUBCHAPTER N. LANDFILL MINING
30 TAC §§330.401 - 330.419

(EDITOR’S NOTE: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The proposed repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §382.011, General Powers and Duties; §382.012, Policy and Purpose; §382.014, Permitting Authority; and §382.051, Standard Permit. The proposed repeals also implement Texas Water Code, §5.103, Rules.

§330.401. Definitions.
§330.403. General Requirements.
§330.404. Variances.
§330.405. Relationship with Operating Landfills.
§330.408. Location Standards.
§330.409. Operational Requirements and Design Criteria.
§330.413. Certification by Engineer, Ownership or Control of Land, and Inspection.
§330.414. Required Forms, Applications, and Reports.
§330.415. Additional Requirements for Municipal Solid Waste Mining Facilities.
§330.416. Registration Application Preparation.
§330.417. Sampling and Analysis Requirements for Soil Final Product.
§330.418. Final Soil Product Grades.
§330.419. Allowable Uses of Final Soil Product by Grade.

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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STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The standard air permit is proposed under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051,
which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The proposed new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed new sections also implement Texas Water Code, §5.103, Rules.


All landfill mining operations shall comply with all of the following general requirements.

(1) Operations on a municipal solid waste landfill unit. Landfill mining activities shall be conducted in such a manner that they do not disrupt landfill operations.

(2) Leachate. Leachate found while uncovering buried waste shall be properly disposed of in an authorized facility.


(a) In specific cases the executive director may approve a variance from the requirements of this subchapter due to special conditions, if the variance is not contrary to the public health and safety. A variance may not be approved concerning the procedural requirements of this subchapter, including application procedures and the filing of reports, or concerning the provisions of §330.607 of this title (relating to Air Quality Requirements).

(b) A request for a variance must be submitted in writing to the executive director. The request may be made in an application for a registration. Any approval of a variance must be in writing from the executive director.

§330.605. Relationship with Operating Landfills.

Landfill mining facilities considered to be in conjunction with permitted landfill facilities may be located at municipal solid waste permitted facilities. The owner shall prepare and submit an application for a permit modification in accordance with the provisions of §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications).

§330.607. Air Quality Requirements.

(a) General requirements.

(1) Any landfill mining process operation that has existing authority under the Texas Clean Air Act does not have to meet the air quality criteria of this subchapter. In accordance with the Texas Health and Safety Code, Texas Clean Air Act, §382.051, any new landfill mining operation that meets all of the applicable requirements of this subchapter is entitled to an air quality standard permit authorization under this subchapter in lieu of the requirement to obtain an air quality permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

(2) Those operations that would otherwise be required to obtain air quality authorization under Chapter 116 of this title, which cannot satisfy all of the requirements of this subchapter, shall apply for and obtain air quality authorization in accordance with Chapter 116 of this title in addition to any registration required in this subchapter.

(3) Any operation authorized under this subchapter that is a new major source or any modification that constitutes a major modification under nonattainment review or prevention of significant deterioration review as amended by the Federal Clean Air Act amendments of 1990, and regulations promulgated thereunder, shall be subject to the requirements of Chapter 116 of this title in addition to any registration required in this subchapter.

(4) Operations that do not wish to comply with the requirements of this section are required to apply for and obtain air quality authorization under Chapter 116 of this title. Once a person has applied for and obtained air quality authorization under Chapter 116 of this title, the person is exempt from the air quality requirements of this subchapter.

(b) Air quality standard permit. Landfill mining operations required to obtain authorization under §330.9 of this title (relating to Registration Required) that meet the following requirements are entitled to an air quality standard permit.

(1) All permanent on-site roads shall be watered, treated with dust-suppressant chemicals, or paved and cleaned as necessary to achieve maximum control of dust emissions. Vehicular speeds on non-paved roads shall not exceed ten miles per hour. Leachate and gas condensate are prohibited from use as dust-suppressant.

(2) Prior to processing any material with a high odor potential, the operator shall ensure that there are means to prevent nuisance odors from leaving the facility boundaries.

(3) All material shall be conveyed mechanically, or if conveyed pneumatically, the conveying air shall be vented to the atmosphere through a fabric filter(s) having a maximum filtering velocity of 4.0 feet/minute with mechanical cleaning or 7.0 feet/minute with air cleaning.

(4) Except for initial start-up and shut-down, all processing equipment not enclosed inside a building shall be equipped with low-velocity fog nozzles spaced to create a continuous fog curtain or the operator shall have portable watering equipment available during the processing operation. These controls shall be utilized as necessary for maximum control of dust when loading vehicles and stockpiling recyclable material, reusable soil, or waste material. Excavation equipment is not considered as processing equipment. Leachate from process water is prohibited from use as dust-suppressant.

(5) All conveyors that off-load materials from processing equipment at a point that is not enclosed inside a building shall have available a water or mechanical dust suppression system. These controls shall be utilized as necessary for maximum control of dust when stockpiling material.

(6) All activities that could result in increased odor emissions shall be conducted in a manner that does not create nuisance conditions or shall only be conducted inside a building maintained under negative pressure and controlled with a chemical oxidation scrubbing system or bio filter system.
(7) Excavated waste material transported from the landfill facility shall be transported in covered trucks to minimize the loss of material.

§330.609. Operational Requirements and Design Criteria.

The operation of the facility shall comply with all of the following operational requirements.

(1) Protection of groundwater. The owner or operator shall install and maintain a liner system constructed in accordance with one of the provisions of subparagraphs (A) or (B) of this paragraph. The liner system shall be provided where receiving, processing, post-processing, screening, and storage areas would be in contact with the ground or in areas where leachate, contaminated materials, contaminated products, or contaminated water is stored or retained. The application shall demonstrate that the facility is designed so as not to contaminate the groundwater and so as to protect the existing groundwater quality from degradation. The owner or operator shall submit a liner quality control plan as specified in §330.339 of this title (relating to Liner Quality Control Plan). For the purposes of this paragraph, protection of the groundwater includes the protection of perched water or shallow surface infiltration. The liner shall be covered with a material designed to withstand normal traffic from the processing operations. The owner or operator of the facility shall demonstrate that any liner system constructed will not undergo uplift from hydrostatic forces during its construction or operational life and that any existing liner system will not undergo uplift from hydrostatic forces during mining operations. Acceptable demonstration methods are listed within §330.337(b)(1) - (4) of this title (relating to Special Liner Design Constraints):

(A) a composite liner consisting of two components. The upper component must consist of a minimum 30 mil geomembrane and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1 x 10^-6 centimeters/second. Geomembrane components consisting of high density polyethylene shall be at least 60 mil thick. The geomembrane shall be installed in direct and uniform contact with the soil component;

(B) an alternative design approved by the executive director that is protective of groundwater. When approving a design that complies with this subsection, the executive director shall consider at least the following factors:

(ii) the hydrogeologic factors of the area;

(iii) the climatic factors of the area; and

(iii) the volume and physical and chemical characteristics of the waste and leachate;

(C) a demonstration that any liner system constructed will not undergo uplift from hydrostatic forces during its construction or operational life and that any existing liner system will not undergo uplift from hydrostatic forces during mining operations. Acceptable demonstration methods are listed within §330.337(b)(1) - (4) of this title;

(D) submission of liner construction certifications as required by §330.341 of this title (relating to Soil Liner Evaluation Report and Geomembrane Liner Evaluation Report).

(2) Prohibited materials. The operator shall operate the recovery process in a manner that will preclude the entry of hazardous constituents. The operator shall not arrange for waste disposal at an unauthorized facility.

(3) Waste slopes. Side slopes of excavations into buried waste for the sake of obtaining material to process shall be no steeper than 34 degrees (per Occupational Safety and Health Administration 1926.652) unless otherwise approved.

(4) Authorization required for significant changes. The operator shall obtain written permission from the executive director before changing the processing method or other significant changes to the original registration application.

(5) Existing systems. On landfills where leachate collection systems, liners, or gas collection systems exist, care must be taken to not destroy or disrupt these systems if it is planned to retain these features on-site, and these systems must remain operational until they are removed.

(6) Soil end-product standards.

(A) Particle sizes found in soil to be beneficially used shall not exceed the screen size and the foreign matter criteria contained §330.615, of this title (relating to Final Soil Product Grades and Allowable Uses).

(B) The operator shall meet processing testing requirements set forth in §330.613 of this title (relating to Sampling and Analysis Requirements for Final Soil Product), final product grades set forth in §330.615 of this title.

(7) Certified operator. The operator shall employ at least one agency-certified landfill operator who shall routinely be available on-site during the hours of operation.

(8) Health and safety coordinator. The operator shall employ at least one health and safety coordinator on a full-time basis to be on-site at least 70% of the time during excavation and waste processing. The health and safety coordinator shall be trained in hazardous waste and emergency response operations.

(9) Personal protection equipment. The operator shall specify personal protection equipment and its operational characteristics and the equipment must be located on-site.

(10) Health and safety plan. Operations must be conducted in accordance with an approved health and safety plan.

(11) Covered trucks. Covered trucks must be used for transporting excavated material off-site.

§330.611. Required Reportings.

The operator shall submit all of the following.

(1) Annual report. The operator shall submit annual written reports. These reports shall at a minimum include input and output quantities, a description of the soil end-product distribution, and all results of any required laboratory testing. A copy of the annual report shall be kept on-site for a period of five years.

(2) Final soil product testing report. Facilities requiring registration must submit reports on final product testing to the executive director in compliance with §330.613 of this title (relating to Sampling and Analysis Requirements for Final Soil Product) on a quarterly basis.

§330.613. Sampling and Analysis Requirements for Final Soil Product.

(a) Applicability. Facilities that receive a registration under this subchapter are required to test their final product in accordance with this section.

(b) Analytical methods. Facilities that use analytical methods to characterize their final product must use methods such as those described in the following publications.

(1) Chemical and physical analysis shall utilize:

(A) "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" (SW-846); or
(B) "Methods for Chemical Analysis of Water and Wastes" (EPA-600).

(2) Analysis of pathogens shall utilize "Standard Methods for the Examination of Water and Wastewater" (Water Pollution Control Federation, 1995).

(3) Analysis for salinity and pH shall utilize North Central Regional (NCR) Method 14 for Saturated Media Extract Method contained in "Recommended Test Procedure for Greenhouse Growth Media" NCR Publication Number 221 (Revised), Recommended Chemical Soil Test Procedures, Bulletin Number 49 (Revised), October 1988, pages 34-37.

(4) Analysis of total, fixed, and volatile solids shall utilize Method 2540 G (Total, Fixed, and Volatile Solids in Solid and Semi-solid Samples) as described in "Standard Methods for the Examination of Water and Wastewater" (Water Pollution Control Federation, 1995).

(c) Sample collection. Sample collection, preservation, and analysis shall assure valid and representative results in accordance with Subchapter F of this chapter (relating to Analytical Quality Assurance and Quality Control).

(d) Documentation.

(1) Owners or operators of registered facilities shall record and maintain all of the following information regarding their activities of operation for three years after the final product is shipped off-site or upon facility closure:

(A) batch numbers identifying the final product sampling batch;

(B) the quantities, types, and sources of materials processed and the dates processed;

(C) the quantity and final product grade assigned described in §30.615 of this title (relating to Final Soil Product Grades and Allowable Uses);

(D) the date of sampling; and

(E) all analytical data used to characterize the final product, including laboratory quality assurance/quality control data.

(2) The following records shall be maintained on-site permanently or until facility closure:

(A) sampling plan and procedures;

(B) training and certification records of staff; and

(C) final soil product test results.

(3) Records shall be available for inspection by executive director representatives during normal business hours.

(4) The executive director may at any time request that additional parameters be tested. These parameters are intended to address public health and environmental protection:

(1) total metals, to include:

(A) arsenic;

(B) cadmium;

(C) chromium;

(D) copper;

(E) lead;

(F) mercury;

(G) molybdenum;

(H) nickel;

(I) selenium; and

(J) zinc;

(2) weight percent of foreign matter, dry weight basis;

(3) pH by the saturated media extract method;

(4) salinity by the saturated media extract electrical conductivity method;

(5) pathogens:

(A) salmonella; and

(B) fecal coliform;

(6) polychlorinated-biphenyls; and

(7) asbestos;

(i) Data precision and accuracy. Analytical data quality shall be established as specified in Subchapter F of this chapter.

(i) Reporting requirements.
(1) Facilities must report the following information to the executive director on a semiannual basis for each sampling batch of final soil product. Reports must include, but may not be limited to, all of the following information:

(A) batch numbers identifying the final soil product sampling batch;

(B) the quantities and types of waste materials processed and the dates processed;

(C) the quantity of final soil product;

(D) the final soil product grade or permit number of the disposal facility receiving the final product if it is not Grade 1 or Grade 2 as established in §330.613 of this title;

(E) all analytical results used to characterize the final soil product, including laboratory quality assurance/quality control data and chain-of-custody documentation; and

(F) the date of sampling.

(2) Reports must be submitted to the executive director within two months after the reporting period ends.


(a) Applicability. Facilities that receive a registration under this subchapter are required to test final soil products in accordance with this section.

(b) Final soil product testing. The final soil product shall be regularly tested under §330.613 of this title (relating to Sampling and Analysis Requirements for Final Soil Product) to determine the product’s grade. Testing of final product and interpretation of test results shall be conducted in accordance with Subchapter F of this chapter (relating to Analytical Quality Assurance and Quality Control).

(c) Final product classification and usage. The final soil product shall be classified according to the following classification system.

(1) Grade 1 Soil. There are no restrictions on the use of Grade 1 Soil. To be considered Grade 1 Soil, the final product shall meet all of the following criteria:

(A) shall contain no foreign matter of a size or shape that can cause human or animal injury;

(B) shall not exceed all Maximum Allowable Concentrations for Grade 1 Soil in Table 1 of this subparagraph; Figure: 30 TAC §330.615(c)(1)(B)

(C) shall not contain foreign matter in quantities that cumulatively are greater than 1.5% dry weight on a four millimeter screen;

(D) shall meet the requirements for pathogen reduction for Grade 1 Soil as described in Table 2 of this subparagraph; and Figure: 30 TAC §330.615(c)(1)(D)

(E) shall meet the requirements for salinity and pH for Grade 1 Soil as described in Table 2 of subparagraph (D) of this paragraph.

(2) Grade 2 Soil. To be considered Grade 2 Soil, the final product shall meet all of the following criteria:

(A) shall contain no foreign matter of a size or shape that can cause human or animal injury;

(B) shall not exceed all Maximum Allowable Concentrations for Grade 2 Soil in Table 1 of paragraph (1)(B) of this subsection;

(C) shall not contain foreign matter in quantities that cumulatively are greater than 1.5% dry weight on a four millimeter screen;

(D) shall meet the requirements for pathogen reduction for Grade 2 Soil as described in Table 2 of paragraph (1)(D) of this subsection;

(E) shall meet the requirements for salinity and pH for Grade 2 Soil as described in Table 2 of paragraph (1)(D) of this subsection; and

(F) shall not be used at a residence, recreational area, or licensed child-care facility, or for food chain crops.

(3) Waste grade soil. Waste grade soil:

(A) exceeds any one of the Maximum Allowable Concentrations for Grade 2 final product in Table 1 of paragraph (1)(B) of this subsection;

(B) does not meet the other requirements of Grade 1 or Grade 2 Soil; and

(C) shall be appropriately disposed at a permitted municipal solid waste facility.

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

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

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Stephanie Bergeron Perdue

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: October 9, 2005

For further information, please call: (512) 239-0348

SUBCHAPTER O. REGIONAL AND LOCAL SOLID WASTE MANAGEMENT PLANNING AND FINANCIAL ASSISTANCE GENERAL PROVISIONS

30 TAC §§330.561 - 330.569

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

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemakings; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The proposed repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste.
Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed rules also implement Texas Water Code, §5.103, Rules.

§330.561. Purpose and Scope.

§330.562. Definitions of Terms and Abbreviations.

§330.563. Regional and Local Plan Requirements.

§330.564. Coordination with Other Programs.


§330.569. Regional Solid Waste Grants Program.

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

Filed with the Office of the Secretary of State on August 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) 239-0348

STATUTORY AUTHORITY
The new sections are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is proposed under THSC, §382.011, which gives the commission the powers necessary to convene to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The proposed new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed new sections also implement Texas Water Code, §5.103, Rules.

(a) Contents. The contents of regional and local solid waste management plans are specified in Texas Health and Safety Code, §§363.064.

(b) Purpose. The sections in this subchapter are intended for use in the development of a guidance document to assist in the implementation of regional and local solid waste management plans. These sections provide the recommended content of regional and local solid waste management plans and guidance documents, provide for coordination with other programs and public participation, establish criteria for regional and local plan submission and approval, and set out criteria for financial assistance to councils of government and local governments.

(c) Scope.

(1) General. A regional or local solid waste management plan shall conform to the requirements of Texas Health and Safety Code, §363.064, and provide the general structure to implement a regional or local program.

(2) Planning process. A regional or local solid waste management plan shall be the result of a planning process related to proper management of solid waste in the planning area under consideration. The process shall include identification of concerns and collection and evaluation of data necessary to provide a written public statement of goals and objectives, and a general statement of the actions recommended to accomplish those goals and objectives.

(3) Geographic area. A regional solid waste management plan shall consider the entire area within an identified planning region and provide an overview of the solid waste management situation throughout the region. A local solid waste management plan shall consider all of the area within the jurisdiction of one or more local governments, but shall not include an entire planning region.

(d) Regional and local solid waste management plans pending upon the effective date of the comprehensive rule revisions to this chapter as adopted in 2006 (2006 Revisions) are subject to the 2006 Revisions.

§330.633. Definitions of Terms and Abbreviations.

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


(2) City—An incorporated city or town in the state.

(3) Closed municipal solid waste landfill unit—A discrete area of land or an excavation that has received only municipal solid waste or municipal solid waste combined with other solid wastes, including, but not limited to, construction/demolition waste, commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator hazardous waste, and industrial solid waste, and the area of land is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined by 40 Code of Federal Regulations §257.2.
(4) Council of government--A regional planning commission created under Local Government Code, Chapter 391.

(5) Governing body--The city council, commissioners court, board of directors, trustees, or similar body charged by law with governing a public agency.

(6) Inactive facility--A facility that no longer receives solid waste.

(7) Planning fund--The municipal solid waste management planning fund created in the state treasury by the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Texas Health and Safety Code, Chapter 363).

(8) Planning period--The period of time that an adopted solid waste management plan is designed to remain effective.

(9) Planning region--A region of the state identified by the governor as an appropriate region for municipal solid waste planning.

(10) Private operator--A person, other than a government or governmental subdivision or agency, engaged in some aspect of operating a solid waste management system. The term includes any entity other than a government or governmental subdivision or agency, owned and operated by investment of private capital.

(11) Property--Land, structures, interests in land, air rights, water rights, and rights that accompany interests in land, structures, water rights, and air rights and includes easements, rights of way, uses, leases, incorporeal hereditaments, legal and equitable estates, interest, or rights such as terms for years and liens.

(12) Public agency--A city, county, district, or authority created and operating under the Texas Constitution, Article III, §52(b) (1) or (2), or Article XVI, §59, or a combination of two or more of these governmental entities acting under an interlocal agreement and having the authority under state laws to own and operate a solid waste management system.

(13) Regional or local solid waste management plan--A plan adopted by a council of government or local government under authority of the Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Texas Health and Safety Code, Chapter 363).

(14) Regional Solid Waste Grants Program--The program established to utilize funds dedicated under Texas Health and Safety Code, §361.014, for local and regional solid waste projects and to update and maintain regional solid waste management plans.

(15) Resolution--A resolution, order, ordinance, or other action of a governing body.

(16) Solid waste management--The systematic control of any or all of the following activities:

(A) generation;
(B) source separation;
(C) collection;
(D) handling;
(E) storage;
(F) transportation;
(G) processing;
(H) treatment;
(I) resource recovery;
(J) disposal of solid waste.

(17) Solid waste management system--Any plant, composting process plant, incinerator, sanitary landfill, transfer station, or other works and equipment acquired, installed, or operated for the purpose of collecting, handling, storing, processing, recovering material or energy, or disposing of solid waste and includes sites for these works and equipment.

(18) Solid waste resource recovery system--Any real property, buildings, structures, plants, works, facilities, equipment, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful in connection with the processing of solid waste, including equipment associated with the use or operation of such plant, vessel, equipment, or other property.

(19) State solid waste management plan--The municipal solid waste management plan for Texas.

§330.635. Regional and Local Solid Waste Management Plan Requirements. (a) Regional solid waste management plans. A regional plan identifies the overriding concerns, goals, objectives, and recommended actions for solid waste management over a long-range period for the entire planning region. The details to implement a regional plan are provided in a Regional Solid Waste Management Implementation Plan Guideline that is approved by the executive director. A Regional Solid Waste Management Plan Implementation Guideline is a separate document. The requirements for the guidance document are found in §330.643 of this title (relating to Regional and Local Solid Waste Management Implementation Plan Guideline Requirements).

(1) Geographic scope. The geographic scope of the regional planning process shall be the entire planning region designated by the governor.

(2) Plan content. A regional plan shall be the result of a planning process related to the proper management of solid waste in the planning region. The process shall include identification of overriding concerns and collection and evaluation of the data necessary to provide a written statement of goals and objectives and actions recommended to accomplish those goals and objectives. The regional plan shall include:

(A) a statement of regional goals and objectives;
(B) a description and assessment of efforts to minimize, reuse, and recycle waste, as follows:
   (i) include a brief description and assessment of current efforts in the region to minimize municipal solid waste (MSW), including sludge, and efforts to reuse or recycle waste;
   (ii) establish a recycling rate goal appropriate to the region;
(iii) list any recommendations for encouraging and achieving a greater degree of waste minimization and waste reuse or recycling in the geographic area covered by the plan;

(iv) include a description and assessment of existing or proposed community programs for the collection of household hazardous waste;

(v) recommend composting programs for yard waste and related organic wastes that may include:

(I) creation and use of community composting centers;

(II) adoption of the “Don’t Bag It” program for lawn clippings developed by the Texas Agricultural Extension Service; and

(III) development and promotion of education programs on home composting, community composting, and the separation of yard waste for use as mulch; and

(vi) include a public education/outreach component in the solid waste program;

(C) a commitment to the management of MSW facilities of the following:

(i) encouraging cooperative efforts between local governments in the siting of landfills for the disposal of solid waste;

(ii) assessing the need for new waste disposal capacity;

(iii) considering the need to transport waste between municipalities, from a municipality to an area in the jurisdiction of a county, or between counties, particularly if a technically suitable site for a landfill does not exist in a particular area;

(iv) allowing a local government to justify the need for a landfill in its jurisdiction to dispose of the solid waste generated in the jurisdiction of another local government that does not have a technically suitable site for a landfill in its jurisdiction;

(v) completing and maintaining an inventory of MSW landfill units in accordance with Texas Health and Safety Code, §363.0635. One copy of the inventory shall be provided to the commission and to the chief planning official of each municipality and county in which a unit is located; and

(vi) developing a guidance document to review MSW registration and permit applications to determine conformance with the goals and objectives outlined in Volume II: Regional Solid Waste Management Plan Implementation Guidelines as referenced in §330.643 of this title.

(b) Local plans. A local plan addresses overriding short and long-range concerns and actions related to solid waste management within the jurisdiction of one or more local governments and may be developed regardless of whether a regional plan has been developed that will affect the local planning area. The details to implement a local plan are provided in a Regional Solid Waste Management Implementation Plan Guideline that is approved by the executive director. A Regional Solid Waste Management Plan Implementation Guideline is a separate document. The requirements for the guidance document are found in §330.643 of this title.

(1) Geographic scope. The geographic scope of the local planning process shall be the jurisdiction of one or more local governments with common concerns or needs, but shall not include the entire planning region.

(2) Plan content. A local plan shall be the result of a planning process that is related to the proper management of solid waste in the local planning area. The process shall include identification of concerns and collection and evaluation of the data necessary to provide a written public statement of goals and objectives and the actions recommended to accomplish those goals and objectives. The local plan shall include:

(A) a statement of local goals and objectives;

(B) a description and assessment of efforts to minimize, reuse, and recycle waste, as follows:

(i) include a brief description and an assessment of current efforts in the region to minimize MSW, including sludge, and efforts to reuse or recycle waste;

(ii) establish a recycling rate goal appropriate to the region;

(iii) list any recommendations for encouraging and achieving a greater degree of waste minimization and waste reuse or recycling in the geographic area covered by the plan;

(iv) include a description and assessment of existing or proposed community programs for the collection of household hazardous waste;

(v) recommend composting programs for yard waste and related organic wastes that may include:

(I) creation and use of community composting centers;

(II) adoption of the “Don’t Bag It” program for lawn clippings developed by the Texas Agricultural Extension Service; and

(III) development and promotion of education programs on home composting, community composting, and the separation of yard waste for use as mulch; and

(vi) include a public education/outreach component in the solid waste program; and

(C) commitment to the management of MSW facilities of the following:

(i) encouraging cooperative efforts between local governments in the siting of landfills for the disposal of solid waste;

(ii) assessing the need for new waste disposal capacity;

(iii) considering the need to transport waste between municipalities, from a municipality to an area in the jurisdiction of a county, or between counties, particularly if a technically suitable site for a landfill does not exist in a particular area;

(iv) allowing a local government to justify the need for a landfill in its jurisdiction to dispose of the solid waste generated in the jurisdiction of another local government that does not have a technically suitable site for a landfill in its jurisdiction.

(3) Special considerations or restrictions. The local plan shall not prohibit, in fact or by effect, importation or exportation of waste from one political jurisdiction to another.

§330.637. Coordination With Other Programs.

(a) All solid waste plans shall be consistent with provisions established by federal, state, and local programs that affect solid waste management and shall consider programs and requirements from:

(1) federal jurisdiction - United States Environmental Protection Agency;
(2) state jurisdiction:
   (A) Texas Commission on Environmental Quality;
   (B) Railroad Commission of Texas; and
   (C) other state agencies; and
(3) substate jurisdiction:
   (A) regional planning agencies;
   (B) special districts or authorities;
   (C) counties; and
   (D) cities.

(b) All solid waste management plans shall consider other programs and responsibilities with the aim of avoiding duplication of effort and gaps in program coverage.


(a) Advisory council. The advisory council shall provide input, review, and comment during development of regional and local plans.

(b) Governmental review. Local governments affected by regional plans shall be given opportunities for review and comment on relevant portions of the plan, including adequate notice of public meetings conducted on the plans. Local plans shall be submitted to appropriate regional planning agencies for review and comment.

(c) Public meeting. A public meeting shall be held prior to the adoption of a regional or local plan for the purpose of receiving comment from interested parties.

(d) Notice and availability. The governing body of the responsible entity shall make available to interested persons at locations of convenience planning reports and documents. Notice of availability of documents and of public meetings shall be advertised in newspapers of general circulation in the area affected by the plan. The governing body of the responsible entity shall provide proper notice a minimum of 15 days in advance of the meeting. The notice shall include the meeting time, location, and subjects to be discussed.

(e) Plan approval. Local and regional solid waste management plans shall be approved by the governing body of the responsible entity before being submitted for approval by the commission.


(a) Prior to the submission of a plan, the plan shall be adopted by the council of government or local government(s) in accordance with applicable administrative procedures. Local governments shall coordinate with the appropriate council of government and ensure that a local plan is consistent with any regional solid waste management plan in effect for the region encompassing the jurisdiction of the local government, if a regional plan has been approved by the commission.

(b) Within 90 days after a regional or local plan has been submitted, the executive director will tentatively determine if the plan conforms to this subchapter and the state solid waste management plan. The executive director will communicate this determination to the agency that submitted the plan. If the plan is not in conformance, a notice of deficiency will be provided to the planning agency within 30 days of the tentative disapproval. The executive director has authority to disapprove any plan that has deficiencies. Plans not approved will not be considered by the commission until the executive director determines that the deficiencies have been corrected, unless the council of government or local government submits a request for appeal to the commission. In order for a plan to be considered under such circumstances, the appeal must be in writing and submitted to the commission within 30 days following the day the council of government or local government receives notification of tentative plan disapproval by the executive director.

(c) If the executive director tentatively determines a regional or local plan meets the requirements of this subchapter, is in conformance with the state solid waste management plan, and should be approved, the executive director will submit the plan to the commission for adoption in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001. If approved, the executive director will notify the planning agency of the commission’s approval. In the event the plan is not approved, the commission will state the plan’s deficiencies and the executive director will immediately notify the planning agency of the commission’s decision and the plan’s deficiencies. The plan may be resubmitted for approval if the executive director determines that deficiencies have been corrected.

(d) If a regional or local solid waste management plan is adopted by the commission, public and private solid waste management activities and state regulatory activities shall conform to the adopted regional or local solid waste management plan. The plan shall only remain in effect during the planning period defined in the plan. Under the procedures and criteria of subsections (g) and (h) of this section, the executive director may grant a variance from an adopted regional or local solid waste management plan.

(e) If a portion of a regional or local plan is determined by the executive director to no longer be in compliance with the state solid waste management plan or this subchapter, the executive director may request that the council of government or local government revise the plan. If such a revision is not submitted to the executive director within 180 days, the executive director may ask the commission to withdraw its approval of that portion of the plan.

(f) A council of government or local government may submit revisions or updates to an approved plan that reflect new information or changed conditions. Updates to an approved plan to provide for changes to data and information contained in the plan, which do not substantially change the scope or content of the goals and recommendations of the plan, may be incorporated into an approved plan upon approval by the executive director without further adoption procedures being required. Major revisions and amendments to an approved plan that substantially change the scope or content of the goals and recommendations of the plan shall be considered by the same procedures as the original plan submission and approval.

(g) Upon application, the executive director may grant a variance from an adopted regional or local solid waste management plan when:

1. the application of the plan creates an unnecessary hardship;
2. equally safe, effective methods could be used;
3. practical difficulties are encountered in meeting the requirements of a plan; or
4. deviation or exception would not affect substantial compliance with the plan and not threaten health or safety.

(h) If the executive director intends to grant a variance from the requirements of a plan, the executive director will offer the opportunity for a public meeting on the matter prior to the final decision. The meeting, if requested, will be advertised and conducted within the area affected by the plan.

(i) Upon approval of a regional plan by the commission, the council of government shall provide a copy of the adopted plan, including the inventory of closed municipal solid waste landfill units, to the chief planning official of each municipality and county within the planning
region. The council of government will include an advisory to the chief planning official that all enclosed structures within 1,000 feet of a closed municipal solid waste landfill unit identified on the inventory must have installed methane gas monitors, in accordance with §330.952(a) of this title (relating to Applicability and Exemptions). The council of government and the chief planning officials shall make the adopted regional plan available for public inspection.


(a) Regional implementation plans. A regional solid waste management plan provides the overriding structure and commitment to comply with the requirements for regional planning. A regional implementation plan provides the details to implement a regional solid waste management plan, is approved by the commissions’ executive director, and identifies the concerns, goals, objectives, and recommended actions for solid waste management over a long-range period for the entire planning region.

(1) Geographic scope. The geographic scope of the regional planning process shall be the entire planning region designated by the governor. It is not anticipated that the regional plan will present site-specific information. The regional implementation plan shall use the four types of planning units listed in subparagraphs (A) - (D) of this paragraph, as appropriate for the information presented:

(A) small geographic areas such as census tracts or city boundaries for the most detailed data collection and manipulation;

(B) planning areas to be used for the assessment of concerns and the evaluation of alternatives. These planning areas shall be aggregations of small geographic areas;

(C) county boundaries for the summarization and presentation of key information; or

(D) the entire planning region.

(2) Planning periods. An implementation plan should be developed based on the results of a planning process. The regional planning process shall address solid waste management over a long-range period. Long range is considered to be a period of at least 20 years. The maximum planning period addressed by the plan shall be stated on the plan cover and title page and at other appropriate locations within the body of the plan. The regional implementation plan shall use the four planning periods listed in subparagraphs (A) - (D) of this paragraph as appropriate for the information presented:

(A) current and historical information;

(B) short-range planning period, one to five years, with specific information presented by year;

(C) intermediate planning period, six to ten years, with information in less detail; or

(D) long-range planning period, 11 to 20 years or longer, with information in the least detail.

(3) Plan content. A regional implementation plan shall be the result of a planning process related to the proper management of solid waste in the planning region. The process shall include identification of concerns and collection and evaluation of the data necessary to provide a written public statement of goals and objectives, and actions recommended to accomplish those goals and objectives. The regional implementation plan shall include:

(A) population patterns, commercial and industrial data, and other demographic information necessary to estimate solid waste quantities and characteristics;

(B) estimates of current and future solid waste amounts by type;

(C) description of current and planned solid waste management activities in the region;

(D) description and assessment of the adequacy of existing resource recovery, storage, transportation, treatment, and disposal facilities and practices, and programs for the collection and disposal of household hazardous wastes;

(E) assessment of current source reduction and waste minimization efforts, including sludge, and efforts to reuse or recycle waste;

(F) identification of additional opportunities for source reduction and waste minimization, and reuse or recycling of waste;

(G) recommendations for encouraging and achieving a greater degree of source reduction and waste minimization, and reuse or recycling of waste;

(H) identification of public and private management agencies and responsibilities;

(I) identification of solid waste management concerns and establishment of priorities for addressing those concerns;

(J) planning areas and agencies with common solid waste management concerns that could be addressed through joint action;

(K) identification of incentives and barriers for source reduction and waste minimization, and resource recovery, including identification of potential markets;

(L) regional goals and objectives, including waste reduction goals consistent with state goals;

(M) advantages and disadvantages of alternative actions;

(N) the recommended plan of action and associated timetable for achieving regional goals and objectives, including: waste reduction; composting programs for yard wastes and related organic wastes; household hazardous waste collection and disposal programs; public education programs; and the need for new or expanded facilities and practices; and

(O) identification of the process that will be used to evaluate whether a proposed municipal solid waste facility application will be in conformance with the regional plan.

(4) Special considerations or restrictions. The regional implementation plan shall not prohibit, in fact or by effect, importation or exportation of waste from one political jurisdiction into another.

(5) Prior approval. A regional implementation plan and any substantive changes must be approved in advance of implementation by the Texas Commission on Environmental Quality’s executive director.

(b) Local plans. A local solid waste management plan provides the overriding structure and commitment to comply with the requirements for local planning. A local implementation plan provides the details to implement a local solid waste management plan, is approved by the commissions’ executive director, and addresses specific short- and long-range concerns and actions related to solid waste management within the jurisdiction of one or more local governments and may be developed regardless of whether a regional plan has been developed that will affect the local planning area.

(1) Geographic scope. The geographic scope of the local planning process shall be the jurisdiction of one or more local governments with common concerns or needs, but shall not include the entire planning region. In certain cases the local plan may present site-specific
information. The local implementation plan shall use the three types of planning units listed in subparagraphs (A) - (C) of this paragraph, as appropriate for the information presented:

(A) small geographic areas such as census tracts or city boundaries for the most detailed data collection and manipulation. These small areas should be the same as those used in the regional plan;

(B) planning areas to be used for the assessment of concerns and the evaluation of alternatives. These planning areas should be aggregations of the small geographic areas;

(C) the entire area encompassed by the local plan.

(2) Planning periods. The local planning process shall address specific short and long-range concerns and actions in solid waste management. The maximum planning period addressed by the plan shall be stated on the plan cover and title page and at other appropriate locations within the body of the plan. The local implementation plan should use the planning periods listed in subparagraphs (A) - (D) of this paragraph as appropriate for the information presented:

(A) current and historical information;

(B) short-range planning period, one to five years, with specific information presented by year;

(C) intermediate planning period, six to ten years, with information in less detail; or

(D) long-range planning period, 11 to 20 years or longer.

(3) Plan content. A local implementation plan shall be the result of a planning process that is related to the proper management of solid waste in the local planning area. The process shall include identification of concerns and collection and evaluation of the data necessary to provide a written public statement of goals and objectives, and the actions recommended to accomplish those goals and objectives. The local implementation plan shall include:

(A) population and commercial and industrial data from the regional planning process, supplemented with other local demographic information as necessary;

(B) composition, characteristics, and amounts of waste, by type, that affect the local planning area;

(C) description of current and planned solid waste management activities in the local planning area;

(D) description and assessment of the adequacy of existing resource recovery, storage, transportation, treatment, and disposal facilities and practices, including programs for the collection and disposal of household hazardous wastes;

(E) identification of the short and long-range solid waste management concerns within the local planning area;

(F) assessment of current source reduction and waste minimization efforts for solid waste, including sludge, and efforts to reuse or recycle waste;

(G) identification of additional opportunities for source reduction and waste minimization, and reuse or recycling of waste;

(H) recommendations for encouraging and achieving a greater degree of source reduction and waste minimization, and reuse or recycling of waste;

(I) local goals and objectives associated with management concerns, including waste reduction goals consistent with state and regional goals;

(J) advantages and disadvantages of alternative actions;

(K) the recommended plan of action and associated timetable for accomplishing the goals and objectives, including: waste reduction; composting programs for yard wastes and related organic wastes; household hazardous waste collection programs; public education programs; and

(L) identification of the process that will be used to evaluate whether a proposed municipal solid waste facility application will be in conformance with the regional plan.

(4) Special considerations or restrictions. The local implementation plan shall not prohibit, in fact or by effect, importation or exportation of waste from one political jurisdiction to another.

(5) Prior approval. A local implementation plan and any substantive changes must be approved in advance of implementation by the executive director.


(a) Authority. The municipal solid waste management planning fund is established by the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Texas Health and Safety Code, Chapter 363) as a special fund in the state treasury.

(b) Administration of the planning fund.

(1) The executive director shall administer the financial assistance program and the planning fund under the direction of the commission.

(2) An applicant for financial assistance from the planning fund shall agree to comply with the state solid waste management plan, commission rules, and any other requirements adopted by the commission.

(3) The executive director shall not authorize release of funds under an application for financial assistance until the applicant has furnished the executive director with a resolution adopted by the governing body of each public agency or planning region that is a party to the application certifying that:

(A) the applicant will comply with the provisions of the financial assistance program and the requirements of the commission;

(B) the grant will only be used for the purposes for which it was provided;

(C) regional or local solid waste management plans, along with their implementation plans, developed with state financial assistance will be adopted by the governing body as its policy; and

(D) future municipal solid waste management activities will, to the extent reasonably feasible, conform to the regional or local solid waste management plan.

(4) The planning fund shall not be used for the preparation of final design and working drawings, construction, acquisition of land, or an interest in land, or payment for recovered resources.

(5) The order of priority to be given to applicants in receiving financial assistance shall be determined by:

(A) the need to initiate or improve the solid waste management program within the applicant’s jurisdiction;

(B) the needs of the state;

(C) the financial need of the applicant;

(D) the degree that the proposed plan work program will result in improvements that meet the requirements of other applicable state, regional, and local solid waste management plans or activities;
(E) a positive consideration for applicants who have completed approved plans while utilizing their own resources; and

(F) a positive consideration for applicants who have committed a substantial amount of their own resources for development of an approvable plan at the time that a request is made for state financial assistance.

(6) The executive director may approve an application consistent with the provisions of this section when the executive director finds state financial participation is in the public interest and when it is determined that both state and regional or local funding is sufficient to complete the agreed scope of services. The executive director shall approve or disapprove an application for financial assistance within 90 days of its receipt.

(c) Applications.

(1) Requests for state financial assistance shall be made on forms furnished by the commission and shall include a work program and budget for a defined period in which the tasks described in the work program are to be completed.

(2) The only applicant eligible to apply for regional planning financial assistance shall be the council of government designated as responsible for the planning region for which a plan is considered.

(3) The only applicants authorized to apply for local planning financial assistance are local governments or public agencies and designated councils of government. Where the local plan is to cover a geographical area larger than the area of one city, then the application and any resulting contract shall be made by one of the cities, counties, or public agencies that has all or part of its jurisdiction within the area to be considered in the plan, and that is authorized by all public agencies with jurisdiction included in the area considered to act as their agent; or the designated council of government that has jurisdiction over the geographical area to be considered in the plan.


(a) Purpose. This section identifies state, regional, and local solid waste management plans that have been approved by the commission.

(b) State plan. The state solid waste management plan may be amended and updated from time to time as conditions warrant and as may be directed by state law. For the purposes of this subchapter, the current state plan is the latest plan, including any plan updates and amending materials, that has been issued by the commission.

(c) Plans approved. The current effective regional solid waste management plan for each region or local solid waste management plan for a local government is the latest plan, including plan amendments, that has been adopted by the commission or approved by the executive director. Copies of approved plans shall be kept on file and available for public review at the Texas Commission on Environmental Quality library. Those plans, and any adopted amendments to the plans, are incorporated into this subchapter. Updates to an approved regional or local plan that do not require official adoption by the commission, as specified under §330.641(f) of this title (relating to Procedures for Regional and Local Plan Submission, Approval, and Distribution), may be incorporated into an approved plan for informational purposes, as each update is approved by the executive director. Each plan’s effectiveness applies only for the geographical area described in the plan and for the period designated in the plan.

(d) Conflicting provisions. By adopting a regional or local plan, the commission determined that the plan has been developed according to commission rules and does not conflict with the state plan. If it should later be determined that provisions of an adopted plan do conflict with provisions of the state plan, then provisions of the state plan shall prevail.

(e) Agency responsibilities. It shall be the responsibility of the council of government to coordinate the implementation of regional policies and recommended actions in the approved regional plan and coordinate local planning efforts. It shall be the responsibility of affected local governments to implement the policies and recommended actions of adopted regional and local plans and to maintain policies and activities that do not conflict with provisions in current state, regional, and local solid waste management plans.

§330.649. Regional Solid Waste Grants Program.

(a) Authority. Funds are dedicated under Texas Health and Safety Code, §361.014, for the development and updating of regional and local solid waste management plans, and for implementing regional and local projects consistent with approved regional solid waste management plans and the state solid waste management plan. This regional solid waste grants program is separate from the financial assistance program outlined under §330.643 of this title (relating to Regional and Local Solid Waste Management Implementation Plan Guideline Requirements).

(b) Administration of regional solid waste grants program. The executive director shall administer the regional solid waste grants program under the direction of the commission.

(c) Funding allocation. Funds for local and regional projects under the regional solid waste grants program shall be allocated to municipal solid waste geographic planning regions according to a formula established by the commission that takes into account population, area, solid waste fee generation, and public health needs.

(d) Public/private cooperation. A project or service funded under the regional solid waste grant program must promote cooperation between public and private entities and may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services.

(e) Pass-through grants. The executive director may establish procedures to make grant funds available to authorized local entities through pass-through grants administered by each council of government.

(f) Applications.

(1) Requests for state financial assistance provided directly by the agency shall be made on forms furnished by the executive director.

(2) Requests for financial assistance made available through pass-through grants administered by a council of government shall be made on forms developed jointly by the executive director and the council of government, and furnished by the council of government.

(g) Application procedures. Applicants for financial assistance from the agency shall follow the procedures set forth in the application instructions and guidelines issued by the executive director. Applicants for pass-through grant assistance from a council of government shall follow the procedures set forth in the pass-through grant application instructions issued by the council of government.

(h) Grant contracts. Grants shall be provided through contractual agreements between the agency and the grant recipient. If a council of government provides financial assistance to local entities through a pass-through grant arrangement, the council of government shall enter into an appropriate contractual agreement with the local grant recipient. The contractual agreement between the council of government and the local grant recipient shall adhere to all applicable provisions of the main grant contract between the council of government and the Texas Commission on Environmental 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.

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Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 9, 2005
For further information, please call: (512) 239-0348

SUBCHAPTER P. FEES AND REPORTING


(Disclaimer: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The proposed repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed repeals also implement Texas Water Code, §5.103, Rules.

§330.601. Purpose and Applicability.
§330.602. Fees.
§330.603. Reports.
§330.604. Composting Refund.
§330.641. Purpose and Applicability.
§330.642. Annual Reports.
§330.643. Annual Registration Fees.

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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30 TAC §§330.671, 330.673, 330.675, 330.677

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The proposed new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed new sections also implement Texas Water Code, §5.103, Rules.

§330.671. Purpose and Applicability.

(a) Purpose.

(1) Fees. The commission is mandated by Texas Health and Safety Code, §361.013, to collect a fee for solid waste disposed of within the state, and from transporters of solid waste who are required to register with the state. Persons desiring to transport or deliver waste in enclosed containers or enclosed vehicles to a Type IV municipal solid waste management facility are subject to special route permit application and maintenance fees set forth and described in §330.103 of this title (relating to Collection and Transportation Requirements). The fee amount may be raised or lowered in accordance with spending levels authorized by the legislature.

(2) Industrial solid waste and hazardous waste fees. The assessment of fees for the generation, treatment, storage, or disposal of industrial solid waste or hazardous waste is governed by regulations contained in Chapter 335, Subchapter J of this title (relating to Hazardous Waste Generation, Facility and Disposal Fees System).

(3) Reports. The commission requires reports in order to track the amount of waste being stored, treated, processed, or disposed of
in the state, to track the amount of processing and disposal capacity and reserve (future) disposal capacity, and to enable equitable assessment and collection of fees.

(b) Applicability

(1) Fees. Each operator of a municipal solid waste disposal facility or process for disposal is required to pay a fee to the agency based upon the amount of waste received for disposal. For the purpose of this subchapter, “waste received for disposal” means the total amount of the waste (measured in tons or cubic yards, or determined by the population equivalent method specified in §330.675(a)(3) of this title (relating to Reports) received by a disposal facility at the gate, excluding only those wastes that are recycled or exempted from payment of fees under this subchapter or by law. For the purpose of these sections, landfills, waste incinerators, and sites used for land treatment or disposal of wastes, sites used for land application of sludge or similar waste for beneficial use, composting facilities, and other similar facilities or activities are determined to be disposal facilities or processes. Recycling operations or facilities that process waste for recycling are not considered disposal facilities. Source separated yard waste composted at a composting facility, including a composting facility located at a permitted landfill, is exempt from the fee requirements set forth and described in these sections. For the purpose of these sections, source separated yard waste is defined as leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscape maintenance and land-clearing operations that has been separated and has not been commingled with any other waste material at the point of generation. The agency will credit any fee payment due under this subchapter for any material received and converted to compost product for composting through a composting process. Any compost or product for composting that is not used as compost and is deposited in a landfill or used as landfill daily cover is not exempt from the fee.

(2) Industrial solid waste and hazardous waste fees. A fee for disposal of an industrial solid waste or hazardous waste in a municipal solid waste disposal facility shall be assessed at the rates prescribed under the authority of Chapter 335, Subchapter J of this title. If no fee under Chapter 335, Subchapter J of this title, is applicable to the disposal of industrial solid waste or hazardous waste, then such waste shall be assessed a fee under this chapter for the disposal of solid waste in a municipal solid waste facility.

(3) Reports. All registered or permitted facility operators are required to submit reports to the executive director covering the types and amounts of waste processed or disposed of at the facility or process location; other pertinent information necessary to track the amount of waste generated and disposed of, recovered, or recycled; and the amount of processing or disposal capacity of facilities. The information requested on forms provided by the executive director shall not be considered confidential or classified information unless specifically authorized by law, and refusal to submit the form complete with accurate information by the applicable deadline shall be considered as a violation of this section and subject to appropriate enforcement action and penalty.

(4) Interest penalty. Owners or operators of a facility failing to make payment of the fees imposed under this subchapter when due shall be assessed penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees).

§330.673 Fees.

(a) Landfilling. Each operator of a facility in Texas that disposes of municipal solid waste (MSW) by means of landfilling, including landfilling of incinerator ash, is required to pay a fee to the agency for all waste received for disposal. The fee rate for waste disposed of by landfilling is dependent upon the reporting units used.

(1) Fee rates. For purposes of this subsection, uncompacted waste means any waste that is not a liquid or a sludge, has not been mechanically compacted by a collection vehicle, has not been driven over by heavy equipment prior to collection, or has not been compacted subsequent or prior to collection by any type of mechanical device other than small, in-house, compactor devices owned and/or operated by the generator of the waste. Compacted waste is a liquid, sludge, or similar waste or any waste that has been reduced in volume by a collection vehicle or by any other means including, but not limited to, dewatering, composting, incineration, and similar processes.

(A) Tons. For waste reported in tons, the fee rate is $1.25 per ton received for disposal.

(B) Cubic yards (compacted). For waste reported in compacted cubic yards, the fee rate is $0.40 per cubic yard received for disposal.

(C) Cubic yards (uncompacted). For waste reported in uncompacted cubic yards, the fee rate is $0.25 per cubic yard received for disposal.

(2) Measurement options. The volume or weight reported on the quarterly solid waste summary report must be consistent with the volume or weight of the waste received for disposal, as defined in §330.671(b)(1) of this title (relating to Purpose and Applicability). The volume or weight of the waste received for disposal shall be determined prior to disposal or processing of the waste.

(A) The recommended method for measuring and reporting waste received at the gate is in short tons. The facility operator must accurately measure and report the number of cubic yards or tons of waste received at the gate.

(i) The fee for waste reported in short tons will be calculated by the executive director at an amount equal to $1.25 per ton.

(ii) The fee for compacted waste reported in cubic yards will be calculated by the executive director at an amount equal to $0.40 per cubic yard.

(iii) The fee for uncompacted waste reported in cubic yards will be calculated by the executive director at an amount equal to $0.25 per cubic yard.

(B) If a landfill operator chooses to report the amount of waste received utilizing the population equivalent method authorized in §330.675(a)(3) of this title (relating to Reports), the fee for such waste received shall be calculated by the executive director at an amount equal to $1.25 per ton.

(3) Fee calculation. The fee shall be calculated by the executive director using information obtained from the quarterly solid waste summary report. The total cubic yards or tonnage reported to the executive director in the quarterly solid waste summary report shall be derived from gate tickets (weight or volume) or invoices, except in the case of operators who are authorized to report utilizing the population equivalent method in §330.675(a)(3) of this title, and records of recycled materials or any other information deemed relevant by the executive director. A billing statement will be generated quarterly by the executive director and forwarded to the applicable permittee/registrant or a designated representative.

(4) Fee due date. All solid waste fees shall be due within 30 days of the date the payment is requested.

(5) Method of payment. The required fee shall be submitted in the form of a check or money order made payable to the Texas Commission on Environmental Quality and delivered or mailed to the return
address designated by the executive director in the billing statement distributed quarterly.

(6) Penalties. Failure of the landfill operator to submit the required fee payment by the due date shall be sufficient cause for the commission to revoke the landfill permit and authorization to process or dispose of waste. The commission may assess interest penalties for late payment of fees and may also assess penalties (fines) in accordance with Texas Water Code, §7.051 (relating to Administrative Penalty), or take any other action authorized by law to secure compliance.

(7) Exemptions.

(A) A fee will not be charged on solid waste resulting from a public entity’s effort to protect the public health and safety of the community from the effects of a natural or man-made disaster or from structures that have been contributing to drug trafficking or other crimes if the disposal facility at which that solid waste is offered for disposal has donated to a municipality, county, or other political subdivision the cost of disposing of that waste.

(B) A fee only for the amount determined necessary to reimburse MSW regulatory activities will be charged federal facilities. Prior to the fourth MSW billing quarter following the close of each regular session of the Texas State Legislature, the Texas Commission on Environmental Quality’s chief financial officer will determine the percentage of the MSW disposal fee that represents reimbursement for regulatory implementation of the state MSW program and the percentage that represents a state tax. The percentage determination shall be reported to the MSW Permits Section for use in determining fees owed by federal facilities. The MSW Permits Section shall grant federal facilities a credit on their MSW fees equal to the percentage of the fee determined to be a state tax. The credit shall be applied to each billing quarter beginning with the first billing quarter of the state fiscal year.

(b) Incinerators and processes for disposal. Each operator of a facility that disposes of or processes MSW for disposal by means other than landfilling is required to pay a fee to the agency for all waste received for processing or disposal. Facilities and/or processes included in this category include, but are not limited to, incineration; composting; application of sludge, septic tank waste, or shredded waste to the land; and similar facilities or processes. Not included as a process for disposal is land application of waste that has already been properly composted in one of the facilities named.

(1) Fee rates. For purposes of this subsection, uncompacted waste means any waste that is not a liquid or a sludge, has not been mechanically collected by a collection vehicle, has not been driven over by heavy equipment prior to collection, or has not been compacted subsequent or prior to collection by any type of mechanical device other than small, in-house, compactor devices owned and/or operated by the generator of the waste. Compacted waste is a liquid, sludge, or similar waste or any waste that has been reduced in volume by a collection vehicle or by any other means including, but not limited to, dewatering, composting, incineration, and similar processes.

(A) Tons. For waste reported in tons, the fee rate is $0.62 and one-half cent per ton received.

(B) Cubic yards (compacted). For waste reported in compacted cubic yards, the fee rate is $0.20 per cubic yard received.

(C) Cubic yards (uncompacted). For waste reported in uncompacted cubic yards, the fee rate is $0.12 and one-half cent per cubic yard received.

(2) Measurement options. The volume or weight reported on the quarterly solid waste summary report must be consistent with the volume or weight of the waste received for disposal, as defined in §330.671(b)(1) of this title. The volume or weight of the waste received for disposal shall be determined prior to disposal or processing of the waste.

(A) The recommended method for measuring and reporting waste received at the gate is in short tons. The operator must accurately measure and report the number of cubic yards or tons of waste received.

(i) The fee for waste reported in short tons will be calculated by the executive director at an amount equal to $0.62 and one-half cent per ton.

(ii) The fee for compacted waste reported in cubic yards will be calculated by the executive director at an amount equal to $0.20 per cubic yard.

(iii) The fee for uncompacted waste reported in cubic yards will be calculated by the executive director at an amount equal to $0.12 and one-half cent per cubic yard.

(B) If a facility operator chooses to report the amount of waste received utilizing the population equivalent method authorized in §330.675(a)(3) of this title, the fee shall be calculated by the executive director at an amount equal to $0.62 and one-half cent per ton.

(3) Fee calculation. The fee shall be calculated by the executive director using information obtained from the quarterly solid waste summary report. The total cubic yards or tonnage reported to the executive director in the quarterly solid waste summary report shall be derived from gate tickets (weight or volume) or invoices, except in the case of operators who are authorized to report utilizing the population equivalent method in §330.675(a)(3) of this title, and records of recycled materials or any other information deemed relevant by the executive director. A billing statement will be generated quarterly by the executive director and forwarded to the applicable permittee/registrant or a designated representative.

(4) Fee due date. All solid waste fees shall be due within 30 days of the date the payment is requested.

(5) Method of payment. The required fee shall be submitted in the form of a check or money order made payable to the Texas Commission on Environmental Quality and delivered or mailed to the return address designated by the executive director in the billing statement distributed quarterly.

(6) Penalties. Failure of the facility or process operator to submit the required fee payment by the due date shall be sufficient cause for the commission to revoke the permit or registration and authorization to process or dispose of waste. The commission may assess interest penalties for late payment of fees and may also assess penalties (fines) in accordance with Texas Water Code, §7.051, or take any other action authorized by law to secure compliance.

(7) Exemptions. A fee will not be charged on solid waste resulting from a public entity’s effort to protect the public health and safety of the community from the effects of a natural or man-made disaster or from structures that have been contributing to drug trafficking or other crimes if the disposal facility at which that solid waste is offered for disposal has donated to a municipality, county, or other political subdivision the cost of disposing of that waste.

(c) Facilities and processes not for disposal. Facilities or processes not included in the scope of subsections (a) and (b) of this section shall be considered as “facilities and processes not for disposal.” Facilities and processes not for disposal are those facilities that are permitted or registered independently from landfill, incinerator, or disposal processing operations and include, but are not limited to, such facilities or processes as transfer stations, shredders, balers, methane extractors.
etc. Facilities and processes not for disposal are not required to pay a fee to the agency, but are required to submit reports.

§330.675. Reports.

(a) Disposal facilities and processes.

(1) Municipal Solid Waste Fee Report frequency, report form, and report information.

(A) Report frequency. Quarterly, each disposal facility or process operator shall report to the executive director the information requested on the report form for the appropriate reporting period including the amount of source separated yard waste converted to compost or product for composting. Annually, the operator shall submit a summary of the information to show the yearly totals and year-end status of the facility or process, as requested on the report form, for the appropriate reporting period. An operator shall file a separate report for each facility that has a unique permit, permit application number, or registration number.

(B) Report form. The report shall be on a form furnished by the executive director. The report is reproduced by the facility operator and not recommended because each report form for each reporting period will have two unique numbers on each form. One number will specifically identify the facility for which the report is made; the other number will specifically identify the individual form. To use the wrong form, or the form intended for a different reporting period, will automatically make the data incorrect for that facility report. The operator will receive one form from the executive director for each facility or process prior to the due date. The operator must assure that the data entered on the form are applicable for the particular facility and period for which the data are reported.

(C) Report information. In addition to a statement of the amount of waste received for processing or disposal, the report shall contain other information requested on the form, including the facility operator’s name, address, and phone number; the permit number, permit application number, or registration number; the facility type, size, and capacity; and other information the executive director may request.

(2) Reporting units. The amount of waste received for processing or disposal shall be reported in short tons (2,000 pounds) or in cubic yards as received (compacted or unconfined) at the gate. If accounting of the waste is recorded in cubic yards, then separate accounting must be made for waste that comes to the facility in open vehicles or without compaction, and waste that comes to the facility in compactor vehicles. If scales are not utilized and accounting of the waste received is in cubic yards, gallons, or drums then those volumetric units may be converted to tons for reporting purposes, using the conversion factors set forth in subparagraphs (A) and (B) of this paragraph.

(A) General weight/volume conversion factors for various types of waste shall be as follows:

(i) one ton = 2,000 pounds;

(ii) one gallon = 7.5 pounds (grease trap waste);

(iii) one gallon = 8.3 pounds (wastewater treatment plant sludge or septage);

(iv) one gallon = 9.0 pounds (grit trap waste); and

(v) one drum = 55 gallons.

(B) Conversion factors to be used for waste transport vehicles relative to waste volume and weight in vehicles shall be as follows:

(i) one cubic yard = 400 pounds (no compaction); and

(ii) one cubic yard = 666.66 pounds (medium compaction); and

(iii) one cubic yard = 800 pounds (heavy compaction).

(3) Use of population equivalent. In determining the amount of waste deposited in a landfill serving less than 5,000 people or the amount of waste processed for disposal at a processing facility serving less than 5,000 people, the owner/operator may use the number of tons calculated or derived from the population served by the facility in lieu of maintaining records of the waste deposited at the facility. The amount of waste shall be calculated on the basis of one ton per person per year. The report shall document the population served by the facility and reflect any changes since the previous report.

(4) Reporting units for beneficial land use application sites. Wastewater treatment plant sludge and septage received for disposal at registered beneficial use land application sites in vacuum or closed tank trucks may be reported in dry weight equivalent units, provided the site operator either produces satisfactory documentation indicating the percent solids present in the received waste materials or uses the dry weight/volume conversion factors set forth in subparagraphs (A) and (B) of this paragraph:

(A) one gallon = 0.5 pounds (sludge - dry weight equivalent); and

(B) one gallon = 0.3 pounds (septage - dry weight equivalent).

(5) Report due date. The required quarterly solid waste summary report shall be submitted to the executive director not later than 20 days following the end of the fiscal quarter for which the report is applicable. The fiscal year begins on September 1, and concludes on August 31.

(6) Method of submission. The required report shall be delivered or mailed to the agency to the return address designated by the executive director in the billing statement distributed quarterly.

(7) Penalties. Failure of the facility or process operator to submit the required report by the due date shall be sufficient cause for the commission to revoke the permit or registration and authorization to process or dispose of waste. The commission may assess interest penalties for late payment of fees and may also assess penalties (fines) in accordance with Texas Water Code, §7.051 (relating to Administrative Penalty) or take any other action authorized by law to secure compliance.

(8) Facilities and processes not for disposal. Facilities and processes not for disposal (as defined in §330.673(c) of this title (relating to Fees)) are subject to reporting requirements, but are not required to pay a fee.

(1) Municipal Solid Waste Annual Summary Report frequency, report form, and report information.

(A) Report frequency. Annually, each facility or process operator shall report to the executive director the information requested on the report form for the appropriate reporting period. An operator shall file a separate report for each facility that has a unique permit, permit application number, or registration number.

(B) Report form. The form of the report shall be in accordance with subsection (a)(1)(B) of this section.

(C) Report information. The information in the report shall be in accordance with subsection (a)(1)(C) of this section.

(2) Reporting units. The units used in reporting shall be in accordance with subsection (a)(2) of this section.
(3) Use of population equivalent. The use of the population equivalent method of reporting waste received or processed shall be in accordance with subsection (a)(3) of this section.

(4) Report due date. The required annual report shall be submitted to the executive director not later than 45 days following the calendar year for which the report is applicable.

(5) Method of submission. The required report shall be delivered or mailed to the agency to the return address designated by the executive director in the billing statement distributed quarterly.

(6) Penalties. Failure of the facility or process operator to submit the required report by the due date shall be sufficient cause for the commission to revoke the permit or registration and authorization to process or dispose of waste. The commission may assess interest penalties for late payment of fees and may also assess penalties (fining) in accordance with Texas Water Code, §7.051 or take any other action authorized by law to secure compliance.

§330.677. Composting Refund.

(a) Any compost or product for composting that is not used as compost and is deposited in a landfill or used as daily landfill cover is not exempt from fees due under §330.673 of this title (relating to Fees). In order to be eligible to receive a refund authorized by this subsection, the operator of the facility must submit to the executive director a composting plan and receive written approval of the plan by the executive director.

(b) The operator of a publicly or privately owned municipal solid waste facility is entitled to a refund of up to 15% of the solid waste fees collected under §330.673 of this title if:

(1) the refunds are used to lease or purchase and operate equipment necessary to compost yard waste or to contract for the on-site composting of yard waste;

(2) composting operations are actually performed; and

(3) the finished compost material produced by the facility is returned to beneficial reuse.

(c) The amount of refund authorized by this subsection shall increase to 20% of the total solid waste fees collected by the facility if, in addition to composting the yard waste, the operator of the facility voluntarily bans the disposal of yard waste at the facility.

(d) The total amount of the refund authorized by this subsection shall be limited to the amount identified in the facility’s composting plan.

(e) The composting refund is collectible beginning on the date that the first composting operations occur in accordance with the approved composting plan. The executive director will normally allow the composting refund to be applied as a credit against fees required to be collected under §330.673 of this title. The operator is entitled to a refund of a percentage of the fees collected by the facility on or after the date that the executive director approves the composting plan.

(f) The executive director shall conduct an annual assessment of the composting operation to ensure composting activities are conducted in accordance with the approved composting plan. Failure to comply with the composting plan may result in the suspension of the composting refund.

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

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Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0348

SUBCHAPTER R. MANAGEMENT OF USED OR SCRAP TIRES

30 TAC §§330.825 - 330.830

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

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The proposed repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.0519, Standard Permit. The proposed repeals also implement Texas Water Code, §5.103, Rules.


§330.826. WTRF Fiscal Audits.

§330.827. Overpayment from the WTRF.

§330.828. WTRF Program Reviews Applicability and Responsibility.

§330.829. WTRF Program Reviews.


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
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SUBCHAPTER S. ASSISTANCE GRANTS AND CONTRACTS
30 TAC §§330.890 - 330.897

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is proposed under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The proposed amendments implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed amendments also implement Texas Water Code, §5.103, Rules.

§330.890. General Program Information.

(a) Objective. The objectives of the financial assistance programs described in this subchapter are to promote good municipal solid waste management practices within the State of Texas. Through the procedures contained in this subchapter, the commission intends that [to provide] funding be provided for applied research, demonstration and pilot projects, feasibility studies, technical assistance, public education and awareness, information exchange, and local government programs designed to enhance solid waste management and litter abatement enforcement.

(b) Scope. The sections contained in this subchapter identify various kinds of solid waste management assistance grants available, in addition to those described in Subchapter O of this chapter (relating to [Guidelines for] Regional and Local Solid Waste Management Planning and Financial Assistance General Provisions [Blanks]); describe procedures utilized by the commission [department] in advertising and awarding such grants, and contain pertinent application instructions for prospective recipients.

(c) Definitions of terms and abbreviations. The following words, terms, and abbreviations, when used in this subchapter, [shall] have the following meanings, unless the context clearly indicates otherwise.

(1) Local government--A county, incorporated city or town, or any political subdivision of the state that [which] has jurisdiction over two or more counties or parts of two or more counties[,] and [which] has been granted the power by the legislature to regulate solid waste handling or disposal practices or activities within its jurisdiction.

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

(4) State fiscal year--A period of time that [which] begins September 1 of a given year and ends August 31 of the following year.


(d) Authority. The commission’s [department’s] authority to conduct and manage the activities described in this subchapter is derived from Texas Health and Safety Code, Solid Waste Disposal Act, Chapter 361; Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act, Chapter 363; and Texas Litter Abatement Act, Chapter 365 [the Solid Waste Disposal Act, Health and Safety Code, Chapter 361; the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act, Health and Safety Code, Chapter 363; and the Litter Abatement Act, Health and Safety Code, Chapter 365].

(e) Eligible recipients. Entities eligible to apply for the various assistance grants described in this subchapter, except as provided for under §§330.895 of this title (relating to Information Exchange Program) and §§330.897 of this title (relating to Supplemental Funding for the Enforcement of the Solid Waste Disposal Act and the Litter Abatement Act) may include:

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

(6) environmental protection groups[,] and/or nonprofit service organizations having a record of active involvement in municipal solid waste management or public health enhancement activities within the State of Texas; and

(7) (No change.)

(f) Public notice. The agency’s [commission’s] notice of funding availability for the grant programs identified in this subchapter, except as provided for under §§330.895 of this title [relating to Information Exchange Programs] shall be in the form of published requests for proposals (RFP) in the Texas Register. The executive director [commission] may allow[,] at its discretion[,] advertise funding availability and specific RFPs by other means. The published RFPs will outline the work to be performed, establish appropriate deadlines, identify recipient qualifications, matching-fund requirements, and funding limitations. Submitted proposals shall be reviewed only if they satisfy the criteria as set forth in the appropriate RFP.

(g) Application forms and submittal procedures. Applications shall be submitted on forms provided by the executive director. [The necessary forms, as well as written instructions concerning their completion and submittal, may be obtained from the executive director.] All forms submitted for funding consideration, except as provided for under §§330.895 of this title [relating to Information Exchange Programs], must be in response to an RFP issued by the executive director. Unless indicated otherwise on the forms or accompanying instruction sheets, applicants shall submit five copies of the appropriate application forms and all supplementary application materials.

(h) Preapplication conferences. Except in those cases where the published RFP does not specify or recommend participation in a
preapplication conference, prospective applicants shall, prior to submitting the required application forms, contact the staff of the executive director and either make arrangements to participate in a preapplication conference, or explain why it is impractical to attend such a conference. While participation in an RFP recommended preapplication conference is not mandatory, such participation is strongly recommended. Such conferences provide a means to:

1. Examine proposed activities to ensure [issue] conformance, where applicable, with regional and/or local solid waste management plans;
2. Examine proposed activities to ensure [issue] conformance with current [commission issued] RFPs issued by the executive director;
3. Identify topics or projects that the commission [department] views as a priority when applicable;
4. Review and selection procedures.
5. Except as provided in paragraph (2) of this subsection, all applications for solid waste management assistance grants to be awarded under this subchapter shall be processed as follows.

- **Application**: If an application is determined to be complete and in compliance with all application submittal requirements, the applicant shall be notified in writing and advised concerning the time schedule that the executive director intends to follow in reaching a final decision regarding issuance or denial of an assistance grant.

- **Selection Criteria**: Criteria utilized in the selection process for solid waste management assistance grants may include, but are not limited to:

  1. (No change.)
  2. Degree to which the proposal is responsive to the purpose and funding criteria identified in the appropriate [commission issued] RFP issued by the executive director;
  3. (No change.)

- **UGCMS Requirements**: Applications must comply with all requirements set forth in Texas Government Code, Chapter 783, Uniform Grant and Contract Management Act [the Uniform Grant and Contract Management Act of 1981, Chapter 783, Texas Government Code] and the rules promulgated [hereunder] in 1 TAC Part 1, Chapter 5, Subchapter A. [Copies of the Act and the rules may be obtained from the commission.]

- **Contracts**: Except for recipients of funds awarded under §330.895 of this title [relating to Information Exchange Programs], all approved grantees will enter into a contract with the agency [commission] prior to being allocated funds. Such contracts shall:

  1. (No change.)
  2. Require, where appropriate, that work performed by the grantee be in accordance with the applicable regional or local solid waste management plan that [which] has been adopted in accordance with Subchapter O of this chapter [relating to Guidelines for Regional and Local Solid Waste Management Plans];
  3. Require that the grantee comply with the fiscal requirements relating to the administering, accounting, auditing, and fund-recovering procedures as set forth by the Uniform Grant and Contract Management Act [of 1981];
  4. Require that program and fiscal deficiencies documented in monitoring or other reports be cleared in accordance with provisions contained in UGCMS [provisions contained in UG&CMS], within specified time frames; and
  5. (No change.)

- **Solid Waste Disposal Fees**: To be eligible for any funding described in this subchapter, eligible recipients must not be delinquent in solid waste disposal fees owed the agency [commission].

- **Time Extensions**: The commission [department] may, for good cause, grant an extension of time for the completion of work required under a contract. Recipients who have determined that an extension of time is necessary to satisfactorily complete a contracted project shall make a written request to the commission [department] no later than 60 days before the contract expiration date. The request must indicate the amount of additional time needed and the reason such extension of time is required.

- **Grant Programs Suggestions**: The commission encourages the public to submit for consideration ideas and suggestions for municipal solid waste topics that warrant funding under the grant programs identified in this subchapter. In addition to the assistance grants and contracts programs identified in this subchapter, the executive director [commission] may periodically make available for limited terms additional types or forms of assistance grants. Individuals or organizations with suggestions for grant topics and/or additional assistance grants and contracts programs are encouraged to identify them in writing to the executive director [commission].


(a) Program description. The goal of applied research grants awarded under this section is to provide financial assistance grants to encourage and stimulate research and study in the field of municipal solid waste (MSW) management. The commission intends to encourage research as it recognizes the important position it holds in the creation and evolution of improved solid waste management technology.

(b) Eligible projects. Eligible projects shall address the MSW [municipal solid waste] management issues and concerns of the residents of Texas and have foreseeable practical application within the State of Texas.

§330.892. Demonstration Grant Program.

(a) (No change.)

(b) Eligible projects. Eligible projects shall be those that [which] address any issue of municipal solid waste management. Projects must have potential application generally throughout the State of Texas, and not be so operationally unique as to only be applicable at the location where demonstrated. Priority will be given to projects that are judged as having a significant potential for implementation and/or...
economic viability. Grants may be used for the purchase, installation, operation, or maintenance of an approved demonstration project.

(c) Participation frequency. Recipients shall be limited to one demonstration grant, issued under this section, during any specific contract performance period, unless specifically otherwise authorized in the published request for proposal [RFP].

§330.893. Feasibility Study Grant Program.

(a) (No change.)

(b) Eligible projects. Potential study topics include [could be], but are not limited to, the review of various waste management options and their practicality with regard to:

(1) - (8) (No change.)

(c) Participation frequency. Recipients shall be limited to one feasibility study grant, issued under this section, during any specific contract performance period, unless specifically otherwise authorized in the published request for proposal [RFP].

§330.894. Technical Assistance Grant Program.

(a) Program description. Technical assistance grants awarded under this section shall provide supplementary funding to aid recipients in achieving self-identified municipal solid waste management goals that [which] will serve to benefit public health; safeguard the environment; save or recover valuable resources; minimize solid waste generation; improve facility operating efficiency; or reduce nuisances. This assistance may include [be], but is not limited to, engineering, scientific, financial, or mechanical evaluations and analyses and/or the purchasing of materials and supplies that are necessary for the enhancement of a solid waste management program.

(b) Eligible projects. Eligible projects shall be those that [which] address any issue of municipal solid waste management as related to the description mentioned in subsection (a) of this section. Usual and normal expenses associated with maintaining a compliant solid waste facility or operation are not eligible for funding under the Technical Assistance Grant Program.

(c) (No change.)

§330.895. Information Exchange Program.

(a) Program description. The [intent of the] Information Exchange Program (program) is intended to facilitate the exchange of current municipal solid waste management information by providing supplementary travel expense monies. Eligible organizations shall determine their solid waste management needs and associated information requirements, and shall contact the executive director for assistance regarding these information requirements. The executive director shall determine if staff or resources can provide the necessary assistance. If the assistance of another organization is determined to be appropriate, the executive director may identify a willing advisor or facility with relevant, verifiable municipal solid waste experience. The matching of information recipients to information providers shall be done in a manner designed to maximize the amount and quality of information exchanged while minimizing the expense incurred by the state and the recipient organization. In cases where information providers are located within the state, travel to or from out-of-state locations will be approved only where such is shown to be the most cost-effective. The requesting organization, or potential recipient, may then submit a program application. It is anticipated that typically the recipient will send an individual or group of individuals to the advisor so that an actual operational technology or process may be reviewed. However, the executive director recognizes that, to maximize the information exchanged, the recipient may wish to have an advisor or advisors travel to the recipient’s location or some other agreed-upon location. This may be appropriate; however, the recipient will be responsible for reimbursing the information providers, in full, for the appropriate travel expenses. The recipient may, in turn, submit the appropriate reimbursed advisor(s) expenses along with their own expenses, for reimbursement by the executive director.

(b) (No change.)

(c) Eligible projects. Eligible projects must use advisors with a relevant, established, verifiable municipal solid waste management process or program experience. Advisors may represent any political subdivision, educational organization, or private organization. Potential exchange topics include [can be], but are not limited to:

(1) - (12) (No change.)

(d) Funding limitations. Eligible travel expenses shall be those incurred while traveling within the United States. Travel expenses shall be limited to vehicle mileage, air or bus fare, food, and lodging. Recipient and/or information providers’ salaries or fees are not eligible expenses. The State of Texas Travel Allowance Guide [Texas State Travel Allowance Guide] will provide the guidelines for the determination of acceptable expenses. Expenses shall be eligible for repayment only if the travel was conducted after executive director approval and shall be limited to trips of six nights or less in duration.

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

(e) - (f) (No change.)

§330.896. Public Education and Awareness Grant Program.

(a) Program description. The [intent of the] Public Education and Awareness Grant Program (program) is intended to provide financial assistance for the creation, dissemination, and implementation of programs designed to increase public awareness and knowledge with regard to municipal solid waste management issues. The purpose of this program shall be to encourage various educational institutions, nonprofit service and/or environmental protection organizations, local governments, and public agencies to develop creative, innovative, multifaceted public education and awareness programs. The programs and materials developed under this program shall be made available to the public free of charge or for a nominal fee designed to offset organizational handling expenses. It is not the intent of this program to subsidize the development of profit-oriented campaigns.

(b) Eligible requests. Potential programs include [may be], but are not limited to:

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

(c) (No change.)


(a) Program description. The [purpose of the] Supplemental Funding Program (program) is intended to provide supplementary grants to local governments for the enforcement and/or policing of the Solid Waste Disposal Act and the Litter Abatement Act. This program shall be managed so as to provide financial assistance and incentive to local governments to develop, expand, and/or improve an existing municipal solid waste and/or litter abatement enforcement program within their area of jurisdiction. Multifaceted programs that seek to combine preventive measures, public education/awareness, surveillance, and enforcement, including sentencing programs that result in environmental services being provided to the local community, are encouraged by the commission. For funded programs, the commission expects that the local authority will continue to sustain the program after supplementary funding ceases.

(b) - (c) (No change.)
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

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Stephanie Bergeon Perdue
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Texas Commission on Environmental Quality

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SUBCHAPTER T. USE OF LAND OVER CLOSED MUNICIPAL SOLID WASTE LANDFILLS

30 TAC §330.951 - 330.959, 330.960 - 330.964

STATUTORY AUTHORITY

The amendments and new sections are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is proposed under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The proposed amendments and new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed amendments and new sections also implement Texas Water Code, §5.103, Rules.

§330.951. Definitions.

Unless otherwise noted, all terms contained in this section are defined by their plain meaning. This section contains definitions that are applicable only to this subchapter and that [which] supersede definitions in §330.3 [§330.2] of this title (relating to Definitions) where those terms appear in this subchapter. As used in this subchapter, words in the singular include the plural and words in the plural include the singular. The following words and terms, when used in this subchapter, [shall] have the following meanings.

(1) Alteration—Minor changes and standard [Major reconstruction of an existing structure affecting the external frame or the foundation of the structure, or increasing the horizontal extent of the foundation. Standard] redesign activities common in residential and commercial structures, such as moving walls and doors, that will not affect the foundation or increase the horizontal extent of the foundation [are not considered alterations].

(2) Authorization—A written approval issued by the executive director that, by its conditions, may allow the disturbance of the integrity of the final cover.

(3) [Closed municipal solid waste landfill [Municipal Solid Waste Landfill (MSWLF)]—A permitted or non-permitted municipal solid waste landfill with recorded boundaries, which stopped receiving waste and completed the closure activities. [A discrete area of land or an excavation that has received only municipal solid waste or municipal solid waste combined with other solid wastes, including but not limited to construction/demolition waste, commercial solid waste, hazardous waste, and industrial solid waste, and that is not a land application unit, surface impoundment, injection well, or waste pit as those terms are defined by 40 CFR §257.2.]]

(4) [Closure plan—A plan addressing the placement of a final cap on a closed municipal solid waste landfill or dumping area [CMSGWLF] where waste is exposed or the existing cap is inadequate.]

(5) [Construction—The inception of an activity that provides improvements necessary for the utilization of an enclosed structure.]

(6) [Develop and/or development—Any activity on or related to real property that is intended to lead to the construction or alteration of an enclosed structure for the use and/or occupation of people for an industrial, commercial, or public purpose or to the construction of buildings or structures that will include single-family homes and duplexes.]

(7) [Development permit—A written permit issued by the executive director [commission] that, by its conditions, may authorize a person or persons to develop an enclosed structure over a closed municipal solid waste landfill [CMSGWLF] unit or dumping area. The development permit does not supersede local building and development permits, but is an additional permit.]

(8) [Dumping area—An non-permitted municipal solid waste unit with unknown boundaries or which have had the boundaries determined through subsequent investigation.]

(9) [Enclosed structure or structure—Any permanent structure that [which] is intended to be or has the potential of being used or occupied by people for an industrial, commercial, public, or residential purpose.]

(10) [Essential improvements—All improvements and appurtenances including, but not limited to, the excavations for the structure, installation of utilities, on-site wastewater disposal facilities, grading and drainage improvements, access drives and parking lots, foundation, security, fencing, landscape plantings, and irrigation systems necessary for the utilization of an enclosed structure.]

(11) [Existing structure—Any enclosed structure that began development prior to September 1, 1995.]

(12) [Garbage—Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking; and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.]

[12] Industrail Solid Waste (ISW)—Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operation, which may include hazardous waste.

[13] Municipal Solid Waste (MSW)—Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage and rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other wastes other than industrial solid wastes.

(12) [44] Permitted development—An enclosed structure or group of enclosed structures that have been issued a development permit.

(13) Post-closure care—The period of time beginning with the professional engineer certification of completing final closure activities as accepted by the executive director in accordance with §330.453(f), 330.455(c), or 330.457(f)(5) of this title (relating to Closure and Post-Closure) and ending with the professional engineer certification of completion of post-closure care maintenance as accepted by the executive director in accordance with §330.463 of this title (relating to Post-Closure Care Requirements). Monitoring and maintenance activities are required during the post-closure care period in accordance with §330.463 of this title.

(14) Post-closure care landfills—A municipal solid waste landfill facility that has received a municipal solid waste permit under §330.7 of this title (relating to Permit Required) and is currently in the post-closure care period as defined in this section.

(15) Registration—A document issued by the executive director regarding submitted information for an existing enclosed structure built over a closed municipal solid waste landfill unit that does not require a development permit.

(15) Rubbish—Nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials.

(16) Site operating plan [SOPP]—A prepared document that provides guidance for operations and procedures necessary to maintain human safety and environmental protection at the development, permitted development, or existing structure in a manner consistent with the development permit and the commission’s regulations.

(17) Structures gas monitoring plan [SGMP]—A document prepared by a licensed [registered] professional engineer that provides procedures to ensure the detection of landfill gases and the prevention of migration of landfill gases into enclosed structures.


(a) Applicability. The requirements in this subchapter apply to:

(1) persons owning, leasing, or developing property [structures] or structures overlying a closed municipal solid waste landfill or dumping area as defined by §330.951 of this title relating to Definitions [CWSWLF], except as noted in subsection (b) of this section; and

(2) (No change.)

[42] local government officials; and

[44] professional engineers; and

(b) Exemptions. The following persons shall be exempt from certain requirements of this subchapter.

(1) An owner of property constructing a single-family or double-family home, other than a developer of a housing subdivision, shall be exempt from §330.953 of this title (relating to Soil Test Required before Development), §330.954 of this title (relating to Development Permit, Development Authorization, and Registration Requirements, Procedures, and Processing), and §330.961 [§330.960] of this title (relating to Operational Requirements for an Enclosed Structure [Built] Over a Closed Municipal Solid Waste Landfill Unit, a Dumping Area, or a Municipal Solid Waste Landfill in Post-Closure Care).

(2) An owner of an existing structure built built over a closed municipal solid waste landfill [CWSWLF] unit or dumping area and that is a single-family or double-family home shall be exempt from §330.954 of this title and/or [§330.959 of this title (relating to Contents of [Requirements for] Registration Application for [an] Existing Structure Built Over a Closed Municipal Solid Waste Landfill Unit) and §330.961 of this title [§330.960].

(3) An owner/operator of a Type I, II, III, or IV municipal solid waste landfill facility that has received a municipal solid waste permit under §330.4 of this title (relating to Permit Required) and is currently in post-closure care, is exempt from the requirements of this subchapter. The owner/operator must comply with the provisions of §330.255 of this title (relating to Post-Closure Land Use).

§330.953. Soil Test Required before Development.

(a) (No change.)

(b) A soil test under this section shall be conducted by a licensed [registered] professional engineer [PE].

(c) The licensed professional engineer [PE] must choose one of the following tests.

(1) Test I. The licensed engineer [PE] shall observe all subsurface disturbances, undertaken for whatever reason, during development through the completion of the foundation. A subsurface investigation prior to construction is not required by Test I.

(2) Test II. A subsurface investigation undertaken for the purpose of finding a closed municipal solid waste landfill [CWSWLF] unit. The investigation must incorporate a sufficient number of borings or excavations, the number of which shall be determined on a site-specific basis by the licensed professional engineer [PE]. Each boring or excavation shall be to a minimum depth of ten feet.

(3) Test III. A subsurface investigation conducted at the development site for geotechnical or environmental purposes, or a housing and urban development [Housing and Urban Development (HUD)] test for a homeowner’s warranty.

(d) In accordance with [Pursuant to] Texas Health and Safety Code, §361.338(c), [the Texas Engineering Practice Act, §22(a)(4), and in accordance with 22 TAC §134-156 (concerning Responsibility to the Engineering Profession),] any engineer who conducts a soil test and determines that part of the tract overlies a closed municipal solid waste landfill [CWSWLF] shall notify the following persons of that determination within 30 days of the completion of the test:

(1) (No change.)

(2) the executive director [of the commission];

(3) (No change.)

(4) the regional council of government [council of government].
(e) The responsible engineer shall affix his seal, signature, and date of execution to the soil test results as required by the Texas Engineering Practice Act, §15c, and in accordance with 22 TAC §131.166 (relating to [Concerning] Engineer’s Seal).

(f) All soil test excavations where waste is removed shall be backfilled and compacted with clean high-plasticity [CL] or low-plasticity [CL] clay. The excavation shall be backfilled to exceed the existing grade and provide positive drainage.


(a) Permit required for development over a closed municipal solid waste (MSW) landfill unit or dumping area [Required for Development Over a MSW Landfill Unit].

(1) No person may commence or continue physical construction of an enclosed structure over a closed MSW landfill or dumping area as defined in §330.951 of this title [relating to Definitions] [CMSWLE unit] without first submitting a development permit application in accordance with §330.956 of this title (relating to [Permit] Application for Proposed or Existing Constructions [Development] Over a Closed Municipal Solid Waste Landfill Unit or a Dumping Area, General Requirements] and receiving a development permit issued by the executive director [from the commission], except as noted in paragraph (7) [45] of this subsection.

(2) A development permit is not required for an enclosed structure that is to be built on a tract of land that contains a CMSWLE unit, if the enclosed structure is not built over the waste disposal area.

(2) A development permit is required for construction of an enclosed structure over a closed MSW landfill that had received a permit under §330.7 of this title (relating to Permit Required) and had its permit revoked at the end of the post-closure care period in accordance with §305.67 of this title (relating to Revocation and Suspension upon Request or Consent) or for construction of an enclosed structure over a non-permitted closed MSW landfill with recorded boundaries, or over a dumping area with determined boundaries.

(3) A development permit is required for construction of an enclosed structure over a property that includes a dumping area with unknown boundaries as defined in §330.951 of this title, unless the exact waste boundary is determined through soil boring tests in accordance with §330.953 of this title (relating to Soil Test Required before Development), or through alternative investigation methods approved by the executive director.

(4) [49] The permit application under this subchapter must be received at least 45 days prior to the proposed commenced of construction over the closed MSW landfill [CMSWLE unit].

(5) [52] If a person directs an [his] engineer to conduct Soil Test I and the soil test reveals the existence of a closed MSW landfill [CMSWLE] unit or dumping area after the commencement of construction, construction of the enclosed structure being built over the waste area [CMSWLE] shall cease immediately, and a permit application shall be submitted and a development permit issued before construction of the enclosed structure over the waste area [CMSWLE] unit can resume. The person may proceed with construction and development of other facilities, including those items listed in the definition of essential improvements.

(6) [44] If a person directs an [his] engineer to conduct either Soil Test II or Soil Test III and the engineer discovers a closed MSW landfill [CMSWLE] unit or dumping area as a result of the test, he shall submit a permit application. Development of an enclosed structure over the closed landfill [CMSWLE] unit or dumping area cannot begin until a development permit is issued.

(7) [45] If a person directs an [his] engineer to conduct either Soil Test II or Soil Test III and the engineer does not detect a closed MSW landfill [CMSWLE] unit or dumping area as a result of the test, but subsequently discovers a closed MSW landfill [CMSWLE] unit or dumping area during the development, the person is not required to submit a permit application but must meet the provisions of §330.959 of this title (relating to Contents of [Requirements for] Registration Application for [42] an Existing Structure Built Over a Closed Municipal Solid Waste Landfill Unit).

(8) [46] As part of the application, the owner [applicant] shall provide the name and physical and mailing addresses of a public building with normal operating hours such as library, city hall, or county courthouse where the application can be viewed by the general public, and information on the location for the public meeting, hearing including physical and mailing addresses and the name and phone number of a contact person. The facilities where the public meeting [hearing] will be held and where the permit can be viewed shall be in compliance with all applicable requirements of the Americans with [With] Disabilities Act. The application shall also include an adjacent landowner list.

(7) The Health and Safety Code, Section 261.532, requires the TNRCC to charge an application fee equal to the actual cost of reviewing the application prior to the issuance of a development permit. The applicant shall submit an initial application fee of $2,500 to be submitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission. Upon completion of the review process, including the public meeting, the commission will present the applicant with a refund for an overcharge, or an invoice for an undercharge.

(8) If the municipal solid waste facility is covered by an existing permit for the management of solid waste, no person may commence physical construction of an enclosed structure without submitting an amendment application for the existing permit in accordance with §§330.50 - 330.65 of this title (relating to Permit Procedures and receiving the amended permit from the commission).

(b) Review and approval of permit application [Approval of Permit Application].

(1) Notice of the opportunity to request a public meeting for an application shall be provided not later than 45 days of the executive director’s receipt of the application in accordance with the procedures contained in §39.501(c) of this title (relating to Application for Municipal Solid Waste Permit). The owner or operator and the commission shall hold a public meeting in the local area, prior to facility authorization, if a public meeting is required based on the criteria contained in §55.154(c) of this title (relating to Public Meetings). This section does not require the commission to respond to comments, and it does not create an opportunity for a contested case hearing. [The commission shall set a public hearing to be held not later than the 30th day after the application has been received.]
(2) The commission shall notify the owner [applicant] by mail of the date and time of the meeting [hearing not later than the 15th day before the hearing].

(3) The commission shall require the applicant to publish notice of the meeting [hearing] in a newspaper that is generally circulated in each [the] county in which the property proposed for development is located. The published notice must appear at least once a week for the two weeks before the date of the meeting [hearing]. The commission shall also notify all individuals on the list of adjacent landowners at least 15 days prior to the meeting [hearing]. The notice shall list the location, date, and time of the public meeting [hearing], and the location of the public building where the development permit application can be viewed.

(4) The executive director’s [TNRCC Municipal Solid Waste] staff will conduct the public meeting [hearing] at the designated location. The owner [applicant] will make a presentation of the [their] application, the executive director’s [TNRCC] staff will describe the development permit, and public comment will be received. The public meeting [hearing] is not an evidentiary proceeding.

(5) On or before the fifth day following the public meeting [hearing but not later than 35 days following receipt of the application by the commission]:

(A) The [the] executive director will [issue his decision] either [is] approve or [is] deny the development permit application. The executive director shall base the [his] decision on whether the application meets each of the requirements of $330.956 of this title [relating to Permit Application for Development Over a Closed Municipal Solid Waste Landfill Unit] and $330.957 of this title (relating to Contents [Technical Requirements of Part A] of the Development Permit and Workplan Application). A decision denying the permit shall state the deficiencies that were cause for the denial and any modifications necessary to correct those deficiencies; and []

(B) A [a] person may submit in writing to the chief clerk [of the commission] a request to be notified of the executive director’s decision on the application.

(6) The date on which the executive director issues the order shall be construed as the date on which notice of the decision is mailed to the owner [applicant] and to each person that [who] requested notification of the executive director’s decision in accordance with [pursuant to] paragraph (5)(B) of this subsection [relating to Development Permit and Registration Requirements, Procedures, and Processing].

(7) Petition for review of executive director’s decision.

(A) The owner [applicant] or a person may file a petition for review not later than the tenth day after the date the executive director issues the order. The owner [applicant] or person that [who] files a petition shall file the petition with the chief clerk [of the commission], and shall mail a copy of the petition to the owner [applicant] and to each person that [who] requested notification of the executive director’s decision in accordance with [pursuant to] paragraph (5)(B) of this subsection [relating to Development Permit and Registration Requirements, Procedures, and Processing].

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

(8) If no petition for review is filed ten days after the executive director issues a [his] decision, the decision is final and effective on the 11th day after the date the decision was issued.

(9) If the actual cost of reviewing the permit is not equal to the application fee, the owner [applicant] will be presented with either a refund or an invoice in accordance with [pursuant to] subsection (a)(7) of this section [relating to Development Permit and Registration Requirements, Procedures, and Processing]. If an invoice is submitted, a development permit will not be issued until the invoice is paid.

(10) An owner [applicant] who is denied a development permit may submit a new application to the executive director [commission].

(c) Requirements for development over a closed MSW landfill in post-closure care.

(1) For an MSW landfill that is covered by an existing permit for the management of solid waste received under §330.7 of this title and is currently in post-closure care, no person may commence physical construction of an enclosed structure without submitting a permit modification application for the closure plan and post-closure plan of the existing permit in accordance with §305.70(j)(6) of this title (relating to Municipal Solid Waste Permit and Registration Modifications), or a permit amendment application in accordance with §305.62 of this title (relating to Amendment), and a workplan including those items listed in §330.957 of this title, and receiving the approval from the executive director.

(2) For an MSW landfill that is covered by an existing permit for the management of solid waste received under §330.7 of this title and is currently in post-closure care, no person may commence with any type of non-enclosed structures, which will result in the disturbance, in any way, of the final cover without submitting a permit modification application for the closure plan and post-closure plan of the existing permit in accordance with §305.70(j)(6) of this title or a permit amendment application in accordance with §305.62 of this title, and a workplan including those items listed in §330.960 of this title (relating to Contents of Authorization Request to Disturb Final Cover Over a Closed Municipal Solid Waste Landfill for Non-enclosed Structures), and receiving the approval from the executive director.

(3) The executive director shall issue a decision either to approve or to deny the permit modification/amendment application. The executive director shall base the decision on whether the application meets each of the requirements of §330.957 of this title, respectively, and of §330.957 or §330.960 of this title, respectively. A decision denying the permit modification/amendment shall state the deficiencies that were cause for the denial and any modifications necessary to correct those deficiencies.

(d) Registration for existing structures [Existing Structures].

(1) The owner or lessee of an existing structure that existed or began development prior to September 1, 1993, and is built over a closed MSW landfill [CMSWLF] unit, shall submit a registration application to the executive director [TNRCC]. The registration application shall be submitted to the executive director and shall include those items listed in §330.959 of this title [relating to Requirements for Registration of an Existing Structure Built Over a Closed Municipal Solid Waste Landfill Unit]. This paragraph is not intended to require that owners and lessees of enclosed structures initiate investigations for closed MSW landfills [CMSWLFs].

(2) A registration issued by the executive director [commission] under this subchapter is not a registration for the management of solid waste. A registration application for an existing structure shall comply with those requirements in this subchapter. A registration application to manage MSW [municipal solid waste] shall comply with the applicable sections of Chapter 281 and Chapter 305 of this title and Subchapters (A) - (L) of this chapter.

(3) The owner shall submit the registration within 180 days from the [one of the following dates]:
[(A)] the effective date of these regulations; or

[(B)] determination that the structure overlies a closed MSW landfill or dumping area [CWSWLF].

(4) Upon receipt of written approval of the structures gas monitoring plan [SGMP] or approval with modifications to the plan [SGMP] from the executive director, the owner or lessee of the existing structure shall implement the plan in accordance with its approved schedule.

(e) Authorization to disturb final cover for non-enclosed structures.

(1) The integrity of the final cover of a closed MSW landfill shall not knowingly be violated, disturbed, altered, removed, or interrupted in any way without the prior authorization of the executive director, except where soil tests are being performed in accordance with §330.953 of this title.

(2) Penetrations of the final cover or liner systems will not be allowed without the prior authorization of the executive director. These include, but are not limited to, borings, piers, spread footings, foundations for light standards, fence posts, anchors, deadman anchors, manholes, on-site disposal systems, recreational facilities, and any other kind of non-enclosed structures.

(3) An authorization to disturb final cover issued by the executive director under this subchapter is not an authorization for the management of solid waste. An application for authorization shall comply with those requirements in this subchapter.

(4) The authorization request must be received at least 45 days prior to the proposed commencement of construction over the closed municipal solid waste landfill unit.


(a) An enclosed area to be occupied by people under the natural grade of the land or under the grade of the final cover of the closed municipal solid waste (MSW) landfill will not be allowed.

(b) The executive director may require that additional soil layers or building pads be placed on the final cover prior to the initiation of any construction activity or structural improvements in order to protect the integrity and function of the final cover, any liner(s), any components of the containment system(s), or any monitoring system(s).

[(a)] The integrity of the final cover of a CWSWLF shall not knowingly be violated, disturbed, altered, removed, or interrupted in any way without the prior written approval of the executive director, except where soil tests are being performed in accordance with §330.953 of this title (relating to Soil Test Required before development).]

[(b)] Penetrations of the final cover or liner systems will not be allowed without the prior written approval of the executive director. These include, but are not limited to, borings, piers, spread footings, foundations for light standards, fence posts, anchors, deadman anchors, manholes, on-site disposal systems, recreational facilities, etc.

(c) The executive director may allow small amounts of any non-hazardous municipal solid waste removed from a closed MSW landfill [CWSWLF for any reason] (including residuals from a soil test) to be redeposited in the closed MSW landfill on a case-by-case basis. The workplan for developing land over a closed MSW landfill should describe the steps taken to ensure that removed waste will be appropriately covered or removed to an authorized waste management facility. [shall not be deposited in or reapplied on the CWSWLF but must be properly transported to a permitted municipal solid waste facility. Any industrial or hazardous waste removed from the CWSWLF shall be transported and disposed in accordance with Chapter 335 of this title (relating to Industrial and Municipal Solid Wastes).]

(d) Unauthorized pilings in or through the final cover of a closed MSW landfill are prohibited. [An enclosed area to be occupied by people under the natural grade of the land or under the grade of the final cover of the CWSWLF will not be allowed.]

(e) Unauthorized borings or other penetrations of the final cover of a closed MSW landfill are prohibited.

(f) Any water that comes in contact with waste becomes contaminated water and has to be properly discharged.

(g) Locations where waste is removed shall be backfilled and compacted with clean high-plasticity or low-plasticity clay. The excavation shall be backfilled to exceed the existing grade and provide positive drainage.

(h) No waste shall be left exposed overnight.

§330.956. [Disposal] Application for Proposed or Existing Constructions [Development] Over a Closed Municipal Solid Waste Landfill Unit or a Dumping Area, General Requirements.

(a) [Development permit application. The application [is divided into Parts A and B in Part A] shall be submitted prior to the public meeting [hearing]. The owner [applicant] shall be required to comply with the design, construction, and operating procedures proposed in the [his] application. [Part B shall be submitted upon completion of construction of the structure.]

(b) [Responsibilities of applicant.] The owner [applicant] is responsible for providing the executive director data of sufficient completeness, accuracy, and clarity to provide assurance that operation of the facility [site] will pose no reasonable probability of adverse effects to the health, welfare, or physical property of residents and occupants of the structures, and the environment. Failure to provide complete information as required by this subchapter may be cause for the executive director to return the application without further action. Submission of false information shall constitute grounds for denial or revocation of the development permit.

[(e)] Special design considerations.] The owner [applicant] is responsible for determining and reporting to the executive director any site-specific conditions that require special design considerations. The proposed development shall be in compliance with all applicable state and federal laws.

(c) The owner shall submit an application following the requirements in §330.57(e) - (h) of this title (relating to Permit and Registration Applications for Municipal Solid Waste Facilities).

[(d)] Number of copies. Three copies of the application shall be submitted to the executive director. Upon the request of the executive director, the applicant shall furnish additional copies of the application.

[(e)] Preparation. Preparation of the application shall conform with the Engineering Practice Act, Texas Civil Statutes, Article 3271a.

[(f)] The responsible engineer shall affix his seal, sign his name, place the date of execution, and state the intended purpose on each sheet of engineering plans and drawings, and on the title or contents page of the application as required by the Texas Engineering Practice Act, §1.58, and in accordance with 22 TAC §131.138 (relating to Engineer’s Seal).]

[(g)] Applications that have not been sealed shall be considered incomplete for the intended purpose and shall be retained by the commission for referral and potential inspection by the Texas State Board of Registration for Professional Engineers.]

(a) General Requirements. The application shall follow the general requirements in §330.956 of this title (relating to Application for Proposed or Existing Constructions Over a Closed Municipal Solid Waste Landfill Unit or a Dumping Area, General Requirements) [Preliminary Material].

[4] Title page. The title page shall show the name of the project, the TNRCC development permit application number if known, the name of the applicant, the location by city and county, the date the part was prepared, and, if applicable, the number and date of the revision. It shall be sealed as required by the Texas Engineering Practice Act.

[5] Table of contents. The table of contents shall list and give the page numbers for the main sections of the application. It shall be sealed as required by the Texas Engineering Practice Act.

(b) Certification.

(1) [Ω] Following the language of Texas [Certification: Pursuant to the] Health and Safety Code, §361.553, the licensed [registered] professional engineer preparing a development permit application shall include the following certification: Certification of No Potential Threat to Public Health or the Environment. "I, ___________ P.E. # ___________, certify that the proposed development is necessary to reduce a potential threat to public health or the environment, or that the proposed development will not increase or create a potential threat to public health or the environment. Further, I certify that the proposed development will/will not damage the integrity or function of any component of the Closed Municipal Solid Waste Landfill Unit, including, but not limited to, the final cover, containment systems, monitoring system, or liners. This certification includes all documentation of all studies and data on which I relied in making these determinations." (signed, sealed, and dated by the licensed [registered] professional engineer).

(2) For landfills in post-closure care, the owner or operator of the closed municipal solid waste (MSW) landfill unit shall submit to the executive director for review and approval a certification, signed by an independent licensed professional engineer and including all applicable documentation necessary to support the certification, demonstrating that:

(A) any proposed construction activities or structural improvements on the closed MSW landfill unit or waste management area shall not disturb the integrity and function of the final cover, any liner(s), all components of the containment system(s), and any monitoring system(s);

(B) the post-closure activities or improvements shall not increase or serve to create any potential threat to human health and the environment or that the proposed activities or improvements are necessary to reduce a potential threat to human health and the environment;

(C) any proposed modification or replacement of existing construction activities or structural improvements on any closed MSW landfill unit or waste management area that may disturb the integrity and function of any portion of the final cover, any liner(s), any components of the containment system(s), or any monitoring system(s)
shall not increase nor serve to create any potential threat to human health and the environment; and

(D) other disturbances of a closed MSW landfill unit or waste management area if the owner or operator submits to the executive director for review and approval, a certification that demonstrates that the disturbance, including the removal of any waste, shall not cause harm to the integrity and function of the final cover, any liner(s), any components of the containment system(s), or any monitoring system(s) and shall not increase nor serve to create any potential threat to human health or the environment. This certification shall be signed by the owner or operator of the unit or facility and an independent licensed professional engineer and shall include all applicable documentation necessary for the certification.

(c) [44] Existing conditions summary. The owner [applicant] shall discuss any land use, environmental, or special issues that affect the facility [site]. This shall include, but not be limited to:

(1) [4A] condition of final cover;
(2) [4B] waste characterization;
(3) [4C] gas production; and
(4) [4D] potential environmental impacts.

d) [4B] Legal authority. The applicant shall provide verification of his/her legal status. Normally, this is a one-page certificate of incorporation issued by the Secretary of State.

[4C] Evidence of competency. The names of the principals and supervisors of the applicant’s organization relative to the development shall be provided.

[4D] Notice of Appointment. The applicant shall provide a notice of appointment identifying the applicant’s engineer.

[4E] Notice of coordination. The applicant shall provide notice of coordination with all local, state, and federal government officials and agencies.

[4F] Legal description. The applicant shall provide legal description of the property in accordance with §330.59(d) of this title (relating to Contents of Part I of the Application).

[4G] provide the legal description of the property and the county, book, and page number of the current ownership record from the county deed records or a certified copy of the written notice submitted to the county deed records required by §330.964 of this title (relating to Notice to Real Property Records).

[4H] for property that is platted, provide the county, book, volume, and page number of the final plat record of that acreage encompassed in the application and a copy of the final plat document in addition to a written legal description.

[4I] provide a boundary metes and bounds drawing and description of the site signed and sealed by a Registered Professional Land Surveyor; and

[4J] provide a boundary metes and bounds drawing and description of the limits of the waste disposal area on the site signed and sealed by a Registered Professional Land Surveyor.

[4K] Site drawing. The applicant shall provide a site drawing, drawn to scale, that indicates the location of all waste disposal areas, existing and proposed structures, creeks, and ponds.

[4L] Maps. All maps shall clearly show the boundaries of the tract of land under development and the actual fill areas.

(1) General location maps. These maps shall be all or a portion of county maps prepared by the Texas Department of Transportation (TxDOT). At least one general location map shall be at a scale of 1/2 [one-half] inch equals one mile. If the TxDOT publishes more detailed maps of the proposed site area, the more detailed maps shall also be included. The latest published revision of all maps shall be used. In addition, the applicant shall provide maps as necessary to accurately show proximity of the site to surrounding features and structures.

(2) General topographic maps. These maps shall be United States Geological Survey 7-1/2 minute quadrangle sheets or equivalent. At least one general topographic map shall be at a scale of one inch equals 2,000 feet.

[4M] Aerial photographs. Applicants shall provide an aerial photograph approximately nine inches by nine inches with a scale within a range of one inch equals 1,667 feet to one inch equals 3,334 feet and showing the area within at least a one-mile radius of the site boundaries. The site boundaries and actual fill areas shall be marked. Photocopies of photographs are not acceptable substitutes for photographs.

[4N] General geology and soils statement. The application shall include a discussion in general terms of the geology and soils of the proposed facility [site], including any known pathways for leachate and landfill gas migration.

[4O] Groundwater and surface water statement. The application shall include a description of the groundwater and surface water resources at or near the facility [site] and how they will be impacted by the development.

[4P] Foundation plans. The owner [applicant] shall provide foundation plans, including geotechnical soil investigation and design reports.

(1) In order to prevent gas migration into buildings and other structures, structures shall be designed and constructed in accordance with the following criteria.

(A) A geomembrane or equivalent system with very low gas permeability shall be installed between the slab and the subgrade, and a permeable layer of a minimum thickness of 12 inches, composed of an open-graded, clean aggregate material, shall be installed between the geomembrane and the subgrade.

(B) A geotextile filter shall be utilized to prevent introduction of fine soil or other particulate matter into the permeable layer.

(C) A landfill gas ventilation or active collection system shall be installed consistent with the structures gas monitoring plan [Structures Gas Monitoring Plan] required by subsection (4) [4G] of this section.

(D) Perforated vent pipes or alternative venting devices approved by the executive director shall be installed within the permeable layer and shall be designed to operate without clogging.

(E) The venting gas devices shall be constructed to allow connection to an induced-draft exhaust system.

(F) Automatic methane gas sensors shall be installed within the venting pipe and/or permeable gas layer and inside the building or any other structure in order to trigger an audible alarm when methane gas concentrations greater than 20% of the lower explosive limit are detected.

(2) Alterations of existing structures are exempt from the requirements of paragraph (1) of this subsection.

(3) An owner [applicant] who requests suspension of gas monitoring based upon the demonstration required by subsection
(q)(1)(B) [se] of this section [relating to Technical Requirements of Part A of the Application], may submit to the executive director [commission] a request for a variance from the requirements of paragraph (1) of this subsection. The executive director [commission] shall base the [sia] decision on site-specific factors including, but not limited to, the age of the MSW [CWSWLF], type of waste deposited in the MSW landfill [CWSWLF], and testing methods utilized by the owner [applicant].

(k) [sia] Other plans. The application shall include plans the following:

1 grading and drainage;
2 irrigation systems; and
3 a dimensional control plan of the facility [sia] relating all existing and/or proposed enclosed structures and essential improvements of the development[,] and the locations of all required improvements and appurtenances[,] to the legal description boundary of the facility [sia] and the limits of the waste disposal area, signed and sealed by a registered professional land surveyor.

(l) [sia] Soil tests. The owner [applicant] shall provide all soil tests and/or other information relied upon to make the determination that the facility [sia] was used as an MSW [a municipal solid waste] disposal area as required by §330.953 of this title (relating to Soil Test Required before Development), including procedures performed to identify the limits of the waste disposal area.

(m) [sia] Certified copies of required notices. The owner [applicant] shall provide certified copies of all notices having been made by the licensed professional engineer, by the owner, and by the lessor/lessee in accordance with §330.953 of this title [relating to Soil Test Required before Development], §330.962 (§330.961) of this title (relating to Notice to Real Property Records), §330.963 (§330.962) of this title (relating to Notice to Buyers, Lessees, and Occupants), and §330.964 (§330.963) of this title (relating to Lease Restrictions).

(n) [sia] Closure plan. The owner [applicant] shall provide a closure plan for any part of the waste disposal area that will not have a structure built over it, including placement of the final cover.

(o) [sia] Operational requirements plan. The owner [applicant] shall provide a plan discussing the necessary procedures and practices to be implemented and followed to ensure that the owner [applicant] meets the provisions of §330.961 (§330.962) of this title (relating to Operational Requirements for an Enclosed Structure Over a Closed Municipal Solid Waste Landfill Unit, a Dumping Area, or a Municipal Solid Waste Landfill in Post-Closure Care).

(p) [sia] Site operating plan [Operating Plan (SOP)]. The owner [applicant] shall provide a site operating plan [Site Operating Plan], which at a minimum shall include specific guidance, procedures, instructions, and schedules for the following:

1 a description, including size, type, and function, of the equipment to be utilized at the structure other than methane monitoring equipment;
2 a detailed description of the procedures that the operating personnel shall follow to utilize the equipment; and
3 a plan to implement and maintain the operational requirements of §330.961 (§330.962) of this title [relating to Operational Requirements for an Enclosed Structure Over a Closed Municipal Solid Waste Landfill Units].

(g) [sia] Structures gas monitoring plan [Structures Gas Monitoring Plan]. The owner [applicant] shall provide a structures gas monitoring plan [Structures Gas Monitoring Plan] in accordance with the following.

1 General.

(A) The owner or lessee of a new on-site permanent enclosed structure built over a closed MSW landfill [CWSWLF] unit or a dumping area with determined boundaries shall ensure that the concentration of methane gas within the facility structure [generated by the CWSWLF unit] does not exceed 20% of the lower explosive limit for methane (1.5% by volume methane [in air]) in facility structures (excluding gas control or recovery system components) overlying the closed MSW landfill [CWSWLF] unit.

(i) Any new enclosed structures shall contain automatic methane gas sensors approved by the executive director [commission] and designed to trigger an audible alarm if the volumetric concentration of methane in the air is greater than 1.0% (20% of the lower explosive limit [Lower Explosive Limit (LEL)]).

(ii) Any new enclosed structures built over a closed MSW landfill or a dumping area [CWSWLF] shall utilize a ventilation system or an active gas extraction and collection system.

(B) Landfill gas monitoring requirements for a development applying for a development permit under this subchapter may be suspended by the executive director if the owner [applicant] can demonstrate that there is no potential for migration of the landfill gases listed in paragraph (2)(G) of this subsection. This demonstration shall be certified by a licensed [registered] professional engineer and approved by the executive director, and shall be based upon site-specific field-collected measurements, sampling, and analysis of physical, chemical, and biological processes.

(2) Requirements for structures gas monitoring plan [Structures Gas Monitoring Plan (SGMP)]. The owner or lessee shall submit a structures gas monitoring plan [SGMP], designed by a licensed [registered] professional engineer, to the executive director [commission] for review and approval. The plan [SGMP] shall ensure detection of the presence of landfill gas entering on-site structures. All design drawings shall bear the registered engineer’s seal and signature. The plan [SGMP] shall include, but not be limited to, the following:

(A) a discussion of specific facility [site] characteristics and potential migration pathways or barriers in the development of the plan [SGMP], including, but not limited to:

(i) the location of buildings and structures relative to the waste disposal area;

(ii) the nature and age of waste and its potential to generate landfill gas;

(iii) routes of entry for the intrusion of landfill gas into structures;

(iv) ignition sources within structures;

(v) the location of any utility lines or pipelines that cross, are adjacent to, or are near the closed MSW landfill [CWSWLF] unit or dumping area;

(vi) number of people occupying the structures and duration of occupation; and

(vii) depth of final cover over deposited waste;

(B) a narrative describing design characteristics of proposed structures related to landfill gas accumulation prevention, detection, and elimination including, but not limited to:

Construction plans and specifications [Plans and Specifications] of the proposed or modified structure shall be prepared and [one copy] maintained at the structure at all times during construction. After completion of construction, one set of as-built construction plans and specifications shall be [submitted to the executive director and another set shall be] maintained at the permitted development. [Plans retained by the executive director shall be made available for inspection by representatives, interested parties, and the public.] Plans maintained at the structure shall be made available for inspection by executive director [the TNRCC] representatives.


(a) The application shall follow the general requirements as set forth in §330.956 of this title (relating to Application for Proposed or Existing Constructions Over a Closed Municipal Solid Waste Landfill Unit or Dumping Area, General Requirements).

(b) The registration application shall consist of the following:

(1) The owner’s name, company, name, mailing address, physical street address, city, state, zip code, and name, title, and telephone number of a contact person;

(2) [A] a legal description as set forth in §330.957(e) of this title (relating to [Technical Requirements of Part A] of the Development Permit and Workplan Application);

(3) [B] certified copies of all notices having been made by the owner and the lessor/lessee in accordance with §330.962 of this title (relating to Notice to Real Property Records), §330.963 of this title (relating to Notice to Buyers, Lessees, and Occupants), and §330.964 of this title (relating to Lease Restrictions); and

(4) [A] site operating plan [Site Operating Plan (SOP)] as set forth in §330.957(p) of this title (relating to Technical Requirements of Part A of the Application);

(5) a structures gas monitoring plan: [Structures Gas Monitoring Plan (SGMP)];

(A) General.

(i) The owner or lessee of an existing structure built over a closed municipal solid waste landfill [CMSWLF] unit shall ensure that the concentration of methane gas generated by the landfill [structure] does not exceed 20% of the lower explosive limit for methane (1.0% by volume methane in air) in facility structures (excluding gas control or recovery system components). Any [new] enclosed structures shall contain automatic methane gas sensors approved by the executive director [commission] and designed to trigger an audible alarm if the volumetric concentration of methane in the air is greater than 1.0% [20% LEL].

(ii) Landfill gas monitoring requirements for a registration under this section may be suspended by the executive director as provided for in §330.957(q)(1)(B) of this title (relating to Technical Requirements of Part A of the Application).

(B) Requirements for structures gas monitoring plan [Structures Gas Monitoring Plan (SGMP)]. The owner or lessee shall submit a structures gas monitoring plan [SGMP], designed by a licensed [registered] professional engineer, to the executive director [commission] for review and approval. The plan [SGMP] shall ensure detection of the presence of landfill gas entering on-site structures. All design drawings should bear the registered engineer’s seal and signature. The plan [SGMP] shall include, but not be limited to, the following:
(i) an analysis of specific facility [site] characteristics and potential migration pathways or barriers as set forth in §330.957(n)(2)(A) [§330.957(a)(2)(A)] of this title [relating to Technical Requirements of Part A of the Application];

(ii) a facility [site] drawing, drawn to scale, which indicates the location of all waste disposal areas, existing structures, creeks, and ponds;

(iii) a narrative describing modifications to the existing structures including, but not limited to, the following:

(I) structural;

(II) electrical;

(III) mechanical; and

(IV) landfill gas monitoring equipment including manufacturer’s specification sheets and any gas ventilation or active gas extraction systems if the development utilizes such systems;

(iv) a detailed implementation schedule for the installation of landfill gas monitoring equipment;

(v) a sampling and analysis plan as set forth in §330.957(q)(2)(F) [§330.957(a)(2)(F)] of this title [relating to Technical Requirements of Part A of the Application]; and

(vi) a landfill gas analysis as set forth in §330.957(q)(2)(G) [§330.957(a)(2)(G)] of this title [relating to Technical Requirements of Part A of the Application]; and

(6) a safety and evacuation plan describing evacuation procedures and safety measures in the event the methane gas sensors sound the audible alarms.


The owner of a property that includes a closed municipal solid waste landfill or dumping area shall not disturb the final cover without prior written approval from the executive director. The authorization request shall include the following:

(1) a certification as set forth in §330.957(b) of this title (relating to Contents of the Development Permit and Workplan Application);

(2) the existing conditions summary as set forth in §330.957(c) of this title;

(3) proposed project description including location related to the closed landfill;

(4) description of the construction/investigation process including, but not limited to, work schedule and safety issues during construction;

(5) description of the procedures for water and/or methane monitoring and excavated material disposal during construction;

(6) maps and drawings, site drawing, and general location map to indicate the landfill location; and

(7) engineering plans, sealed and signed by a licensed professional engineer indicating the proposed project description and its location relative to the landfill.

§330.961. Operational Requirements for an Enclosed Structure Over a Closed Municipal Solid Waste Landfill Unit, a Dumping Area, or a Municipal Solid Waste Landfill in Post-Closure Care.

(a) General.

(1) The development permit or registration, the site operating plan, any closure plan, the structures gas monitoring plan, the safety and evacuation plan, and all other documents and plans required by this subchapter shall become operational requirements and shall be considered a part of the operating record of the development or structure. A copy of these documents shall be maintained on-site in an office at the permitted/registered development.

(2) The owner, operator, or lessee shall retain the operating record for the life of the structure.

(3) Any deviation from the development permit/registration and incorporated plans or other related documents associated with the development permit or registration without approval of the executive director is a violation of this subchapter.

(4) The development permit or registration holder shall notify the executive director of any incident involving the facility relative to the development permit or registration and provisions for the remediation of the incident.

(b) Landfill gas control. All landfill gases shall be monitored in accordance with the structures gas monitoring plan prepared as set forth in §330.957 of this title (relating to Contents of the Development Permit and Workplan Application) and §330.959 of this title (relating to Contents of Registration Application for an Existing Structure Built Over a Closed Municipal Solid Waste Landfill Unit).

(1) Landfill gas monitoring.

(A) The owner or lessee of a new structure to be built on or an existing structure built over a closed municipal solid waste (MSW) landfill unit shall provide equipment for monitoring on-site structures, including, but not limited to, buildings, subsurface vaults, utilities, or any other areas where potential gas buildup would be of concern.

(B) Monitoring on-site structures may include, but is not limited to, periodic monitoring using either permanently installed monitoring probes or continuous monitoring systems.

(C) Structures located on top of the waste area shall be monitored on a continuous basis, and monitoring equipment shall be designed to trigger an audible alarm if the volumetric concentration of methane in the sampled air is greater than 1% within the venting pipe or permeable layer, and/or inside the structure. When practical, structures should be monitored after they have been closed overnight or for the weekend to allow for an accurate assessment of gas accumulation.

(D) Areas of the structure where gas may accumulate should be monitored and include, but are not limited to, areas in, under, beneath, and around basements, crawl spaces, floor seams or cracks, and subsurface utility connections.

(E) Gas monitoring and control systems shall be modified as needed to reflect modifications to the structure.

(2) Reporting.

(A) All on-site structures shall be sampled for methane on a monthly basis. All monthly sampling results shall be placed in the operating record of the facility in accordance with §330.125(b)(3) of this title (relating to Recordkeeping Requirements) and be made available for inspection by the executive director in accordance with §330.125(c) of this title. If methane gas levels exceeding the limits specified in paragraph (1) of this subsection are detected, the owner, operator, or lessee shall notify the executive director and take action in accordance with §330.371(c) of this title (relating to Landfill Gas Management).

(B) Sampling for specified trace gases may be required by the executive director when there is a possibility of acute or chronic exposure due to carcinogenic or toxic compounds.
(c) Air criteria.

(1) The closed MSW landfill or dumping area is subject to commission jurisdiction concerning burning and air pollution control. The owner shall ensure that the closed MSW landfill or dumping area does not violate any applicable requirement of the approved state implementation plan.

(2) Ventilation of the closed MSW landfill or dumping area, and any enclosed structures shall be provided in accordance with all appropriate commission rules.

(d) Ponded water. The ponding of water over waste in the closed MSW landfill unit or dumping area, regardless of its origin, shall be prevented. Ponded water that occurs on a closed MSW landfill unit or dumping area shall be eliminated as quickly as possible and the area in which the ponding occurred shall be filled in and regraded within seven days of the occurrence.

(e) Water pollution control. Surface drainage in and around the structure shall be controlled to minimize surface water running onto, into, and off the closed MSW landfill or dumping area.

(f) Groundwater monitoring. Groundwater monitoring may be required by the executive director and shall be conducted in accordance with the requirements of Subchapter J of this title (relating to Groundwater Monitoring and Corrective Action).

(g) Conduits. All conduits intended for the transport or carrying of fluids over or within the closed MSW landfill or dumping area shall be double-containing (split casings shall not be used). To the extent possible, all such utilities shall be in fill material placed over the upgraded final cover.

(h) Recordkeeping requirements.

(1) The owner or lessee shall promptly record and retain in the operating record the following information:

(A) all results from gas monitoring and any remediation plans pertaining to explosive and other gases;

(B) all unit design documentation for the placement of gas monitoring systems and leachate or gas condensate removal or disposal related to the closed MSW landfill unit;

(C) copies of all correspondence and responses relating to the development permit;

(D) all documents relating to the operation and maintenance of the building, facility, or monitoring systems as they relate to the development permit; and

(E) any other document(s) as specified by the approved development permit or by the executive director.

(2) The owner, operator, or lessee shall provide written notification to the executive director for each occurrence that documents listed in subsection (h) of this section are placed into or added to the operating record. All information contained in the operating record shall be furnished upon request to the executive director and shall be made available at all reasonable times for inspection by the executive director or his representative.

§330.962 Notice to Real Property Records.

(a) Owner of property. An owner of property that oversees a dumping area shall prepare and file for record in the real property records in the county where the land is located a written notice stating:

(1) the former use of the land;

(2) the legal description of the tract of land that contains the dumping area, and at the owner’s discretion, the portion of the tract of land that contains the dumping area;

(3) notice that restrictions on the development or lease of the land exist in Texas Health and Safety Code, Chapter 361, Subchapter R, and this subchapter; and

(4) the name of the owner.

(b) Local government official. A local government official who receives notice under §330.953 of this title (relating to Soil Test Required before Development) that a dumping area exists on a tract of land shall prepare and file for record in the real property records in the county where the land is located a written notice stating:

(1) the legal description of the tract of land that contains the dumping area;

(2) the current owner of the tract;

(3) notice of the tract’s former use as a municipal solid waste landfill unit; and

(4) notice that restrictions on the development or lease of the land exist in Texas Health and Safety Code, Chapter 361, Subchapter R, and in this subchapter.

§330.963 Notice to Buyers, Lessees, and Occupants.

(a) An owner of land that oversees a closed municipal solid waste landfill or dumping area shall prepare a written notice stating the former name of the facility, the legal description of property, notice of the restrictions on the development or lease of the land imposed by this subchapter and Texas Health and Safety Code, Chapter 361, Subchapter R, and the name of the owner. The owner shall file for record the notice in the real property records of the county in which the property is located.

(b) An owner of land that oversees a closed municipal solid waste landfill or dumping area shall notify each lessee and each occupant of a structure that oversees the unit of:

(1) the land’s former use as a landfill; and

(2) the structural controls in place to minimize potential future danger posed by the closed municipal solid waste landfill or dumping area.

§330.964 Lease Restrictions.

This section is not intended to require that owners and lessees of property initiate investigations for closed municipal solid waste landfills or dumping areas. A person may not lease or offer for lease property that oversees a closed municipal solid waste landfill or dumping area unit unless:

(1) existing development on the land is in compliance with this subchapter; or

(2) the person gives notice to the prospective lessee of what is required to bring the property and any development on the property into compliance with this subchapter and the prohibitions or requirements for future development imposed by this subchapter and by any development permit issued for development of the property under this subchapter.

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

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

TRD-200503743

PROPOSED RULES September 9, 2005 30 TexReg 5705
30 TAC §§330.960 - 330.963

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

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The proposed repeals implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed repeals also implement Texas Water Code, §5.103, Rules.

§330.960. Operational Requirements for an Enclosed Structure Over a Closed Municipal Solid Waste Landfill Unit.


§330.962. Notice to Buyers, Lessees, and Occupants.

§330.963. Lease Restrictions.

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

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

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Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 9, 2005
For further information, please call: (512) 239-0348

SUBCHAPTER U. STANDARD AIR PERMITS FOR MUNICIPAL SOLID WASTE LANDFILL FACILITIES AND TRANSFER STATIONS


STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is proposed under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The proposed new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed new sections also implement Texas Water Code, §5.103, Rules.

§330.981. Applicability.

The requirements of this subchapter will be implemented 180 days after the effective date of this chapter.

§330.983. Definitions.

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

(1) Bioreactor—A municipal solid waste landfill cell or a portion of a municipal solid waste landfill where air and/or liquids (including, but not limited to, leachate and landfill gas condensate) are added in a controlled fashion to the waste mass in order to accelerate or enhance the biodegradation and or biostabilization of the waste.

(2) Bioremediation—The biological breakdown of waste occurring at a landfill prior to placing the waste in a landfill cell. Processing may include adding supplements and oxygen to speed the natural biological processes, after which the material will meet landfill acceptance standards and can be placed in a cell. Common sources of material requiring bioremediation are transportation or pipeline accidents and spills.

(3) Category 1 municipal solid waste landfills—Landfills with a design capacity less than 2.5 million megagrams by mass or 2.5 million cubic meters by volume that operate in accordance with 40 Code of Federal Regulations Part 60, Subpart WW, as applicable.

(4) Category 2 municipal solid waste landfills—Landfills with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters and a calculated uncontrolled non-methane organic compound emission rate less than 50 megagrams per year that...
operate in accordance with 40 Code of Federal Regulations Part 60, Subpart WWW.

(5) Category 3 municipal solid waste landfills--Landfills with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters and a calculated uncontrolled non-methane organic compound emission rate greater than or equal to 50 megagrams per year that operate in accordance with 40 Code of Federal Regulations Part 60, Subpart WWW and 40 Code of Federal Regulations Subpart AAAAA, as applicable.

(6) Construction--As defined in §116.12 of this title (relating to Nonattainment Review Definitions). Any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions.

(7) Facility--As defined in §116.10 of this title (relating to General Definitions). A discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not a facility.

(8) Modification--As pertaining to a municipal solid waste landfill defined in 40 Code of Federal Regulations §60.751, means an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity after May 30, 1991. Modification does not occur until the owner or operator commences construction on the horizontal or vertical expansion.

(9) Modification of existing facility--As defined in §116.12 of this title (relating to Nonattainment Review Definitions). Any physical change in, or change in the method of operation of, a facility in a manner that increases the amount of any air contaminant emitted by the facility into the atmosphere or that results in the emission of any air contaminant not previously emitted. The term does not include conditions listed under §116.10(11) of this title (relating to General Definitions).

(10) Process--As defined in §101.1 of this title (relating to Definitions). Any action, operation, or treatment embracing chemical, commercial, industrial, or manufacturing factors such as combustion units, kilns, stills, dryers, roasters, and equipment used in connection with them, and all other methods or forms of manufacturing or processing that may emit smoke, particulate matter, gaseous matter, or visible emissions.

(11) Project--As pertaining to a municipal solid waste landfill defined in 40 Code of Federal Regulations §60.751, for the purposes of this subchapter means the construction or modification of a facility or a group of facilities submitted under the same registration.

(12) Receptor--Any off-property recreational area, commercial/industrial structure, residence, or other normally occupied structures not used solely by the owner and/or operator of the municipal solid waste landfill site.

(13) Site--As defined in §101.1 of this title (relating to Definitions), will mean all regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. Site includes any property identified in the permit or used in connection with the regulated activity at the same street address or location.

(14) Source--As defined in §116.10 of this title (relating to General Definitions). A point of origin of air contaminants, whether privately or publicly owned or operated.

(15) Waste solidification--The physical process used to reduce the mobility of constituents in a waste or to eliminate free liquids.

(16) Waste stabilization--The chemical process used to stabilize the volatility of the constituents in a waste.

§330.985. Applicability and Exceptions.

(a) This subchapter authorizes air emissions from municipal solid waste landfill sites and transfer stations that meet the conditions listed in this subchapter.

(b) This standard permit does not relieve the owner and/or operator from complying with any other applicable provisions of the Texas Health and Safety Code, Texas Water Code, rules of the Texas Commission on Environmental Quality, or any other applicable state and federal rules and regulations.

(c) An owner and/or operator may claim this standard permit for the operation, construction, or modification of a municipal solid waste landfill or a Type V transfer station including Type I, Type IAE, Type IV, and Type IVAE landfill as defined in §330.5 of this title (relating to Classification of Municipal Solid Waste Facilities), except as specified in subsection (d) of this section.

(d) Exceptions.

(1) Any project that constitutes a new major source, or major modification under the new source review requirements of the Federal Clean Air Act, Part C (Prevention of Significant Deterioration of Air Quality) or Part D (Plan Requirements for Nonattainment Areas), and the related adopted regulations are subject to the requirements of §116.110 of this title (relating to Applicability) rather than this subchapter.

(2) Separate permit authorization under Chapter 106 of this title (relating to Permits by Rule) or Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) must be obtained for the following activities at a site and may not be claimed under this subchapter:

(A) incineration (not including flares or air curtain incinerators), other than that used to control landfill gas emissions, as defined in 40 Code of Federal Regulations Part 60, Subpart WWW;

(B) rock crushers not used as temporary installations exclusively for cell construction, concrete batch plants, or hot mix asphalt concrete plants;

(C) composting; and

(D) a municipal solid waste landfill site that is permitted to accept 51% or more by weight or volume of Class I industrial nonhazardous waste.


(a) Type IV landfills are exempt from the requirements of this subsection.

(b) Certification under this subchapter constitutes an acknowledgment and agreement that the permit holder will comply with all rules, regulations, and orders of the commission issued in conformity with Texas Clean Air Act, Texas Health and Safety Code, Chapter 382, and the conditions precedent to the claiming of this standard permit. If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition will govern. Acceptance includes consent to the entrance of commission employees and designated representatives of any local air pollution control agency having jurisdiction over the site into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the standard permit.
(c) A certification under this subchapter is valid for a term not to exceed ten years from the date of receipt by the Texas Commission on Environmental Quality. An owner and/or operator is required to renew a certification by no later than the expiration date of the certification. The commission will provide written notice to operators of the renewal deadline at least 180 days prior to the expiration of the certification.

(d) Two copies of the certification must be submitted to the Waste Permits Division. One copy must be submitted to the appropriate regional office, and one copy must be sent to any appropriate local air pollution control program having jurisdiction over the site. The certification must be based on the capacity of the landfill minimum of a ten-year period. The certification must include supporting documentation to demonstrate compliance with the conditions of this subchapter and any other applicable federal and state requirements, and at a minimum should include the following:

1. the basis and quantification of emission estimates;
2. sufficient information to demonstrate that the project will comply with all applicable conditions of this subchapter; and
3. a description of any equipment and related processes.

(e) Certifications must be submitted as follows.

1. Existing municipal solid waste landfill sites that have been modified and do not continue to meet the existing standard permit under §116.621 of this title (relating to Municipal Solid Waste Landfills) must submit a certification no later than 180 days from the effective date of this section.

2. New municipal solid waste landfill sites must submit a certification at least 120 days prior to building or installation of any equipment or structure that may emit air contaminants.

3. Modifications to an existing municipal solid waste landfill site that results in a change in categories as listed in §330.983 of this title (relating to Definitions) must submit a certification at least 60 days after changes occurring at the site.

4. New facilities or changes to existing facilities that do not cause a site to become ineligible for this standard permit can be authorized by meeting one of the following:

   1. independently claiming the permit by rule under Chapter 106 of this title (relating to Permits by Rule) or a standard permit under Chapter 116, Subchapter F of this title (relating to Standard Permits), including all registrations, fees, and documentation. These independent registrations must be administratively incorporated at the next standard permit certification renewal or modification; or

   2. including the claimed permit by rule or standard permit as a part of an initial or modified certification. A claimed permit by rule or standard permit included under a municipal solid waste landfill standard permit certification is exempt from the registration and fee requirements normally required of permits by rule or standard permits. The certification must include sufficient information necessary to demonstrate qualification for those authorizations. Certifications must meet the following:

      (A) update the site certification annually if the cumulative amount of emissions for any changes is:
      (i) less than five tons per year of any criteria air contaminant for sites located in a designated nonattainment area; or
      (ii) less than 25 tons per year of any criteria air contaminant for sites located in an attainment area;

      (B) update the site certification within 30 days of the change if the site is not considered an existing major source in accordance with prevention of significant deterioration review or nonattainment new source review, and the cumulative amount of emissions for these changes is:
      (i) greater than or equal to five tons per year of any criteria air contaminant for sites located in a designated nonattainment area; or
      (ii) 25 tons per year of any criteria air contaminant for sites located in attainment areas; or

      (C) update the site certification at least 30 days prior to the change, including any applicable major source netting demonstration as specified in §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas), if the site is considered an existing major site in accordance with prevention of significant deterioration review or nonattainment new source review, and the cumulative amount of emissions for changes is:
      (i) greater than or equal to five tons per year of any criteria air contaminant for sites located in a designated nonattainment area; or
      (ii) 25 tons per year of any criteria air contaminant for sites located in an attainment area.

(a) An owner and/or operator of a municipal solid waste landfill site must comply with the following general requirements, as applicable:

   (1) provisions of Federal Clean Air Act (FCAA), §111 (relating to Standards of Performance for New Stationary Sources) as listed under 40 Code of Federal Regulations (CFR) Part 60, promulgated by the United States Environmental Protection Agency (EPA), including, but not limited to, Subpart WW;

   (2) provisions of FCAA, §112 (relating to Hazardous Air Pollutants) as listed under 40 CFR Part 61, promulgated by the EPA;

   (3) maximum achievable control technology standards as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA, §112, 40 CFR 63)), including, but not limited to, Subpart AAA;

   (4) if subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program), obtain allocations to operate; and

   (5) rules and regulations of the commission adopted under Texas Clean Air Act, Texas Health and Safety Code, Chapter 382, and with the intent of the Texas Clean Air Act, including the protection of health and property of the public.

(b) All representations with regard to construction plans, operating procedures, permits by rule, or standard permits claimed, and maximum emission rates in any certification for this subchapter, become conditions upon which the municipal solid waste landfill must be constructed and operated. The owner or operator must submit a revised certification for changes that vary from the original representations. If changes occur and the site remains eligible for this subchapter, the owner and/or operator of the site must follow the notification/certification procedures listed in §330.987 of this title (relating to Certification Requirements). Any change that occurs such that a site, facility, or project is no longer eligible to claim this standard permit requires proper authorization under §116.111 of this title (relating to General Application).

§330.991. Technical and Operational Requirements for all Municipal Solid Waste Landfill Sites.
(a) Air emissions from the following stationary sources are authorized by this standard permit:
(1) recycling (e.g., crushing glass, shredding or crushing aluminum, light bulb crushing, wood chipping, or mulching);

(2) transfer stations:
   (A) located at a municipal solid waste (MSW) landfill site; or
   (B) not located at a landfill and have a capacity greater than 40 cubic yards, all emission sources at the transfer site must be located a minimum distance of 165 feet from the nearest receptor;

(3) waste solidification/stabilization operations, which must be conducted with the following conditions:
   (A) when dry fine powdery materials, including, but not limited to, fly ash, cement kiln dust, hydrated lime, and fine sawdust are used for mixing in the waste solidification/stabilization process loading/unloading, transporting, and mixing, they must be controlled so as to minimize particulate matter emissions. Controls to minimize particular matter emissions may include loading and storing in enclosed containers, or mixing and unloading under conditions where the materials cannot become airborne; and
   (B) no visible emissions may cross the property line for a period not to exceed 30 seconds in any six-minute period, as determined by United States Environmental Protection Agency (EPA) Test Method 22;

(4) landfill construction, operation, and closures, including landfill gas emissions and associated capture and control equipment;

(5) landfill mist spray systems to control odor. These landfill mist spray systems are subject to the limitations of §106.261 of this title (relating to Facilities (Emission Limitations)) or §106.262 of this title (Facilities (Emission and Distance Limitations)), as applicable, and will operate such that no visible emissions may cross the property line for a period not to exceed 30 seconds in any six-minute period, as determined by EPA Test Method 22;

(6) MSW landfill bioreactor cell construction and operations, which must comply with the following requirements:
   (A) bioreactor cell must not accept or process Class I industrial nonhazardous waste;
   (B) the owner and/or operator must have an approved landfill gas collection and control system (GCSS) by the General/Standard/Rule Permits (GSR) Section of the Texas Commission on Environmental Quality’s Air Permits Division, prior to the introduction of air or liquids into the bioreactor cell;
   (C) before the construction of a bioreactor cell, the owner and/or operator must submit a GCSS design plan prepared by a licensed professional engineer for approval by the Texas Commission on Environmental Quality Air Permits Division, GSR Section, Mail Code 163, and the design plan must contain the following requirements as a minimum:
      (i) the GCSS for the bioreactor must be dedicated only to the approved bioreactor cell and it must have separate controls and not be a segment of any other GCSS for the MSW landfill;
      (ii) the GCSS must be designed with a safety factor based on good engineering practice to control the maximum expected gas flow from the entire bioreactor cell over the intended useful life of the gas control or treatment system. The maximum expected gas flow is to be determined by the latest version of the EPA LandGen model using Lo=170 m3/Mg and k=0.25 yr as default values, unless a specific bioreactor cell methane generation rate determined by EPA Method 2E, 40 CFR Part 60, Appendix A has been approved by the Air Permits Division;
      (iii) the GCSS design plan must have supporting pipe sizing and network flow calculations to demonstrate that the requirements of 40 CFR §60.752(b)(2)(ii)(A)(1), (3), and (4) are satisfied;
      (iv) the GCSS design plan must include any alternates to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping, or reporting provisions of 40 CFR §§60.753 - 60.758 proposed by the owner or operator; and

(7) any other facility or group of facilities that meets a permit by rule under Chapter 106 of this title (relating to Permits by Rule) or a standard permit under Chapter 116, Subchapter F of this title (relating to Standard Permits);

(8) leachate and landfill gas condensate activities, which must be conducted as follows:
   (A) leachate and/or landfill gas condensate may be recirculated on-site at a rate not to exceed 100,000 gallons per day, and in accordance with the conditions and limitations specified in §330.177 of this title (relating to Leachate and Gas Condensate Recirculation); and
   (B) air emissions are authorized from leachate and/or landfill gas condensate stored in tanks or disposed in evaporation ponds that are lined in accordance with §330.331(b) of this title (relating to Design Criteria), and meet the requirements in §330.177 of this title (relating to Technical Guidelines);

(9) fuel storage tanks, which must meet the following requirements:
   (A) storage and transfer of gasoline, diesel fuel, or kerosene are authorized by this standard permit;
   (B) permanent gasoline tanks must be located at least 500 feet from any off-property receptor;
   (C) total annual throughput of gasoline for all tanks may not exceed 20,000 gallons per year unless a vapor balance system as defined in §115.10 of this title (relating to Definitions), is used; and
   (D) records of annual throughput must be maintained;

(10) tire shredding, which may be conducted at a rate not to exceed 11 tons per hour. Records of the amount of tires shredded per hour must be maintained;

(11) bioremediation pads, which must be operated such that the pad must be located at least 165 feet from any off-property receptor;
(12) the GCCS, which must be designed to route total collected landfill gas to one of the following control devices:

(A) flares that satisfy requirements and are operated in accordance with 40 CFR Part 60, Subpart WW;

(B) a landfill gas-fired stationary, reciprocating internal combustion engine or a landfill gas-fired turbine not used to generate electricity, that satisfies all of the requirements of §106.4(a)(1) of this title (relating to Requirements for Permitting by Rule) and §106.312 of this title (relating to Stationary Engines and Turbines);

(C) a landfill gas-fired stationary electric generating unit that satisfies all of the requirements of Chapter 116, Subchapter F of this title;

(D) a landfill gas-fired boiler, heater, or other combustion unit, not including stationary, reciprocating internal combustion engines or turbines, that satisfies the maximum heat input and nitrous oxide requirements of §106.4(a)(1) of this title and §106.183 of this title (relating to Boilers, Heaters, and Other Combustion Devices) and applicable sections of Chapter 117 of this title (relating to Control of Air Pollution from Nitrogen Compounds);

(E) a pollution control project that satisfies all the requirements of §116.617 of this title (relating to Standard Permits for Pollution Control Projects). Any facility or process added under this subsection is not considered a new production facility for the purposes of §116.617 of this title; or

(F) a gas treatment system that processes the collected gas to produce a product or by-product for subsequent sale or use. All emissions from any atmospheric vent from the gas treatment system must be subject to the requirements of 40 CFR §60.752(b)(2)(iii)(A) or (B); and

(13) a temporary rock crusher that is used exclusively for cell construction that satisfies all the requirements of §116.111 of this title (relating to General Application).

(b) If sampling of stacks and/or process vents are required, the owner or operator must contact the appropriate regional office and any other air pollution control program having jurisdiction over the sitework prior to sampling to obtain the proper data forms and procedures. All sampling and testing procedures must be approved by the executive director and coordinated with the regional representatives of the commission. The owner or operator is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

(c) The facilities covered by this standard permit may not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. Notification for emissions events and unscheduled maintenance must be made in accordance with §101.201 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements) and §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements).

(d) Owners and/or operators must monitor and control particulate matter as follows.

1. All operations must be conducted in a manner so as to minimize any particulate matter emissions at the landfill boundary. No site-generated visible emissions, as determined by EPA Test Method 22, may not cross the property line for a period exceeding 30 seconds in any six-minute period.

(2) Roads and other areas subject to vehicle traffic must be kept clean of debris and either be watered, treated with dust-suppressant chemicals, or paved with a cohesive hard surface that is maintained intact and cleaned as necessary.

(3) All excavated areas must be watered or treated with dust-suppressant chemicals as necessary to control particulate matter emissions.

(e) Tire shredding, outdoor dry abrasive blasting, the operation of a temporary rock crusher used exclusively for cell construction, or waste solidification/stabilization when fine materials are used in the process, must not occur simultaneously (no two or more processes can occur at the same time).

(f) An MSW landfill cell that contains Class II industrial nonhazardous waste greater than 20% by weight or volume must have a GCCS associated with the location of the Class II waste, and that GCCS is subject to the provisions of §330.995 of this title (relating to Recordkeeping and Reporting Requirements for all Municipal Solid Waste Landfill Sites).

§330.993. Additional Requirements for Owners or Operators of Category 3 Municipal Solid Waste Landfills.

(a) The owner and/or operator must comply with the applicable provisions as specified in 40 Code of Federal Regulations §§60.752 - 60.759 and 40 Code of Federal Regulations Part 63, Subparts A and AAAA. The landfill gas collection and control system may be caged or removed provided that the following are met:

1. the municipal solid waste landfill is permanently closed in accordance with Subchapter K of this chapter (relating to Closure and Post-Closure); and

2. the conditions of 40 Code of Federal Regulations §§60.752(b)(vi) are met, and a closure report has been submitted to the Texas Commission on Environmental Quality’s Air Permits Division in accordance with 40 Code of Federal Regulations §60.757(d).

(b) Methane concentration at the surface of the municipal solid waste landfill must be monitored quarterly, as specified in 40 Code of Federal Regulations §60.755(c).

(c) The gas collection and control system must be monitored in accordance with the provisions specified in 40 Code of Federal Regulations §60.756.

§330.995. Recordkeeping and Reporting Requirements for All Municipal Solid Waste Landfill Sites.

(a) A copy of this subchapter along with any claimed permit by rule, the applicable general conditions of Chapter 106, Subchapter A of this title (relating to General Requirements), and any claimed standard permits must be kept at the site.

(b) The operator will keep records for any permit by rule or standard permit claimed containing sufficient information to demonstrate compliance with Chapter 106, Subchapter A of this title and all applicable permit by rule or standard permit conditions. This information must include, but is not limited to, production records and operating hours.

(c) The owner or operator will maintain additional records specified in 40 Code of Federal Regulations (CFR) Part 60, Subpart WW or 40 CFR 63, Subpart AAAA, if applicable, including:

1. an initial design capacity report required by 40 CFR §60.757(a)(2), or an amended design capacity report required by 40 CFR §60.757(a)(3);

2. records of the non-methane organic compound emission rates, determined annually using the procedures specified in 40 CFR §60.754(a)(1), or every five years using the procedures of 40 CFR §60.757(b)(1)(ii), as applicable, and submit the non-methane organic
compound emissions rate report within 90 days of exceeding 2.5 million megagrams and 2.5 million cubic meters and annually thereafter, or every five years in accordance with 40 CFR §60.757(b); and

(3) all records in accordance with the provisions of 40 CFR §60.758, Recordkeeping Requirements.

(d) A semiannual compliance report must be submitted to the Texas Commission on Environmental Quality’s Office of Compliance and Enforcement, in accordance with the provisions of 40 CFR §63.1980.

(e) Records must be maintained at the site and made available at the request of representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution control program having jurisdiction over the site.

(f) Records must be retained for at least 60 months.

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

Filed with the Office of the Secretary of State on August 29, 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) 239-0348

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SUBCHAPTER Y. MEDICAL WASTE MANAGEMENT

30 TAC §§330.1001 - 330.1010

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

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans.

The proposed rules implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed rules also implement Texas Water Code, §5.103, Rules.


§330.1002. Applicability.


§330.1005. Transporters of Medical Waste.

§330.1006. Transfer of Shipments of Medical Waste.

§330.1007. Interstate Transportation.

§330.1008. Medical Waste Collection Stations.

§330.1009. Storage of Medical Waste.

§330.1010. On-Site Treatment Services on Mobile Vehicles.

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

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Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality

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STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; and THSC, §361.011, which establishes the commission’s jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; and §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and §363.061, which authorizes the commission to adopt rules relating to regional and local solid waste management plans. The standard air permit is proposed under THSC, §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; §382.051, which authorizes the commission to adopt rules as necessary to comply with regulations applicable to permits issued under the TCAA; and §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The proposed new sections implement THSC, §361.002, Policy and Findings; §361.011, Commission’s Jurisdiction, Municipal Solid Waste; §361.024, Rules and Standards; §361.061, Permits; §361.123, Limitation on Location of Municipal Solid Waste Landfills, as added by House Bill 1053, 79th Legislature, 2005; §361.123, Allowed Wastes and Exemptions for Certain Small Municipal Solid Waste Landfills in Arid Areas, as added by House Bill 1609, 79th Legislature, 2005; §363.061, Commission Rules, Approval of Regional and Local Solid Waste Management Plans; §382.002, Policy and Purpose; §382.011, General Powers and...
Duties; §382.051, Permitting Authority; and §382.05195, Standard Permit. The proposed new sections also implement Texas Water Code, §5.103, Rules.


The purpose of this subchapter is to establish procedures and requirements for the handling, transportation, and disposal of medical waste as defined in §330.3 of this title (relating to Definitions) that the Board of Health has determined requires special handling to protect human health or the environment.

§330.1203. Applicability.

(a) Owners and operators shall comply with the comprehensive rule revisions to this chapter as adopted in 2006 within 120 days of the effective date of the 2006 Revisions. This subchapter is applicable to persons who generate, collect, transport, store, process, treat or dispose of medical waste;

(b) This subchapter will not apply to waste that is subject to 25 TAC Chapter 289 (relating to Radiation Control).

§330.1205. Definitions.

(a) The words, terms, and abbreviations, when used in this chapter, are defined in 25 TAC §1.132 (relating to Definitions) and/or in §330.3 of this title (relating to Definitions). When the definitions found in 25 TAC §1.132 are changed, such changes shall prevail over the definitions found in §330.3 of this title;

(b) For the purpose of the subchapter, medical waste managed on property that is owned or effectively controlled by one entity and that is within 75 miles of the point of generation shall be considered to be managed on-site.


(a) Health care-related facilities shall identify and segregate medical waste, as defined in §330.3 of this title (relating to Definitions), from ordinary rubbish and garbage produced within or by the facilities. Other municipal solid waste may be combined with medical waste or may be identified and segregated as a separate waste stream. Where medical waste and other municipal solid wastes are combined, the combined waste shall be considered to be medical waste;

(b) Requirements for shipment of untreated medical waste off-site are as follows.

1. Generators may transport their own untreated waste or shall release waste only to transporters who are registered with the executive director to transport untreated medical waste as required in §330.1211 of this title (relating to Transports of Untreated Medical Waste).

2. Except for medical waste shipped via First Class or Priority Mail using the United States Postal Service, the generator shall obtain from the transporter a signed receipt for each shipment of medical waste.

3. The generator shall maintain a file of receipts for shipments of untreated medical waste for a period of three years following the date of shipment. This time period may be extended by the executive director for investigative purposes or in case of enforcement action.

4. The file of receipts for shipments of untreated medical waste shall be available for inspection by commission personnel during normal business hours without prior notice.

(c) Requirements for identification and packaging of untreated medical waste are as follows.

1. Medical waste, other than sharps, shall be placed in a plastic bag that meets the requirements of the American Society for Testing and Materials Standards (ASTM) Number D1709.01 and ASTM D1922.00a, or as otherwise required by the United States Department of Transportation under regulations set forth in 49 Code of Federal Regulations §171.7. If empty containers that held free liquids are placed into the bag, one cup of absorbent material for each six cubic feet, or fraction thereof, of bag volume must be placed in the bottom of the bag.

2. The bag containing medical waste shall be placed in a rigid container that is leak resistant, impervious to moisture, of sufficient strength to prevent tearing and bursting under normal conditions of use and handling, and sealed to prevent leakage or as otherwise required by the United States Department of Transportation under regulations set forth in 49 Code of Federal Regulations §173.134.

3. If the waste contains free liquids in containers, the plastic bag and/or the rigid container shall contain absorbent material sufficient to absorb 150% of the volume of free liquids placed in the bag.

4. The outer container shall be conspicuously marked with a warning legend that must appear in English and in Spanish, along with the international symbol for biohazardous material. The warning must appear on the sides of the container, twice in English and twice in Spanish. The wording of the warning legend shall be as follows: “CAUTION, contains medical waste which may be biohazardous” and “CAUCION, contiene desechos medicos que pueden ser biopeligroso.” The outer container shall also be labeled in accordance with 49 Code of Federal Regulations §173.134(c).

5. The generator shall affix to each container a label that contains the name and address of the generator and either the date of shipment or an identification number for the shipment.

6. The transporter shall affix to each container a label that contains the name, address, telephone number, and state registration number of the transporter. This information may be printed on the container.

7. The printing on labels required in paragraphs (5) and (6) of this subsection shall be done in indelible ink with letters at least 0.5 inch in height. A single label may be used to satisfy the requirements of paragraphs (5) and (6) of this subsection. If a single label is used, the transporter shall insure the label is affixed to or printed on the container.

8. The requirements of paragraphs (5) and (6) of this subsection shall not apply to shipments where the United States Postal Service is the transporter.

9. Sharps must be placed in a marked, puncture-resistant rigid container designed for sharps. This container may be placed in the plastic bag described in paragraph (1) of this subsection. The bag must then be placed in a rigid container as described in paragraph (2) of this subsection.

(d) The executive director may waive any or all of the requirements in this section if a situation exists that requires a waiver of such requirements in order to protect the public health and safety from the effects of a natural or man-made disaster.

§330.1209 Storage of Medical Waste.

(a) The storage of medical waste shall be in a secure manner and location that affords protection from theft, vandalism, inadvertent human or animal exposure, rain, water, and wind. The waste shall be managed so as not to provide a breeding place or food for insects or rodents, and not generate noxious odors.

(b) Except for generators and treatment facilities, persons storing putrescible or biohazardous untreated medical waste for longer than 72 hours after pickup from the generator shall maintain a storage temperature of 45 degrees Fahrenheit or less. Treatment facilities storing putrescible or biohazardous untreated medical waste for longer than 72
hours after receipt shall maintain a storage temperature of 45 degrees Fahrenheit or less.


(a) The requirements of this section are applicable to any person that collects for transport or that transports untreated medical waste that is designated as a medical waste unless that person is exempt under the following provisions.

(1) Generators who generate 50 pounds or less per month of medical waste may transport their own untreated waste to an authorized medical waste collection station, transfer station, storage facility, or processing facility without complying with the requirements of this section.

(2) Generators who generate more than 50 pounds per month of medical waste may transport their own waste to a transfer station, storage facility, or processing facility authorized to receive medical waste and shall comply with subsection (d) - (l) of this section. These generators must notify the commission that they are transporting their own waste, provide the executive director with the information required in subsection (b) of this section, and submit an annual summary report as required by subsection (m) of this section.


(b) Transporters shall notify the executive director, by letter, within 15 days of any changes to their registration if:

(1) the amount of untreated medical waste or total operation is expanded by 50% over that originally registered;

(2) the office or place of business is moved;

(3) the name of registrant or owner of the operation is changed;

(4) the name of the partners, corporate directors, or corporate officers change.

(c) Requirements for transportation units used to collect or transport untreated medical waste are as follows.

(1) Transportation units used to collect and transport medical waste shall:

(A) have a fully enclosed, leak-proof, cargo-carrying body, such as a cargo compartment, box trailer, or roll-off box;

(B) protect the waste from mechanical stress or compaction;

(C) carry spill cleanup equipment including, but not limited to, disinfectants, absorbent materials, personal protective equipment, such as gloves, coveralls, and eye protection, and waterproof containers or packaging materials; and

(D) have the following identification on the two sides and back of the cargo-carrying compartment in letters at least three inches high: (the name of the transporter); TCEQ; (registration number); and Caution: Medical Waste.

(2) The cargo compartment of the vehicle or trailer shall:

(A) be maintained in a sanitary condition;

(B) be locked when the vehicle or trailer is in motion;

(C) be locked or secured when waste is present in the compartment except during loading or unloading of waste;

(D) have a floor and sides made of an impervious, nonporous material;

(E) have all discharge openings securely closed during operation of the vehicle or trailer; and

(F) maintain a temperature of 45 degrees Fahrenheit or less for putrescible or biohazardous untreated medical waste transported for more than 72 hours after initial receipt from the generator.

(d) Transportation units or trailers used to transport untreated medical waste shall not be used to transport any other material until the transportation unit or trailer has been cleaned and the cargo compartment disinfected. A written record of the date and the process used to clean and disinfect the transportation unit or trailer shall be maintained for three years unless the commission directs a longer holding period. The record must identify the transportation unit or trailer by motor vehicle identification number or license tag number. The owner of the transportation unit or trailer, if not the registrant, shall be notified in writing by the registrant that the transportation unit or trailer has been used to transport medical waste and when and how the transportation unit or trailer was disinfected.

(e) Shipment of untreated medical waste, properly containerized Animal and Plant Health Inspection Services waste, and nonhazardous pharmaceutical waste shall not be commingled or mixed during transport or storage with any other waste (such as rubbish, garbage, hazardous waste, asbestos, or radioactive waste regulated under 25 TAC Chapter 289 (relating to Radiation Control)), provided that the entire shipment of co-transported untreated medical waste, Animal and Plant Health Inspection Services waste, and nonhazardous pharmaceutical waste are delivered to the same treatment facility.

(f) Financial assurances shall be provided in accordance with Chapter 37, Subchapter U of this title (relating to Financial Assurance for Medical Waste Transporters).

(g) The transporter shall furnish the generator a signed receipt for each shipment at the time of collection of the waste. The receipt shall include the name, address, telephone number, and registration number of the transporter. The receipt shall also identify the generator by name and address, and shall list the weight of waste collected and date of collection. If certified scales are not available, the number of containers shall be listed, and the transporter must provide the generator with a written or electronic statement of the total weight of the containers within 45 days.

(h) The transporter shall initiate and maintain a record of each waste shipment collection and disposition. The record shall be in the form of a waste shipping document or other similar documentation. The transporter shall retain a copy of all waste shipping documents showing the collection and disposition of the medical waste. With the exception of delivery to treatment facilities, which are required to notify the generator in accordance with §330.219(h) of this title (relating to Recordkeeping and Reporting Requirements), the transporter shall provide to the generator a written or electronic copy of the waste shipping document verifying receipt of the untreated medical waste by an authorized facility within 45 days of receipt by the receiving facility. Copies of waste shipping documents shall be retained by the transporters for three years in the main transporter office and made available to the commission upon request. The waste shipping document or other similar documentation shall include the:

(1) transporter’s name, address, telephone number, and commission’s assigned transporter registration number;

(2) name and address of the person that generated the untreated medical waste and the date collected;
(3) number of containers of untreated medical waste collected for transportation and the total weight of the containers from each generator, which must be added when certified scales are available;

(4) name of persons collecting, transporting, and unloading the waste;

(5) date and place where the untreated medical waste was deposited or unloaded;

(6) identification (permit or registration number, location, and operator) of the facility where the untreated medical waste was deposited; and

(7) name and signature of facility representative acknowledging receipt of the untreated medical waste and the weight of waste received.

(i) The transporter must be able to provide documentation of each waste shipment from the point of collection through and including the unloading of the waste at a facility authorized to accept the waste. The original shipping document must accompany each shipment of untreated waste to its final destination. The transporter is responsible for the proper collection and deposition of untreated medical waste accepted for transport.

(j) Shipments of untreated medical waste shall be deposited only at a facility that has been authorized by the commission to accept untreated medical waste. Untreated medical waste that is transported out of the state must be deposited at a facility that is authorized by the appropriate agency having jurisdiction over such waste.

(k) Transporters shall not accept untreated medical waste unless the generator has packaged the waste in accordance with the provisions of §330.1207(c) of this title (relating to Generators of Medical Waste). Transporters shall not accept containers of waste that are leaking or damaged unless or until the shipment has been repackaged.

(l) Transporter fees are as follows,

(1) Transporters are required to pay an annual registration fee to the commission based upon the total weight of untreated medical waste transported.

(2) The amount of the annual fee shall be based upon the total weight of untreated medical waste transported under each registration. The fee for the first year of operation under a registration shall be based upon an estimate of the total weight of untreated medical waste to be transported. The fee paid for the first year of operation will be adjusted after submission of at least one annual report and one registration renewal, indicating the actual weight of untreated medical waste transported. An overpayment will be credited to the next year’s registration fee or will be refunded. A billing notice for underpayment of the registration fee will be sent and payment will be due within 30 days after the date of the notice.

(3) The fees shall be determined as follows,

(A) For a total annual weight transported of 1,000 pounds of medical waste or less, the fee is $100.

(B) For a total annual weight transported greater than 1,000 pounds of medical waste but equal to or less than 10,000 pounds of medical waste, the fee is $250.

(C) For a total annual weight transported greater than 10,000 pounds of medical waste but equal to or less than 50,000 pounds of medical waste, the fee is $400.

(D) For a total annual weight transported greater than 50,000 pounds of medical waste, the fee is $500.

(4) The annual fee shall accompany the owner or operator’s original or renewal registration by rule claim and shall be submitted in the form of a check or money order made payable to the Texas Commission on Environmental Quality and delivered or mailed to: Cashiers Office, Texas Commission on Environmental Quality, P.O. Box 13088, Austin, Texas 78711-3088.

(m) Transporters shall submit to the executive director an annual summary report of their activities for the calendar year from January 1 through December 31 of each year. The report shall be submitted no later than March 1 of the year following the end of the report period. The report shall include the name(s) and address(es) of the facilities where the waste was deposited/unloaded, the registration/permit number of the facilities, and the amount of waste deposited/unloaded at each facility. The report shall indicate the amount of waste shipped out of state, the amount of waste shipped into the state, and the amount of waste generated and unloaded in the state.

§330.1213. Transfer of Shipments of Medical Waste.

Packages of untreated medical waste shall not be transferred between transportation units unless the transfer occurs at and on the premises of a facility authorized as a transfer station, as a storage facility, or as a treatment/processing facility that has been approved to function as a transfer station except as provided in §330.1217 of this title (relating to Medical Waste Collection Stations).

(1) In case of transportation unit malfunction, the waste shipment may be transferred to an operational transportation unit and the executive director shall be notified of the incident in writing within five working days. The incident report shall list all transportation units involved in transporting the waste and the cause, if known, of the transportation unit malfunction.

(2) In case of a traffic accident, the waste shipment may be transferred to an operating transportation unit if necessary. Any containers of waste that were damaged in the accident shall be reprocessed as soon as possible. The nearest regional office shall be notified of the incident no later than the end of the next working day. The incident report shall list all vehicles involved in transporting the waste.

§330.1215. Interstate Transportation.

Persons that engage in the transportation of untreated medical waste from Texas to other states or countries or from other states or countries to Texas, or persons that collect or transport waste in Texas but have their place of business in another state, shall comply with all of the requirements for transporters contained in §330.1211 of this title (relating to Transporters of Untreated Medical Waste). If such persons also engage in any activity of managing waste in Texas by storage, processing, or disposal, they shall follow the applicable requirements for facility operators of such activities. Persons who engage in the transportation of waste that does not originate or terminate in Texas are exempt from these regulations, except for §330.1211(c)(1) and (2) of this title.


A facility that has been registered by the commission as a medical waste collection station shall comply with the following provisions.

(1) A registered medical waste collection station may accept untreated medical waste only from those generators who generate 50 pounds or less per month of medical waste and who transport their own waste to the collection station.

(2) Waste delivered to a medical waste collection station must be packaged in accordance with the provisions of §330.1207(c) of this title (relating to Generators of Medical Waste) by the generator.

(3) A medical waste collection station must comply with the requirements for storage of medical waste that are applicable to permitted medical waste transfer and/or medical waste storage facilities.
(4) A facility registered as a medical waste collection station must release the waste only to a registered medical waste transporter. The collection station must provide the transporter with a list of the waste collected at the station including the identity of the waste generator.

(5) A facility registered as a medical waste collection station may not otherwise treat the waste unless authorized as a treatment facility.

§330.1219. Treatment and Disposal of Medical Waste.

(a) Treatment requirements for medical waste shall be as follows:

(1) Medical waste shall be treated in accordance with the provisions of 25 TAC §1.136 (relating to Approved Methods of Treatment and Disposition). Alternative treatment technologies may be approved in accordance with requirements found in 25 TAC §1.135 (relating to Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities).

(2) A generator of 50 pounds or less per calendar month of medical waste that treats all or part of the wastes on-site shall maintain a written record that, at a minimum, contains the following information:

(A) the date of treatment;

(B) the amount of waste treated;

(C) the method/conditions of treatment;

(D) the name (printed) and initials of the person(s) performing treatment; and

(E) if applicable, name, address, telephone number, and registration number of the entity providing treatment.

(3) A generator of more than 50 pounds per calendar month of medical waste that treats all or part of the wastes on-site and persons that treat medical wastes off-site shall maintain a written record that, at a minimum, contains the following information for each batch of waste treated:

(A) the date of treatment;

(B) the amount of waste treated;

(C) the method/conditions of treatment;

(D) the name (printed) and initials of the person(s) performing treatment; and

(E) a written procedure for the operation and testing of any equipment used and a written procedure for the preparation of any chemicals used in treatment.

(ii) The operator shall demonstrate a minimum four log ten reduction (as defined in 25 TAC §1.132 (relating to Definitions)) on routine performance testing using appropriate Bacillus species biological indicators (as defined in 25 TAC §1.132). The operator shall conduct testing at the following intervals:

(I) for generators of more than 50 pounds but less than or equal to 100 pounds per month, testing shall be conducted at least once per month;

(II) for generators of more than 100 pounds but less than or equal to 200 pounds per month, testing shall be conducted at least biweekly; and

(III) for generators of more than 200 pounds per month and persons that treat medical wastes off-site, testing shall be conducted at least weekly.

(iii) For those processes that the manufacturer has documented compliance with the performance standard prescribed in 25 TAC §1.135 based on specified parameters (for example, pH, temperature, pressure, etc.), and for previously approved treatment processes that a continuous readout and record of operating parameters is available, the operator may substitute routine parameter monitoring for biological monitoring. The operator shall confirm that any chemicals or reagents used as part of the treatment process are at the effective treatment strength. The operator will maintain records of operating parameters and reagent strength, if applicable, for three years.

(iv) The manufacturer of single-use, disposable treatment units shall be responsible for maintaining adequate quality control for each lot of single-use products. The treating facility or entity shall be responsible for following the manufacturer’s instructions.

(b) Requirements for disposal of medical wastes that have been treated in accordance with the provisions of 25 TAC §1.136 are as follows:

(1) Treated microbiological waste, blood, blood products, body fluids, laboratory specimens of blood and tissue, and animal bedding may be disposed of in a permitted landfill in accordance with the provisions of §330.171(c)(1) of this title (relating to Disposal of Special Wastes). Any markings that identify the waste as a medical waste shall be covered with a label that identifies the waste as treated medical waste. The identification of the waste as treated may be accomplished by the use of color-coded, disposable containers for the treated waste or by a label that states that the contents of the disposable container have been treated in accordance with the provisions of 25 TAC §1.136.

(2) Treated carcasses and body parts of animals designated as a medical waste may, after treatment, be disposed of in a permitted landfill in accordance with the provisions of §330.171(c)(2) of this title. The collection and transportation of these wastes shall conform to the applicable local ordinance or rule, if such ordinance or rule is more stringent than these sections.

(3) Treated recognizable human body parts, tissues, fetuses, organs, and the products of human abortions, spontaneous or induced, shall not be disposed of in a municipal solid waste landfill. These items shall be disposed of in accordance with the provisions of 25 TAC §1.136(a)(4);

(4) Treated sharps shall be disposed of as follows.

(A) Broken glassware and pipets may be placed in puncture-resistant packaging and discarded in a Type I or Type IAE municipal solid waste landfill.

(B) Whole hypodermic needles, syringes with attached needles, scalpels, blades, and/or razors shall be placed in containers designed for sharps that is marked or labeled as containing treated waste. If the container’s contents have not been encapsulated, then the container shall be segregated from the regular municipal solid waste collection system and shall be collected and transported as special waste for disposal in a permitted municipal solid waste landfill in accordance with the provisions of §330.171(c)(1) of this title (relating to Disposal of Special Waste).

(C) Sharps placed in containers designed for sharps may be encapsulated by addition of an agent to the container that will solidify and encase the contents of the container with a solid matrix. The agent must completely fill the container. The container and solidified contents must withstand an applied pressure of 40 pounds per square inch without
disintegration. The container shall be identified as containing sharps that have been encapsulated in accordance with this subparagraph and may be discarded in a Type I or Type IAE municipal solid waste landfill.

(D) Sharps that have been treated by an approved method that incorporates grinding and/or shredding may be disposed in a Type I or Type IAE municipal solid waste landfill if the sharps have been made unrecognizable and significantly reduced in ability to cause puncture wounds.

(c) Unused hypodermic needles, syringes with attached needles, and scalpel blades shall be disposed of as treated sharps as specified in subsection (b)(4)(B) - (D) of this section.

(d) Operators of medical waste treatment equipment shall use backflow preventers on any potable water connections to prevent contamination of potable water supplies.

(e) Treated medical waste shall be managed as a special waste if the waste retains special characteristics or properties after the treatment process similar to those items listed in §330.3(150)(A) - (S) of this title (relating to Definitions).

§330.1221, On-Site Treatment Services on Mobile Treatment Units.

(a) The requirements of this section are applicable to any person that treats medical waste on mobile treatment units on the site of generation, but is not the generator of the waste.

(b) Persons that claim registration by rule shall maintain a copy of the registration form, as annotated by the commission with an assigned registration number, at their designated place of business and in each mobile treatment unit used in treating medical waste.

(c) Requirements for mobile treatment units used in the treatment of medical waste are as follows.

(1) Treatment units used in the treatment of medical waste shall:

(A) have a fully encloseable, leak-proof, cargo carrying body, such as a cargo compartment or box trailer; and

(B) carry spill cleanup equipment including, but not limited to, disinfectants, absorbent materials, personal protective equipment, such as gloves, coveralls, and eye protection, and leakproof containers or packaging materials.

(2) The cargo compartment of the vehicle and any self-contained treatment unit(s) shall:

(A) be maintained in a sanitary condition;

(B) be secured when the vehicle is in motion;

(C) be made of such impervious, non-porous materials as to allow adequate disinfection/cleaning of the compartment or unit(s); and

(D) have all discharge openings securely closed during operation of the vehicle.

(d) Mobile treatment units used in the treatment of medical waste shall not be transported or any other material until the unit has been cleaned and disinfected. A written record of the date and the process used to clean and disinfect the unit shall be maintained for three years unless the executive director requires a longer holding period. The record must identify the unit by motor vehicle identification number or license tag number. The owner of the unit, if not the registrant, shall be notified in writing that the unit has been used in the treatment of medical waste and when and how the unit was disinfected.

(e) Untreated medical waste shall not be commingled or mixed with hazardous waste, asbestos, or radioactive waste regulated under 25 TAC Chapter 289 (relating to Radiation Control) either before or after treatment.

(f) Providers of on-site treatment of medical waste on mobile treatment units shall furnish the generator the documentation required in §330.1219(a)(3) of this title (relating to Treatment and Disposal of Medical Waste) for the generator’s records.

(g) Providers of on-site treatment of medical waste on mobile treatment units shall maintain records of all waste treatment, which includes the following information:

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

(2) the date of treatment;

(3) the amount of waste treated;

(4) the method/conditions of treatment;

(5) the name (printed) and initials of the person(s) performing the treatment;

(6) a written procedure for the operation and testing of any equipment used and a written procedure for the preparation of any chemicals used in treatment. Routine performance testing using biological indicators and/or monitoring of parametric controls shall be conducted in accordance with §330.1219(a)(3)(E) of this title; and

(7) identification of performance test failures including date of occurrence, corrective action procedures, and retest dates.

(h) Providers of on-site treatment of medical waste on mobile treatment units shall not transport untreated waste unless they are registered in accordance with §330.9 of this title (relating to Registration Required).

(i) Providers of on-site treatment of medical waste on mobile treatment units shall ensure adequate training of all operators in the use of any equipment used in treatment.

(j) Providers of on-site treatment of medical waste on mobile treatment units shall have a contingency plan available in the event of any malfunction of equipment. If there is any question as to the adequacy of treatment of any load, that load shall be run again utilizing biological indicators to test for microbial reduction before the material is released for landfill disposal. If the waste must be removed from the facility before treatment is accomplished, a registered transporter shall remove the waste and all other applicable sections of this chapter shall be in effect.

(k) Owners or operators shall maintain the treatment equipment so as to not result in the creation of nuisance conditions.

(l) Fees to be assessed of providers of on-site treatment of medical waste on mobile treatment units are as follows.

(1) Treatment providers are required to pay an annual fee to the agency based upon the total weight of medical waste treated on-site under each provider registration.

(2) The amount of the annual fee shall be based upon the total weight of medical waste treated on-site.

(3) The fees shall be determined as follows.

(A) For a total annual weight of waste treated on-site of 1,000 pounds or less, the fee is $100.

(B) For a total annual weight of waste treated on-site greater than 1,000 but equal to or less than 10,000 pounds, the fee is $250.

(C) For a total annual weight of waste treated on-site greater than 10,000 but equal to or less than 50,000 pounds, the fee is $400.
For a total annual weight of waste treated on-site greater than 50,000 pounds, the fee is $500.

The annual fee for each provider of on-site treatment of medical waste on mobile treatment units shall accompany the owner or operator’s original or renewal registration by rule claim and shall be submitted in the form of a check or money order made payable to the Texas Commission on Environmental Quality and delivered or mailed to: Cashiers Office, Texas Commission on Environmental Quality, P.O. Box 13088, Austin, Texas 78711-3088.

(m) Providers of on-site treatment of medical waste on mobile treatment units shall submit to the executive director an annual summary report of their activities for the calendar year from January 1 through December 31 of each year. The report shall be submitted no later than March 1 of the year following the end of the report period and shall contain all the information required in subsection (g) of this section.

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

Filed with the Office of the Secretary of State on August 29, 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) 239-0348

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 16. COASTAL PROTECTION

31 TAC §§16.1 - 16.4

The General Land Office (GLO), with the approval of the School Land Board (SLB), proposes amendments to 31 TAC, Part 1, Chapter 16, relating to Coastal Protection, including §16.1 relating to Definitions and Scope, §16.2 relating to Goals and Administrative Policies, §16.3 relating to Policies for Specific Activities and Coastal Natural Resource Areas, and §16.4 relating to Thresholds For Referral. These rule amendments have been undertaken as a result of the comprehensive review of the GLO’s and SLB’s rules mandated by Texas Government Code §2001.039.

Sections 16.1 through 16.4 require that certain actions of the GLO and the SLB comply with the requirements of the Texas Coastal Management Program (CMP). The CMP was created pursuant to the Coastal Coordination Act (Act), Texas Natural Resources Code, Chapter 33, Subchapter F. The goals and policies of the CMP are set forth in the regulations of the Coastal Coordination Council (Council), Title 31, Texas Administrative Code, Chapters 501 through 506 (Council’s rules). The GLO, with approval of the SLB, adopted §§16.1-16.4, effective December 18, 1995, at (20 TexReg 10271). These rules were adopted during the early development of the Texas CMP. In large part, the Chapter 16 rules duplicate provisions of the Act and of the Council’s rules on definitions, goals and administrative policies, and policies for specific activities and coastal natural resource areas. The intent of this rulemaking is to update the rules in Chapter 16 to accurately reflect the Act and Council’s rules as amended since the original adoption of the Chapter 16 regulations in 1995. The rule amendments incorporate the Act and the Council’s rules by reference and delete parts of §§16.1-16.3 that are essentially duplicative. The intent of the deletions and incorporation by reference is to make the GLO’s and SLB’s obligations under the Chapter 16 regulations identical to the GLO’s and SLB’s obligation under existing law as reflected in the Act and the Council’s rules.

The proposed amendment of §16.1(a)(2) deletes the substantive part of this definition of “CMP” and replaces it with a reference to the definition of “Coastal Management Program” in Texas Natural Resources Code §33.203(22) to assure that it conforms to the definition in the Act.

The proposed amendments to §16.1(a)(3) set forth a list of the coastal natural resource areas (CNREAs) covered by the regulation. The amendments to §16.1(a)(3)(A) delete the definition and incorporate by reference the current definition of “waters in the open Gulf of Mexico” provided in Texas Natural Resources Code, §33.203(18). The amendments to §16.1(a)(3)(B) delete the definition and incorporate by reference the current definition of “waters under tidal influence” provided in Texas Natural Resources Code, §33.203(19). The amendments to §16.1(a)(3)(C) delete the definition and incorporate by reference the current definition of “state submerged land” provided in Texas Natural Resources Code, §33.203(15). The amendment to §16.1(a)(3)(D) adds a reference to the definitions of “coastal wetlands” as defined in §16.1(a)(5) of this chapter. The amendment to §16.1(a)(3)(E) deletes the definition and incorporates by reference the current definition of “submerged aquatic vegetation” provided in Texas Natural Resources Code, §33.203(16). The amendments to §16.1(a)(3)(F) delete the definition and incorporate by reference the current definition of “tidal salt or mud flat” provided in Texas Natural Resources Code, §33.203(17). The amendments to §16.1(a)(3)(G) delete the definition and incorporate by reference the current definition of “oyster reefs” provided in Texas Natural Resources Code, §33.203(13). The amendments to §16.1(a)(3)(H) delete the definition and incorporate by reference the current definition of “hard substrate reefs” provided in Texas Natural Resources Code, §33.203(12). The amendments to §16.1(a)(3)(I) delete the definition and incorporates by reference the current definition of “coastal barriers” provided in Texas Natural Resources Code, §33.203(2). The amendments to §16.1(a)(3)(K) delete the definition and incorporate by reference the current definition of “Gulf beaches” provided in Texas Natural Resources Code, §33.203(11). The amendments to §16.1(a)(3)(L) delete the definition and incorporates by reference the current definition of “critical dune areas” provided in Texas Natural Resources Code, §33.203(9). The amendments to §16.1(a)(3)(M) delete the definition and incorporate by reference the current definition of “special hazard areas” provided in Texas Natural Resources Code, §33.203(14). The amendments to §16.1(a)(3)(N) delete the definition and incorporate by reference the current definition of “critical erosion areas” provided in Texas Natural Resources Code, §33.203(10). The amendments to §16.1(a)(3)(O) deletes the definition and incorporate by reference the current definition of “coastal historic area” provided in Texas Natural Resources Code, §33.203(3). The amendments to §16.1(a)(3)(P) deletes the definition of “coastal parks, wildlife areas, and preserves” and replaces it by incorporating by reference the definition of “coastal preserve” provided in Texas Natural Resources Code, §33.203(4). This amendment reflects the change in the Act...
and the Council’s rules at 31 TAC §501.3(b)(3), replacing the phrase "coastal parks, wildlife areas, and preserves" with the term "coastal preserve."

The proposed amendment of §16.1(a)(5) revises the definition of the term "coastal wetlands" by replacing the reference to Texas Water Code, Chapter 11, Subchapter J, with a reference to Texas Water Code §11.502 and by replacing an explicit description of the Texas coastal zone with a reference to the term "coastal zone" defined in §16.1(a)(4).

The proposed amendment of §16.1(a)(7) deletes the definition and incorporates by reference the current definition of "critical area" provided in Texas Natural Resources Code, §33.203(8).

The proposed amendment of §16.1(a)(14) deletes the definition for "Water dependent use or facility" because the proposed amendments eliminate that phrase from this chapter.

The proposed amendment of §16.1(b) deletes the list of specific actions and instead incorporates by reference the list of actions set forth in 31 TAC §505.11(a)(1) relating to Actions and Rules Subject to the Coastal Management Program. The incorporation by reference includes all nine of the actions listed in the current rule, and adds issuance or approval of a certification of a subdivision beach access or dune protection plan, and of an agency or subdivision wetlands mitigation bank. Although those two actions are not currently listed in §16.1(b), they are actions of the GLO that are subject to the CMP as required by 31 TAC §505.11(a)(1). Therefore, including those actions by reference in §16.1(b) streamlines the GLO’s and SLB’s rules to more closely reflect their obligations under the CMP.

The proposed amendment of §16.2(a) deletes the list of goals in this section and replaces it with a reference to the list of goals in the Council’s rule 31 TAC §501.12, adopted as authorized by Texas Natural Resources Code §33.204(a).

The proposed amendment of §16.2(b) deletes the list of administrative policies in this section and replaces it with a reference to the list of administrative policies in the Council’s rule §501.13(a), adopted as authorized by Texas Natural Resources Code §33.204(a).

The proposed amendment to §16.2(c) deletes the procedures for the policy for major actions in this section and replaces it with a reference to the procedures for the policy for major actions in the Council’s rules 31 TAC §501.15(b) and 31 TAC §501.15(c), as adopted by Texas Natural Resources Code §33.204(a).

The proposed amendment of §16.2(f) deletes the second and third sentences in this rule because the corresponding language in the Council’s rule at 31 TAC §505.30(d) has been previously deleted from that rule, effective August 27, 2000, (25 Tex Reg 8032).

The proposed amendment of §16.3 incorporates the policies in Council’s rules 31 TAC §§501.17, 501.23, 501.24, 501.25, and 501.26 as policies of the CMP that the GLO and SLB shall comply with in taking actions listed in §16.1(b) and in adopting rules relating to those policies that are described in the Council’s policies. The phrase “as appropriate” is added because some of the actions covered by this section apply only to the GLO. The amendment clarifies the GLO’s and SLB’s obligation to comply with the Council’s goals and policies applicable to GLO and SLB actions when taking any individual action covered by the CMP, incorporated by reference from 31 TAC §505.11(a)(1), and when adopting any rules explicitly mentioned in 31 TAC §§501.17, 501.23, 501.24, 501.25, and 501.26. The amendment deletes subsections (b)-(e), which are replaced by reference to the Council’s rules in this section.

The proposed amendment of §16.4, relating to Thresholds for Referral, changes the term "coastal parks, wildlife management areas, and preserves" to "coastal preserve" in order to reflect the current definition in Texas Natural Resources Code §33.203(4). The actual thresholds for referral to the Council are not amended.

Pursuant to Texas Government Code §2001.0225, a regulatory analysis is not required for the proposed rulemaking as a “major environmental rule.” The proposed rulemaking will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking does not exceed a standard set by federal law, does not exceed an express requirement of state law, does not 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 or federal program, and is not adopted solely under the general powers of the GLO.

The proposed rulemaking is subject to the CMP pursuant to 31 TAC §505.11(b)(4) because it governs individual agency actions listed in TNRC §33.2053 and 31 TAC §505.11(a)(1). The proposed rule amendments must be consistent with applicable CMP goals and policies. The applicable CMP goals and policies related to the GLO’s rules at 31 TAC §§16.1-16.4 include: 31 TAC §501.12, relating to Goals; 31 TAC §§501.17, relating to Policies for Construction, Operation, and Maintenance of Oil and Gas Exploration and Production Facilities; 501.23, relating to Policies for Development in Critical Areas; 501.24, relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands; 501.25, relating to Policies for Dredging and Dredged Material Disposal and Placement; and 501.26, relating to Policies for Construction in the Beach/Dune System. The proposed amendments are consistent with the applicable goals and policies of the CMP because they are either changes required to reflect amendments to the Act and to the relevant Council’s rules or they are administrative and editorial changes that do not change the substantive meaning or effect of the existing rules in Chapter 16, which have been deemed consistent with the goals and policies of the CMP.

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code, §2007.043(b), and §2.18 of the Attorney General’s Private Real Property Rights Preservation Act Guidelines and determined that a detailed takings impact assessment is not required. The proposed rulemaking does not affect private real property in a manner that restricts or limits the owner’s right to the property that would otherwise exist in the absence of the rule amendments. The proposed rulemaking will not result in a taking of private property and there are no adverse impacts on private real property interests.

Mr. Larry Laine, Chief Clerk of the General Land Office, has determined that for each year of the first five years the amended sections as proposed are in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the amended sections as the amendments constitute minor clarifications and updates to the rules.
Mr. Larry Laine, Chief Clerk of the General Land Office, has determined that there will be no economic cost to persons required to comply with these regulations, as these amendments do not add any additional restrictions or requirements that did not already exist. The public will benefit from the proposed rule amendments because the amended rules will provide more clarity. There will be no effect on small businesses, and a local employment impact statement on these proposed regulations is not required, because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect.

To comment on the proposed rulemaking, please send a comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, TX 78711-2873, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendments are proposed under authority granted in Texas Natural Resources Code §31.051, which provides the Commissioner of the GLO authority to make and enforce rules consistent with the law; and §33.064, which provides the School Land Board authority to adopt procedural and substantial rules which it considers necessary to administer, implement, and enforce Texas Natural Resources Code Chapter 33.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapter F.

§16.1. Definitions and Scope.

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

(1) (No change.)

(2) CMP.--The rules of the Texas Coastal Management Program as defined in Texas Natural Resources Code, §33.203(22), in Chapters 501, 503, 505 and 506 of this title relating to Coastal Management Program; Coastal Management Program Boundary; Council Procedures for State Consistency with Coastal Management Program Goals and Policies; and Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies, respectively.

(3) CNRA (coastal natural resource area)--An area listed as defined in Texas Natural Resources Code, §33.203(1), that is located within the coastal zone, as defined follows:

(A) waters in the open Gulf of Mexico--waters in the state as defined in Texas Natural Resources Code, §33.203(18) [Water Code, §26.001(15), that are part of the open waters of the Gulf of Mexico inside the territorial limits of the state];

(B) waters under tidal influence--waters in the state as defined in Texas Natural Resources Code, §33.203(19) [Water Code, §26.001(5), that are subject to tidal influence according to the Texas Natural Resources Conservation Commission’s Stream Segment Maps, including coastal wetlands];

(C) state submerged lands--submerged land as defined in Texas Natural Resources Code, §33.203(15) [underlying waters under tidal influence or waters of the open Gulf of Mexico] that is owned by the state;

(D) coastal wetlands--wetlands as defined in §16.1(a)(5) of this title (relating to Definitions and Scope);

(E) submerged aquatic vegetation--rooted aquatic vegetation as defined in Texas Natural Resources Code, §33.203(16) [growing in permanently inundated areas in estuarine and marine systems];

(F) tidal sand or mud flat--silt, clay, or sand substrates as defined in Texas Natural Resources Code, §33.203(17) [unvegetated or vegetated by algal mats, that occur in the intertidal zone and that are regularly or intermittently exposed and flooded by wind and water induced tides];

(G) oyster reefs--natural or artificial formations as defined in Texas Natural Resources Code, §33.203(12) [an intertidal or subtidal areas that are composed of oyster shell, live oysters, and other organisms that are discrete, contiguous, and clearly distinguishable from scattered oysters];

(H) hard substrate reefs--naturally occurring hard substrate formations defined in Texas Natural Resources Code, §33.203(12); such as rock outcrops or seafloor warm reefs (living or dead), in intertidal or subtidal areas;

(I) coastal barriers--undeveloped areas as defined in Texas Natural Resources Code, §33.203(2) [barrier islands and peninsulas or otherwise protected areas, as mapped by the United States Department of the Interior, Fish and Wildlife Service (Coastal Barrier Resource System Unit)];

(J) (No change.)

(K) Gulf beaches--beaches bordering the Gulf of Mexico as defined in Texas Natural Resources Code, §33.203(11) that extend inland from the line of mean low tide to the natural line of vegetation bordering the seaward shore of the Gulf of Mexico, or such larger contiguous area to which the public has acquired a right of use or easement to or over by prescription, dedication, or estoppel, or has retained a right by virtue of continuous right in the public since time immemorial;

(L) critical dune areas--protected sand dune complexes as defined in Texas Natural Resources Code, §33.203(9) [on the Gulf shoreline within 1,000 feet of mean high tide as designated by the commission of the GLO under the Texas Natural Resources Code, Chapter 63, Subchapter E, §63.121];

(M) special hazard areas--areas as described in Texas Natural Resources Code, §33.203(14) designed by the Federal Insurance Administration under the National Flood Insurance Act, 42 United States Code Annotated, §§4001 et seq., as having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1-30, AE, A99, AH, VO, VL-30, VE, V, M, or E;

(N) critical erosion areas--areas as defined in Texas Natural Resources Code, §33.203(10) [designated by the commissioner of the GLO under the Texas Natural Resources Code, §33.601(b)];

(O) coastal historic area [areas]--a site that is described in Texas Natural Resources Code, §33.203(3) [specialy identified in rules adopted by the Texas Historical Commission as being coastal in character and that is on the National Register of Historic Places, designated pursuant to 36 United States Code Annotated, §470a, and Code of Federal Regulations, Title 36, Chapter 1, Part 63, or is a state archaeological landmarks, as defined in the Texas Natural Resources Code, Chapter 191, Subchapter D]; and

(P) coastal [parks, wildlife management areas, and] preserve [preserves]--any land described in Texas Natural Resources Code, §33.203(4) [owned by the state that is subject to the Texas Parks and Wildlife Code, Chapter 26, by virtue of its designation and use as
a park, recreation area, scientific area, wildlife refuge, or historic site and that is designated by the Texas Parks and Wildlife Commission as being coastal in character.

(4) (No change.)

(5) Coastal wetlands--Wetlands as defined in Texas Water Code, §11.502. [Chapter 44, Subchapter J] that lie within the coastal zone.

[A] lie seaward of the Coastal Facility Designation Line established by rules adopted under Texas Natural Resources Code, Chapter 40, or

[B] lie within rivers and streams to the extent of tidal influence, as follows:

[[ii] Arroyo Colorado from FM Road 1447 to 440 yards downstream of Cemetery Road south of the Port of Harlingen;]

[[iii] Nueces River from U.S. Highway 77 to the Calallen Dam, 1.1 miles upstream of U.S. Highway 77 in Nueces/San Patricio County;]

[[iii] Guadalupe River from State Highway 35 to the Guadalupe-Blanco River Authority Salt Water Barrier at 0.4 miles downstream of the confluence with the San Antonio River in Calhoun/Refugio County;]

[[iv] Lavaca River and Naval River from FM Road 616 to a point to 5.3 miles downstream of U.S. Highway 59 and to Palmetto Bend Dam, respectively, in Jackson County;]

[[v] Tres Palacios Creek from FM Road 521 to a point 0.4 miles upstream of the confluence with Wilson Creek in Matagorda County;]

[[vi] Colorado River from FM Road 521 to a point 1.3 miles downstream of the Missouri-Pacific Railroad in Matagorda County;]

[[vii] San Bernard River from FM Road 521 to a point two miles upstream of State Highway 35 in Brazoria County;]

[[viii] Chocolate Bayou from FM Road 1204 to a point 2.6 miles downstream of State Highway 35 in Brazoria County;]

[[ix] Cleburn Creek from Interstate Highway 45 to a point 440 yards upstream of FM Road 528 in Galveston/Harris County;]

[[x] Buffalo Bayou (Houston Ship Channel) from Interstate Highway 610 to a point 440 yards upstream of Shepherd Drive in Harris County;]

[[xi] San Jacinto River from Interstate Highway 10 upstream to the Lake Houston dam in Harris County;]

[[xii] Trinity River from Interstate Highway 10 to a point 1.9 miles downstream of U.S. Highway 90 in Liberty County;]

[[xiii] Cedar Bayou from Interstate Highway 10 to a point 1.4 miles upstream of Interstate Highway 10 in Chambers/Harris County;]

[[xiv] Neches River from Interstate Highway 10 to a point seven miles upstream of Interstate Highway 10 in Orange County;]

[[xv] Sabine River from Interstate Highway 10 upstream to Morgan Bluff in Orange County; or]

[C] within one mile from the mean high tide line of those rivers and streams, except for the Trinity and Neches rivers. On the Trinity River, the geographic scope includes wetlands between the mean high tide line on the western shoreline to FM Road 565 and FM Road 1409 and between the mean high tide line on the eastern shoreline to FM Road 563. On the Neches River, the geographic scope includes wetlands within one mile from the mean high tide line on the western shoreline and between the mean high tide line on the eastern shoreline and FM Road 1405.

(6) (No change.)

(7) Critical area [areas]--An area as defined in Texas Natural Resources Code, §35.203(8) [A coastal wetland, area of submerged aquatic vegetation, tidal sand or mud flat, oyster reef, or hard substrate reef].

(8) - (13) (No change.)

(14) Water-dependent use or facility--An activity or facility that must be located in coastal waters or on state submerged lands or that must have direct access to coastal waters in order to serve its basic purpose and function. Facilities that are water-dependent include, but are not limited to, public beach use and access facilities, boat slips, docks, breakwaters, marinas, wharves and other vessel loading or off-loading facilities, utility easements, boat ramps, navigation channels and basins, bridges and bridge approaches, revetments, shoreline protection structures, culverts, groins, saltwater barriers, navigational aids, mooring piling, simple access channels, fish processing plants, boat construction and repair facilities, offshore pipelines and constructed wetlands below mean high water. Activities that are water-dependent include, but are not limited to, marine recreation (fishing, swimming, boating, wildlife viewing), industrial uses dependent on marine transportation or requiring large volumes of water that cannot be obtained at inland sites, mariculture, exploration for and production of oil and gas under coastal waters or submerged lands, and certain meteorological and oceanographic activities.

For purposes of this chapter, the list of actions included in §505.11(a)(1) of this title (relating to Actions and Rules Subject to the Coastal Management Program) [the following] is an exclusive list of actions taken or authorized by the GLO or SLB that may adversely affect a CNRA, and that therefore must be consistent with the goals and policies stated in this chapter.

- [4] a mineral lease plan of operations;

- [5] a geophysical or geochemical permit;

- [6] a miscellaneous easement;

- [7] a surface lease;

- [8] a structure registration;

- [9] a coastal easement;

- [10] a coastal lease;

- [11] a cabin permit; and

- [12] a navigation district lease;

(15) [No change.]

§16.2. Goals and Administrative Policies

(a) Goals. Subject to §16.1(c) of this title (relating to Definitions and Scope), when taking or authorizing an action identified in §16.1(b) of this title (relating to Definitions and Scope) that may adversely affect a CNRA, the goals of the GLO and SLB shall be the coastal management program goals in §501.12 of this title (relating to Goals of the Coastal Management Program). [see]

- [1] to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs;
(2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone;

(3) to minimize loss of human life and property due to the impairment and loss of protective features of CNRAs;

(4) to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone;

(5) to balance the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing CNRAs, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone;

(6) to coordinate GLO and SLB decision-making affecting CNRAs by establishing clear, objective policies for the management of CNRAs;

(7) to make GLO and SLB decision-making affecting CNRAs efficient by identifying and addressing duplication and conflicts between GLO and SLB regulatory and other programs for the management of CNRAs;

(8) to make GLO and SLB decision-making affecting CNRAs more effective by employing the most comprehensive, accurate, and reliable information and scientific data available and by developing, distributing for public comment, and maintaining a coordinated, publicly accessible geographic information system of maps of the coastal zone and CNRAs at the earliest possible date.

(9) to make coastal management processes visible, coherent, accessible, and accountable to the people of Texas by providing for public participation in the ongoing development and implementation of the rules in this chapter; and

(10) to educate the public about the principal coastal problems of state concern and technology available for the protection and improved management of CNRAs.

(b) Administrative Policies. Subject to §16.1(c) of this title (relating to Definitions and Scope), when taking or authorizing an action identified in §16.1(b) of this title (relating to Definitions and Scope) that may adversely affect a CNRA, the administrative policies of the GLO and the SLB shall be the administrative policies in §501.13(a) of this title (relating to Administrative Policies of the Coastal Management Program). [1]

(1) shall require applicants to provide information necessary for the GLO or the SLB to make an informed decision regarding the proposed action;

(2) shall identify the monitoring established to ensure that activities authorized by such actions comply with all applicable GLO or SLB requirements;

(3) may waive a requirement if such waiver is in the best interests of the Permanent School Fund and is consistent with the statutory policies for management of coastal public lands in the Coastal Public Lands Management Act, Texas Natural Resources Code, Chapter 33, and

(4) shall take into account the national interest.

(c) Policy for Major Actions.

(44) Prior to taking a major action, as defined in §16.1 of this title (relating to Definitions and Scope), the GLO and the SLB shall comply with the requirements of §501.15(b) of this title (relating to Policies for Major Actions) and §501.15(c) of this title (relating to Policies for Major Actions), [meet with other agencies or subdivisions with jurisdiction over the activity and coordinate their major actions relating to the activity. The GLO and the SLB shall, to the greatest extent practicable, consider the cumulative and secondary adverse effects, as described in the federal environmental impact assessment process, of each major action relating to the activity.]

(2) The GLO and the SLB shall not take a major action that is inconsistent with the goals and policies of this chapter. In addition, the GLO and the SLB shall avoid and otherwise minimize the cumulative adverse effects to CNRAs of each of its major actions relating to the activity.

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

(f) When publishing notice of receipt of an application or request for agency action, the GLO or the SLB, as appropriate, shall include a statement that the application or requested action is subject to the CMP and must be consistent with the CMP goals and policies. [The agency shall include the council secretary on any public notice list maintained by the agency for actions subject to the CMP. Upon proposal of an action listed in §16.11(b) of this title (relating to Definitions and Scope) to which this chapter applies, the agency shall provide to the council secretary a one-page notice that an action subject to the CMP has been proposed.]

(g) The GLO and the SLB shall maintain a record of all proposed actions that are subject to the CMP and provide such record to the council on a quarterly basis.

§16.3. Policies for Specific Activities and Coastal Natural Resource Areas.

(iii) The GLO and the SLB, as appropriate, shall comply with the policies in §501.17 of this title (relating to Policies for Construction, Operation, and Maintenance of Oil and Gas Exploration and Production Facilities), §501.23 of this title (relating to Policies for Development in Critical Areas), §501.24 of this title (relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands), §501.25 of this title (relating to Policies for Dredging and Dredged Material Disposal and Placement), and §501.26 of this title (relating to Policies for Construction in the Beach/Dune System) when taking an action described in §16.1(b) of this title (relating to Definitions and Scope), and adopting rules relating to such actions described in the referenced policies. [This section when approving oil, gas, and other mineral lease plans of operation, granting surface leases, easements, and permits, and adopting rules under the Texas Natural Resources Code, Chapter 32, 33, and 51-52, and Texas Water Code, Chapter 61, for dredging and dredged material disposal and placement.] To the extent applicable to the public beach, as public beach is defined in Texas Natural Resources Code, §61.013(c), the policies referenced in this section are supplemental to any further restrictions or requirements relating to the beach access and use rights of the public, including Texas Natural Resources Code, Chapter 61 (Use and Maintenance of Public Beaches) and Chapter 15 of this title (relating to Coastal Area Planning).

(iii) Construction, Operation, and Maintenance of Oil and Gas Exploration and Production Facilities.

(1) Oil and gas exploration and production on state submerged lands shall comply with the policies in this subsection.

(2) Policies.

(2A) In or near critical areas, facilities shall be located and operated and geophysical and other operations shall be located and conducted in such a manner as to avoid and otherwise minimize adverse effects, including those from the disposal of solid waste and disturbance

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resulting from the operation of vessels and wheeled or tracked vehicles, whether on areas under lease, easement, or permit or on or across access routes thereto. Where practicable, buffer zones for critical areas shall be established and directional drilling or other methods to avoid disturbance, such as pooling or utilization, shall be employed.]  

(B) Lessees, easement holders, and permittees shall construct facilities in a manner that avoids impoundment or draining of coastal wetlands, if practicable, and shall mitigate any adverse effects on coastal wetlands impounded or drained in accordance with the sequencing requirements in this subsection.]  

(C) Upon completion or cessation of operations, lessees, easement holders, and permittees shall remove facilities and restore any significantly degraded areas to pre-project conditions as closely as practicable, unless facilities can be used for maintenance or enhancement of CNRAs or unless restoration activities would further degrade CNRAs.  

(c) (1) Dredging in Critical Areas.]  

(1) Dredging and construction of structures in, or the discharge of dredged or fill material into, critical areas shall comply with the policies in this subsection. In implementing this subsection, cumulative and secondary adverse effects of these activities will be considered.  

(A) The policies in this subsection shall be applied in a manner consistent with the goal of achieving no net loss of critical area functions and values.  

(B) Persons proposing development in critical areas shall demonstrate that no practicable alternative with fewer adverse effects is available.  

(iii) The person proposing the activity shall demonstrate that the activity is water-dependent. If the activity is not water-dependent, practicable alternatives with less adverse effects are presumed to exist, unless the person clearly demonstrates otherwise.  

(iii) The analysis of alternatives shall be conducted in light of the activity’s overall purpose. For an integrated project (i.e., one which combines more than one use within a single operation or project), the activity’s “overall purpose” refers to the overall purpose of the entire integrated project.  

(“Alternatives” may include different operation or maintenance techniques or practices or a different location, design, configuration, or size. Among the factors that may be considered in the analysis is the ability of the person proposing the activity to obtain an alternative site, including, if the overall purpose of the activity is marine, that person’s ability to obtain an alternative site within the coastal zone.  

(C) In evaluating practicable alternatives, the following sequence shall be applied:  

(i) Adverse effects on critical areas shall be avoided to the greatest extent practicable.  

(ii) Unavoidable adverse effects shall be minimized to the greatest extent practicable by limiting the degree or magnitude of the activity and its implementation.  

(iii) Appropriate and practicable compensatory mitigation shall be required to the greatest extent practicable for all adverse effects that cannot be avoided or minimized.  

(D) “Compensatory mitigation” includes restoring adversely affected critical areas or replacing adversely affected critical areas by creating new critical areas. Compensatory mitigation shall be undertaken, when practicable, in areas adjacent or contiguous to the affected critical areas (on-site). If on-site compensatory mitigation is not practicable, compensatory mitigation shall be undertaken in close physical proximity to the affected critical areas if practicable and in the same watershed if possible (off-site). Compensatory mitigation shall also attempt to replace affected critical areas with critical areas with characteristics identical to or closely approximating those of the affected critical areas (in-kind). The preferred order of compensatory mitigation is:  

(i) on-site, in-kind;  

(ii) off-site, in-kind;  

(iii) on-site, out-of-kind; and  

(iv) off-site, out-of-kind.  

(E) Mitigation banking is acceptable compensatory mitigation if use of the mitigation bank has been approved by the agency authorizing the development and mitigation credits are available for withdrawal. Preservation through acquisition for public ownership of unique critical areas or other ecologically important areas may be acceptable compensatory mitigation in exceptional circumstances. Examples of this include areas of high priority for preservation or restoration, areas whose functions and values are difficult to replicate, or areas not adequately protected by regulatory programs. Acquisition will normally be allowed only in conjunction with preferred forms of compensatory mitigation.  

(F) In determining compensatory mitigation requirements, the impaired functions and values of the affected critical area shall be replaced on a one-to-one ratio. Replacement of functions and values on a one-to-one ratio may require restoration or replacement of the physical area affected on a ratio higher than one-to-one. While no net loss of critical area functions and values is the goal, it is not required in individual cases where mitigation is not practicable or would result in only inconsequential environmental benefits. It is also important to recognize that there are circumstances where the adverse effects of the activity are so significant that, even if alternatives are not available, the activity may not be permitted regardless of the compensatory mitigation proposed.  

(G) Development in critical areas shall not be authorized if significant degradation of critical areas will occur. Significant degradation occurs if:  

(i) the activity will jeopardize the continued existence of species listed as endangered or threatened, or will result in likelihood of the destruction or adverse modification of a habitat determined to be a critical habitat under the Endangered Species Act, 16 United States Code Annotated, §§1531-1544;  

(ii) the activity will cause or contribute, after consideration of dilution and dispersion, to violation of any applicable surface water quality standards established under §501.14(c) of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas);  

(iii) the activity violates any applicable toxic effluent standard or prohibition established under §501.14(d) of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas);  

(iv) the activity violates any requirement imposed to protect a marine sanctuary designated under the Marine Protection, Research, and Sanctuaries Act of 1972, 33 United States Code Annotated, Chapter 37, or]
taking into account the nature and degree of all identifiable adverse effects, including their persistence, permanence, areal extent, and the degree to which these effects will have been mitigated pursuant to subparagraphs (C) and (D) of this subsection, the activity will, individually or collectively, cause or contribute to significant adverse effects on:

(1) human health and welfare, including effects on water supplies, plankton, benthos, fish, shellfish, wildlife, and consumption of fish and wildlife;

(2) the life stages of aquatic life and other wildlife dependent on aquatic ecosystems, including the transfer, concentration, or spread of pollutants or their byproducts beyond the site, or their introduction into an ecosystem, through biological, physical, or chemical processes;

(3) ecosystem diversity, productivity, and stability, including loss of fish and wildlife habitat or loss of the capacity of a coastal wetland to assimilate nutrients, purify water, or reduce wave energy; or

(4) generally accepted recreational, aesthetic or economic values of the critical area which are of exceptional character and importance.

(2) The GLO and the SLB will coordinate with one another, with other agencies required to comply with §501.14(h) of this title (relating to Development in Critical Areas), and with federal agencies when evaluating alternatives, determining appropriate and practicable mitigation, and assessing significant degradation. In connection with authorizations for development in critical areas, the GLO and the SLB shall demonstrate that the requirements of paragraph (1)(A)–(G) of this subsection have been satisfied.

(3) For any dredging or construction of structures in, or discharge of dredged or fill material into, critical areas that is subject to the requirements of §16.2(a) of this title (relating to Policy for Major Actions), data and information on the cumulative and secondary adverse effects of the project need not be produced or evaluated to comply with this subsection if such data and information is produced and evaluated in compliance with §16.2(1)(1)(1) of this title (relating to Policy for Major Actions).

(4) Construction of Waterfront Facilities and Other Structures on State Submerged Lands.

(5) Development on state submerged lands shall comply with the policies in this subsection.

(6) Policies.

(A) Marinas shall be designed and, to the greatest extent practicable, sited so that tides and currents will aid in flushing of the site or renew its water regularly.

(B) Marinas designed for anchorage of private vessels shall provide facilities for the collection of waste, refuse, trash, and debris.

(C) Marinas with the capacity for long-term anchorage of more than ten vessels shall provide pump-out facilities for marine toilets, or other measures or facilities that provide an equal or better level of water quality protection.

(D) Marinas, docks, piers, wharves and other structures shall be designed and, to the greatest extent practicable, sited to avoid and otherwise minimize adverse effects on critical areas from boat traffic and from those structures.

(7) For purposes of providing access to coastal waters, construction of docks, piers, wharves, and other structures shall be preferred over dredging of channels or basins or filling of submerged lands, if such construction is practicable, environmentally preferable, and will not interfere with commercial navigation.

(P) Piers, docks, wharves, bulkheads, jetties, groins, fishing cabins, and artificial reefs (including artificial reefs for compensatory mitigation) shall be limited to the minimum size necessary to serve the project purpose and shall be constructed in a manner that:

(i) does not significantly interfere with navigational;

(ii) does not significantly interfere with the natural coastal processes which supply sediments to coastal shore areas or otherwise exacerbate erosion of coastal shore areas; and

(iii) avoids and otherwise minimizes shading of critical areas and other adverse effects.

(G) Facilities shall be located at sites or designed and constructed to the greatest extent practicable to avoid and otherwise minimize the potential for adverse effects from:

(i) construction and maintenance of other development associated with the facility;

(ii) direct release to coastal waters and critical areas of pollutants from oil or hazardous substance spills or stormwater runoff; and

(iii) deposition of airborne pollutants in coastal waters and critical areas.

(H) Where practicable, pipelines, transmission lines, cables, roads, causeways, and bridges shall be located in existing rights-of-way or previously disturbed areas if necessary to avoid or minimize adverse effects and if it does not result in unreasonable risks to human safety, health, and welfare.

(I) To the greatest extent practicable, construction of facilities shall occur at sites and times selected to have the least adverse effects on recreational uses of CNRAs and on spawning or nesting seasonal or seasonal migrations of terrestrial and aquatic wildlife.

(J) Facilities shall be located at sites which avoid the impoundment and draining of coastal wetlands. If impoundment or draining cannot be avoided, adverse effects to the impounded or drained wetlands shall be mitigated in accordance with the sequencing requirements of subsection (e) of this section. To the greatest extent practicable, facilities shall be located at sites at which expansion will not result in development in critical areas.

(K) Where practicable, piers, docks, wharves, bulkheads, jetties, groins, fishing cabins, and artificial reefs shall be constructed with materials that will not cause any adverse effects on coastal waters or critical areas.

(L) Developed sites shall be returned as closely as practicable to pre-project conditions upon completion or cessation of operations by the removal of facilities and restoration of any significantly degraded areas, unless:

(i) the facilities can be used for public purposes or contribute to the maintenance or enhancement of coastal water quality, critical areas, beaches, state submerged lands, or coastal shore areas,

(ii) restoration activities would further degrade CNRAs.
(M) Water-dependent uses and facilities shall receive preference over those uses and facilities that are not water-dependent.

(N) Nonstructural erosion response methods such as beach nourishment, sediment bypassing, nearshore sediment berms, and planting of vegetation shall be preferred instead of structural erosion response methods.

(O) Major residential and recreational waterfront facilities shall to the greatest extent practicable accommodate public access to coastal waters and preserve the public's ability to enjoy the natural aesthetic values of coastal submerged lands.

(P) Activities on state submerged land shall avoid and otherwise minimize any significant interference with the public's use of and access to such lands.

(Q) Erosion of Gulf beaches and coastal shore areas caused by construction or modification of jetties, breakwaters, groins, or shore stabilization projects shall be mitigated to the extent the costs of mitigation are reasonably proportionate to the benefits of mitigation. Factors that shall be considered in determining whether the costs of mitigation are reasonably proportionate to the cost of the construction or modification and benefits include, but are not limited to, environmental benefits, recreational benefits, flood or storm protection benefits, erosion prevention benefits, and economic development benefits.

(R) Dredging and Dredged Material Disposal and Placement.

(S) Dredging and the disposal and placement of dredged material shall avoid and otherwise minimize adverse effects to coastal waters, state submerged lands, critical areas, coastal shore areas, and Gulf beaches (as those terms are defined in §146.1 of this title (relating Definitions and Scope)) to the greatest extent practicable. In implementing this subsection, cumulative and secondary adverse effects of dredging and the disposal and placement of dredged material and the unique characteristics of affected sites shall be considered.

(T) Dredging and dredged material disposal and placement shall not cause or contribute to, after consideration of dilution and dispersion, violation of any applicable surface water quality standards established under §501.14(1) of this title (relating Discharge of Municipal and Industrial Wastewater to Coastal Waters).

(U) Except as otherwise provided in subparagraph (D) of this paragraph, adverse effects on critical areas from dredging and dredged material disposal or placement shall be avoided and otherwise minimized, and appropriate and practicable compensatory mitigation shall be required, in accordance with subsection (c) of this section.

(V) Except as provided in subparagraph (D) of this paragraph, dredging and the disposal and placement of dredged material shall not be authorized if:

(1) there is a practicable alternative that would have fewer adverse effects on coastal waters, state submerged lands, critical areas, coastal shore areas, and Gulf beaches, so long as that alternative does not have other significant adverse effects;

(2) all appropriate and practicable steps have not been taken to minimize adverse effects on coastal waters, state submerged lands, critical areas, coastal shore areas, and Gulf beaches; or

(3) significant degradation of critical areas under subsection (C)(L)(G)(E) of this section would result.

(W) A dredging or dredged material disposal or placement project that would be prohibited solely by application of subparagraph (C) of this paragraph may be allowed if it is determined to be of overriding importance to the public and national interest in light of economic impacts on navigation and maintenance of commercially navigable waterways.

(X) Adverse effects from dredging and dredged material disposal and placement shall be minimized as required in paragraph (1) of this subsection. Adverse effects can be minimized by employing the techniques in this paragraph where appropriate and practicable.

(Y) Adverse effects from dredging and dredged material disposal and placement can be minimized by controlling the location and dimensions of the activity. Some of the ways to accomplish this include:

(1) locating and confining discharges to minimize smothering of organisms;

(2) locating and designing projects to avoid adverse disruption of water inundation patterns, water circulation, erosion and accretion processes, and other hydrodynamic processes;

(3) using existing or natural channels and basins instead of dredging new channels or basins, and discharging materials in areas that have been previously disturbed or used for disposal or placement of dredged material;

(4) limiting the dimensions of channels, basins, and disposal and placement sites to the minimum reasonably required to serve the project purpose, including allowing for reasonable overridding of channels and basins, and taking into account the need for capacity to accommodate future expansion without causing additional adverse effects;

(5) discharging materials at sites where the substrate is composed of material similar to that being discharged;

(6) locating and designing discharges to minimize the extent of any plume and otherwise control dispersion of material; and

(7) avoiding the impoundment or drainage of critical areas.

(Z) Dredging and disposal and placement of dredged material shall comply with applicable standards for sediment toxicity. Adverse effects from constituents contained in materials discharged can be minimized by treatment of or limitations on the material itself. Some ways to accomplish this include:

(1) disposal or placement of dredged material in a manner that maintains physiochemical conditions at discharge sites and limits or reduces the potency and availability of pollutants;

(2) limiting the solid, liquid, and gaseous components of material discharged;

(3) adding treatment substances to the discharged material; and

(4) adding chemical flocculants to enhance the deposition of suspended particulates in confined disposal areas.

(A) Adverse effects from dredging and dredged material disposal or placement can be minimized through control of the materials discharged. Some ways to accomplish this include:

(1) use of containment levees and sediment basins designed, constructed, and maintained to resist breaches, erosion, slumping, or leaking;

(2) use of lined containment areas to reduce leaching where leaching of chemical constituents from the material is expected to be a problem;
((iii) capping in-place contaminated material, or selectively discharging the most contaminated material first and then capping it with the remaining material;)

((iv) properly containing discharged material and maintaining discharge sites to prevent point and nonpoint pollution; and)

((v) timing the discharge to minimize adverse effects from unusually high water flows, wind, waves, and tidal actions.)

[(D) Adverse effects from dredging and dredged material disposal or placement can be minimized by controlling the manner in which material is dispersed. Some ways of accomplishing this include:]

((i) where environmentally desirable, distributing the material in a thin layer;)

((ii) orienting material to minimize undesirable obstruction of the water current or circulation patterns;)

((iii) using sill screens or other appropriate methods to confine suspended particulates or turbidity to a small area where setting or removal can occur;)

((iv) using currents and circulation patterns to mix, disperse, dilute, or otherwise control the discharge;)

((v) minimizing turbidity by using a diffuser system or releasing material near the bottom;)

((vi) selecting sites or managing discharges to confine and minimize the release of suspended particulates and turbidity and maintain light penetration for organisms; and)

((vii) setting limits on the amount of material to be discharged per unit of time or volume of receiving waters.)

[(E) Adverse effects from dredging and dredged material disposal or placement operations can be minimized by adopting technology to the needs of each site. Some ways of accomplishing this include:]

((i) using appropriate equipment, machinery, and operating techniques for access to sites and transport of material, including those designed to reduce damage to critical areas;)

((ii) having personnel on site adequately trained in avoidance and minimization techniques and requirements; and)

((iii) designing temporary and permanent access roads and channel spanning structures using culverts, open channels, and diversions that will pass both low and high water flows, accommodate fluctuating water levels, and maintain circulation and faunal movement.)

[(F) Adverse effects on plant and animal populations from dredging and dredged material disposal or placement can be minimized by:]

((i) avoiding changes in water current and circulation patterns that would interfere with the movement of animals;)

((ii) selecting sites or managing discharges to prevent or avoid creating habitat conducive to the development of undesirable predators or species that have a competitive edge ecologically over indigenous plants or animals;)

((iii) avoiding sites having unique habitat or other value, including habitat of endangered species;)

((iv) using planning and construction practices to institute habitat development and restoration to produce a new or modified environmental state of higher ecological value by displacement of some or all of the existing environmental characteristics;)

((v) using techniques that have been demonstrated to be effective in circumstances similar to those under consideration whenever possible and, when proposed development and restoration techniques have not yet advanced to the pilot demonstration stage, initiating their use on a small scale to allow corrective action if unanticipated adverse effects occur;)

((vi) timing dredging and dredged material disposal or placement activities to avoid spawning or migration seasons and other biologically critical time periods; and)

((vii) avoiding the destruction of remnant natural sites within areas already affected by development.)

[(G) Adverse effects on human potential from dredging and dredged material disposal or placement can be minimized by:]

((i) selecting sites and following procedures to prevent or minimize any potential damage to the esthetically pleasing features of the site, particularly with respect to water quality;)

((ii) selecting sites which are not valuable as natural aquatic areas;)

((iii) timing dredging and dredged material disposal or placement activities to avoid the seasons or periods when human recreational activity associated with the site is most important; and)

((iv) selecting sites that will not increase incompatible human activity or require frequent dredge or fill maintenance activity in remote fish and wildlife areas.)

[(H) Adverse effects from new channels and basins can be minimized by locating them at sites:]

((i) that ensure adequate flushing and avoid stagnant pockets; or)

((ii) that will create the fewest practicable adverse effects on CNRs from additional infrastructure such as roads, bridges, causeways, piers, docks, wharves, transmission line crossings, and ancillary channels reasonably likely to be constructed as a result of the project; or)

((iii) with the least practicable risk that increased vessel traffic could result in navigation hazards, spills, or other forms of contamination which could adversely affect CNRs;)

((iv) provided that, for any dredging of new channels or basins subject to the requirements of §16.2(c) of this title (relating to Policy for Major Actions), data and information on minimization of secondary adverse effects need not be produced or evaluated to comply with this subparagraph if such data and information is produced and evaluated in compliance with §16.2(c)(1)(A) of this title (relating to Policy for Major Actions).]

[(3) Disposal or placement of dredged material in existing contained dredge disposal sites identified and actively used as described in an environmental assessment or environmental impact statement issued prior to the effective date of this chapter shall be presumed to comply with the requirements of paragraph (1) of this subsection unless modified in design, size, use, or function.]

[(4) Dredged material from commercially navigable waterways is a potentially reusable resource and must be used beneficially in accordance with this policy. If the costs of the beneficial use of]
dredged material are reasonably comparable to the costs of disposal in a non-beneficial manner, the material shall be used beneficially. If the costs of the beneficial use of dredged material are significantly greater than the costs of disposal in a non-beneficial manner, the material shall be used beneficially unless it is demonstrated that the costs of using the material beneficially are not reasonably proportionate to the costs of the project and benefits that will result.

[(A) Factors that shall be considered in determining whether a beneficial use project is appropriate include:]

[(i) environmental benefits; recreational benefits; flood or storm protection benefits, erosion prevention benefits, and economic development benefits;]

[(ii) the proximity of the beneficial use site to the dredge site; and]

[(iii) the quality of the dredged material and its suitability for beneficial use.]

[(B) Examples of the beneficial use of dredged material include, but are not limited to:]

[(i) projects designed to reduce or minimize erosion or provide shoreline protection;]

[(ii) projects designed to create or enhance public beaches or recreational areas;]

[(iii) projects designed to benefit the sediment budget or littoral system;]

[(iv) projects designed to improve or maintain terrestrial or aquatic wildlife habitats;]

[(v) projects designed to create new terrestrial or aquatic wildlife habitat, including the construction of marshlands, coastal wetlands, or other critical areas;]

[(vi) projects designed and demonstrated to benefit benthic communities or aquatic vegetation;]

[(vii) projects designed to create wildlife management areas; parks, airports, or other public facilities;]

[(viii) projects designed to cap landfills or other waste disposal areas;]

[(ix) projects designed to fill private property or upgrade agricultural land, if cost-effective public beneficial uses are not available; and]

[(x) projects designed to remediate past adverse impacts on the coastal zone.]

[(S) If dredged material cannot be used beneficially as provided in paragraph (S) of this subsection, to avoid and otherwise minimize adverse effects as required in paragraph (4) of this subsection, preference shall be given to the greatest extent practicable to disposal in:]

[(A) contained upland sites;]

[(B) other contained sites; and]

[(C) open water areas of relatively low productivity or low biological value.]

[(G) For new sites, dredged materials shall not be disposed of or placed directly on the boundaries of state submerged lands or at such location so as to slump or migrate across the boundaries of state submerged lands in the absence of an agreement between the affected public owner and the adjoining private owner or owners that defines the location of the boundary or boundaries affected by the deposition of the dredged material.]

[(T) Emergency dredging shall be allowed without a prior consistency determination as required in the applicable consistency rule set out in Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies) when:]

[(A) there is an unacceptable hazard to life or navigation;]

[(B) there is an immediate threat of significant loss of property; or]

[(C) an immediate and unforeseen significant economic hardship is likely if corrective action is not taken within a time period less than the normal time needed under standard procedures. The GLO or the SLB, as appropriate, shall notify the council secretary at least 24 hours prior to commencement of any emergency dredging operation. The notice shall include a statement demonstrating the need for emergency action. Prior to initiation of the dredging operations representatives of the project sponsor, the GLO, or the SLB shall, if possible, make all reasonable efforts to meet with council’s designated representatives to ensure consideration of and consistency with applicable policies in this section. Compliance with all applicable policies in this section shall be required at the earliest possible date. The GLO or the SLB, as appropriate, shall provide a consistency determination to the council, as described in Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies) within 60 days after the emergency operation is complete.]

§16.4. Thresholds for Referral.

(a) (No change.)

(b) Real Estate Activities.

(1) (No change.)

(2) The acreage thresholds for real estate activities are as follows:

(A) one-half acre of oyster reef;

(B) one acre of submerged aquatic vegetation;

(C) one acre of coastal wetland;

(D) one acre of algal flat;

(E) one acre of tidal mud flat;

(F) one acre of tidal sand flat;

(G) one acre of state submerged land; or

(H) one acre of upland area fitting the definition of coastal barrier, coastal shore area, Gulf beach, critical dune area, special hazard area, critical erosion area, coastal historic area, or coastal preserve, [historic park, wildlife management area, preserve], as defined in Texas Natural Resources Code, §33.203(1)[§16.1 of this title (relating to Definitions and Scopes)].

(c) Energy-Related Activities (activities related to oil, gas, or other mineral exploration and production).

(1) The GLO’s or SLB’s approval of a mineral lease plan of operations for hard mineral exploration and production exceeds the threshold if the authorized activities would adversely affect CNRA acreage greater than the following:

(A) In the upper coast:
(i) one-half acre of oyster reef;
(ii) five acres of submerged aquatic vegetation;
(iii) five acres of coastal wetland;
(iv) five acres of algal flat;
(v) five acres of tidal mud flat;
(vi) ten acres of tidal sand flat;
(vii) 40 acres of waters in the open Gulf of Mexico;
(viii) 40 acres of open bay waters under tidal influence; or
(ix) 40 acres of upland area fitting the definition of coastal barrier, coastal shore area, Gulf beach, critical dune area, special hazard area, critical erosion area, coastal historic area, or coastal preserve, as defined in Texas Natural Resources Code, §33.203(1) [§16.1 of this title (relating to Definitions and Scopes)].

(B) In the lower coast:
(i) one-half acre of oyster reef;
(ii) 40 acres of submerged aquatic vegetation;
(iii) five acres of coastal wetland;
(iv) 20 acres of algal flat;
(v) 20 acres of tidal mud flat;
(vi) 40 acres of tidal sand flat;
(vii) 40 acres of waters in the open Gulf of Mexico;
(viii) 40 acres of open bay waters under tidal influence; or
(ix) 40 acres of upland area fitting the definition of coastal barrier, coastal shore area, Gulf beach, critical dune area, special hazard area, critical erosion area, coastal historic area, or coastal preserve, as defined in Texas Natural Resources Code, §33.203(1) [§16.1 of this title (relating to Definitions and Scopes)].

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

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

Filed with the Office of the Secretary of State on August 25, 2005.

TRD-20050368
Trace Finley
Policy Director
General Land Office
Earliest possible date of adoption: October 9, 2005
For further information, please call: (512) 475-1859

CHAPTE R 1. ORGANIZATION AND ADMINISTRATION
SUBCHAPTER C. PERSONNEL AND EMPLOYMENT POLICIES
37 TAC §1.42

(Edition note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Public Safety proposes the repeal of §1.42, concerning Volunteer Program. The repeal of the section is necessary because the volunteer program will no longer be handled by an agency-wide volunteer coordinator. Volunteers will be approved and utilized by supervisory chains of command pursuant to internal department policy.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the repeal is in effect the anticipated public benefit resulting from adoption of the repeal will be elimination of an outdated rule. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Paula Logan, HR Director, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0251, (512) 424-5900.

The repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department’s work.

Texas Government Code, §411.004(3) is affected by this repeal.
§1.42. Volunteer Program.

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

Filed with the Office of the Secretary of State on August 23, 2005.

TRD-200503614
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: October 9, 2005
For further information, please call: (512) 424-2135

CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER D. DRIVER IMPROVEMENT
37 TAC §15.89

The Texas Department of Public Safety proposes amendments to Subchapter D, §15.89, concerning Driver Improvement. The amendments will clarify the moving violation convictions that are assessed specific surcharges and not assessed points under the Driver Responsibility Program. The amendments are necessary to correct the previous interpretation of provisions contained in

TITLE 37. PUBLIC SAFETY AND CORRECTIONS
PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY
Chapter 708 of the Texas Transportation Code. In addition, the amendment adds the "No School Bus Endorsement" violation to the list of moving violations in compliance with 49 CFR, Part 383 of the Federal Motor Carrier Safety Act.

Chapter 708 of the Transportation Code grants the department the authority to adopt rules to implement the Driver Responsibility Program (DRP). This program was initially created during the 78th Legislative Session (2003) and requires the department to assess fees based on an individual's driver history. DRP has two major components, a point system and a conviction surcharge system. The point system is based on the accumulation of Class C traffic offenses. An individual receives two points for each traffic conviction and three points if the offense resulted in an accident. The conviction surcharge system is based on a one-time conviction of certain more serious traffic offenses. The program requires the individual to pay the fee, ranging from $100 to $2000 every year for three years.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the amendments are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the amendments are in effect the public benefit anticipated as a result of enforcing the amended section will be current and updated rules. There is no anticipated economic effect on individuals, small businesses, or micro-businesses.

A public hearing on the proposal will be held in Austin on September 14, 2005 at 9:00 a.m. in the Department of Public Safety Training Academy Auditorium, Building C, located at 5805 North Lamar Boulevard, Austin, Texas. 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.

Comments on the proposal may be submitted to Claire McGuinness, Senior Staff Attorney, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0300, (512) 424-5231.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §708.002.

Texas Government Code, §411.004(3) and Texas Transportation Code, §708.002 are affected by this proposal.

§15.89. Moving Violations.

(a) (No change.)

(b) A list of traffic offenses that constitute a moving violation is available in Table 1.

Figure: 37 TAC §15.89(b)

(c) Table 1 also indicates the moving violations that will be assessed points under the Driver Responsibility Program, Texas Transportation Code (TRC), Chapter 708, Subchapter B.

(1) (No change.)

(2) Moving violation convictions that are assessed specific surcharges pursuant to Texas Transportation Code, §§708.102 (intoxicated driver offenses), 708.103 (driving while license invalid or without financial responsibility), and 708.104 (driving without valid license including no commercial driver license, driving without the proper commercial license endorsement and driving without the proper motorcycle endorsement), will not be assessed points under the Driver Responsibility Program.

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

Filed with the Office of the Secretary of State on August 23, 2005.

TRD-200503618

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: October 9, 2005

For further information, please call: (512) 424-2135

SUBCHAPTER J. DRIVER RESPONSIBILITY PROGRAM

37 TAC §15.162

The Texas Department of Public Safety proposes amendments to Subchapter J, §15.162, concerning the Driver Responsibility Program. The amendments are proposed in response to statutory changes made by House Bill 2470, passed during the 79th Legislative Session (2005).

Chapter 708 of the Transportation Code grants the department the authority to adopt rules to implement the Driver Responsibility Program (DRP). This program was initially created during the 78th Legislative Session (2003) and requires the department to assess fees based on an individual's driver history. The program was amended by the 79th Legislative Session (2005) to allow a person to pay a surcharge over a period of 36 consecutive months. DRP has two major components, a point system and a conviction surcharge system. The point system is based on the accumulation of Class C traffic offenses. An individual receives two points for each traffic conviction and three points if the offense resulted in an accident. The conviction surcharge system is based on a one-time conviction of certain more serious traffic offenses. The program requires the individual to pay the fee, ranging from $100 to $2000 every year for three years.

The statute specifically requires the department to establish rules regarding the acceptance of installment payments. The department has contracted with a vendor to process the surcharge payments. Subsection (k) is reformed to allow for the payment of the surcharge over a period of 36 consecutive months.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the amendments are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the amendments are in effect the public benefit anticipated as a result of enforcing the amended section will be current and updated rules. There is no anticipated adverse economic effect on small businesses, or micro-businesses. There will be a fiscal impact to individuals should they chose to utilize the installment agreement option for payment of surcharges under DRP.
Comments on the proposal may be submitted to Claire McGuinness, Senior Staff Attorney, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0300, (512) 424-5231.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department’s work; and Texas Transportation Code, §708.002 and §708.153.

Texas Government Code, §411.004(3) and Texas Transportation Code, §708.002 and §708.153 are affected by this proposal.

§15.162. Installment Agreements.

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

(k) Minimum payments are determined by dividing the total amount due by the maximum payments allowed and adding the partial payment fee. The maximum number of payments is determined by the amount of the surcharge required.

(1) (No change.)

(2) For surcharge requirements of $260 - $499 [§§19.12 and 19.13] an individual may make a maximum of eight (8) [ten (10)] payments.

(3) For surcharge requirements of $500 - $999 an individual may make a maximum of ten (10) payments.


(6) For surcharge requirements of $2000 and greater, an individual may make a maximum of thirty-six (36) payments.

(l) (No change.)

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

Filed with the Office of the Secretary of State on August 23, 2005.

TRD-200503619
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: October 9, 2005
For further information, please call: (512) 424-2135

CHAPTER 19. BREATH ALCOHOL TESTING REGULATIONS

SUBCHAPTER A. BREATH ALCOHOL TESTING REGULATIONS

37 TAC §§19.1 - 19.7

(Editor’s note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Public Safety proposes the repeal of §§19.1 - 19.7, concerning Breath Alcohol Testing Regulations. The sections are proposed for repeal due to substantial revisions having been made. The repeal is filed simultaneously with the proposal of new §§19.1 - 19.7 which will simplify and clarify language for ease of reading and understanding of the Breath Alcohol Testing Regulations.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be clarification as to the interpretation of these regulations concerning contested cases of driving while intoxicated and other contested cases. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Randall Beaty, Assistant Manager, Breath Alcohol Testing, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0570, (512) 424-5200.

The repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department’s work and Texas Transportation Code, §724.016.

Texas Government Code, §411.004(3) and Texas Transportation Code, §724.016 are affected by this proposal.

§19.1. Instrument Certification.

§19.2. Approval of Reference Sample Devices.

§19.3. Certification of Techniques, Methods, and Programs.

§19.4. Operator Certification.

§19.5. Technical Supervisor Certification.

§19.6. Certification of Courses of Instruction.

§19.7. Explanation of Terms and Actions.

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

Filed with the Office of the Secretary of State on August 23, 2005.

TRD-200503616
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135

37 TAC §§19.1 - 19.7

The Texas Department of Public Safety proposes new §§19.1 - 19.7, concerning Breath Alcohol Testing Regulations. In an effort to bring 37 TAC §§19.1 - 19.7 in line with accepted standards for drafting administrative rules, the “Explanation of Terms and Actions” has been moved from the back of the subchapter to the front and therefore a renumbering of the sections became necessary. In addition, the proposed sections will simplify and clarify language for ease of reading and understanding of the Breath Alcohol Testing Regulations. The proposed sections are filed simultaneously with the repeal of current §§19.1 - 19.7.

PROPOSED RULES  September 9, 2005  30 TexReg 5729
Repealed §19.7 now becomes proposed §19.1 and provides for definitions for the proposed rules. Substantive rule was removed and incorporated into other appropriate sections within the title.

Repealed §19.1 now becomes proposed §19.2 and outlines the guidelines for certification of instruments by the scientific director.

Repealed §19.2 now becomes proposed §19.3 and allows the scientific director the flexibility to incorporate evolving technology into testing methodology when deemed appropriate.

Repealed §19.3 now becomes proposed §19.4 and adds language streamlining the business process used to insure breath testing is conducted in accordance with the methods approved by the scientific director. The current application process used to establish a breath testing program under department regulatory control is unduly burdensome and antiquated and language is offered to better facilitate this process. Additionally, the introduction of language to address the substantive rules previously contained in §19.7 was introduced. Likewise, a revision to the reference device criteria was necessary to agree with those made in proposed §19.3.

Repealed §19.4 now becomes proposed §19.5 and substantive rule from Explanation of Terms and Actions was incorporated to address various aspects of certification provisions. Additionally, a deficiency in the renewal of certification process created by a previous revision was addressed to establish consistency with other operator certification standards. Similarly, clarifications for suspension of certification were made to address those substantive rules currently found in §19.7.

Repealed §19.5 now becomes proposed §19.6 and substantive rule from Explanation of Terms and Actions was incorporated to address various aspects of certification provisions. A provision for expiration of certification as well as renewal and recertification was added.

Repealed §19.6 now becomes proposed §19.7 and substantive rule from Explanation of Terms and Actions was incorporated to address various aspects of certification provisions. Course curriculum was clarified to more closely agree with modern training methods.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the new sections are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the new sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification in the state courts as to the interpretation of these regulations concerning contested cases of driving while intoxicated and other statutory related cases. The anticipated cost to small and large businesses that are required to comply with the rules as proposed will be all mailing or shipping costs associated with submitting the instrument or reference sample device(s) to the department. There are no anticipated economic costs to individuals who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Randall Beaty, Assistant Manager, Breath Alcohol Testing, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0570, (512) 424-5200.

The new sections are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department’s work; and Texas Transportation Code, §724.016, which authorizes the department to adopt rules regarding breath specimen analytical methods and qualifications of individuals performing the analyses.

Texas Government Code, §411.004(3), and Texas Transportation Code, §724.016 are affected by this proposal.

§19.1. Definitions.

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

1. Alcohol—Ethyl alcohol, sometimes referred to as grain alcohol or ethanol.
2. Approval—Meeting and maintaining the requirements set forth in this title for approval.
3. Approved breath alcohol testing program—A breath alcohol testing program meeting and maintaining the provisions stated in §19.4 of this title (relating to Approval of Techniques, Methods, and Programs).
4. Approved course of instruction—A school, college, agency, institution, or laboratory meeting the requirements stated in §19.7 of this title (relating to Approval of Courses of Instruction).
5. Breath alcohol test (breath alcohol analysis)—The analysis of a subject’s breath specimen(s) to determine the alcohol concentration(s) thereof.
6. Certification—Meeting and maintaining the requirements set forth in this title for certification.
7. Certified operator—An individual meeting and maintaining the requirements stated in §19.5 of this title (relating to Operator Certification).
8. Conviction—An adjudicated verdict of guilty or an order of deferred adjudication by a court of competent jurisdiction.
9. Department—The unmodified word “department” in this title refers to the Texas Department of Public Safety.
10. Inactivation—The voluntary or temporary discontinuance of certification.
11. Instrument(s)—The device(s) which measure or quantitate the breath alcohol concentration pursuant to §19.2 of this title (relating to Instrument Certification).
12. Office of the Scientific Director (OSD)—The scientific director and his staff.
13. Predicted value—The known value of the reference sample.
14. Proficiency test—A test administered at the direction of a technical supervisor or designated representative of the Scientific Director to establish and/or ascertain the competency of an operator to obtain valid results on breath test instruments.
15. Public information and demonstration—The public display and exhibition of certified evidential breath testing equipment.
16. Recertification—A process to make certification current.
17. Reference Sample Device—An apparatus or device designed to provide a reference sample or analytical test standard.
Renewal of current certification--The continuance of active certification by meeting the requirements stated in §19.5(b) of this title (relating to Operator Certification).

Reports and records--The data and documents pertinent to this title.

Scientific Director--The individual responsible for the implementation, administration and enforcement of the Texas breath alcohol testing regulations.

Security--The safeguard of certified instruments at testing locations.

Site location--The physical site of the breath alcohol testing instrument and reference sample device.

Suspension--The termination or revocation of certification.

System blank analysis--An analysis of ambient air, free of alcohol and other interfering substances, that yields a result of 0.000.

Technical Supervisor and technical supervision--An individual meeting the minimum requirements set forth in §19.6 of this title (relating to Technical Supervisor Certification) and the responsibilities of such.

§19.2 Instrument Certification.

(a) The Office of the Scientific Director, Alcohol Testing Program, Texas Department of Public Safety (hereinafter referred to as the scientific director) shall approve and certify all breath test instruments to be used for evidential purposes.

(1) The scientific director will establish and maintain a list of approved instruments by manufacturer brand or model designation for use in the state.

(2) A manufacturer or designated representative desiring approval of an instrument not on the approved list may submit to the scientific director a production model of the instrument. Examination and evaluation of the instrument to determine if it meets the criteria for approval or certification as an evidential instrument will be done at the discretion of the scientific director. All shipping costs associated with such submission will be done at the expense of the submitting entity.

(b) In order to be approved each instrument must meet the following criteria:

(1) Breath specimens collected for analysis shall be essentially alveolar in composition.

(2) The instrument shall analyze a reference sample or analytical test standard and the result of which must agree within plus or minus 0.01g/210L of the predicted value or such limits as set by the scientific director.

(3) The specificity of the procedure shall be adequate and appropriate for the analyses of breath specimens for the determination of alcohol concentration for law enforcement.

(4) Any other tests deemed necessary by the scientific director to correctly and adequately evaluate the instrument to give correct results in routine breath alcohol testing and be practical and reliable for law enforcement purposes.

(c) Upon proof of compliance with subsection (b) of this section the instrument will be placed on the list of approved instruments.

(1) Inclusion on the scientific director’s list of approved instruments will verify that the instrument by manufacturer brand or model designation meets subsection (b) of this section.

The scientific director may, for cause, rescind approval of and remove an instrument by manufacturer brand or model designation from the approved list.

The technical supervisor shall determine if a specific instrument by serial number is of the same manufacturer brand or model designation as is shown on the scientific director’s approved list and meets the criteria for certification as stated in subsection (b)(2) of this section and when required, shall provide direct testimony or written affidavit of this information.

The scientific director, or a designated representative of technical supervisor, may, for cause, remove a specific instrument by serial number from evidential testing and withdraw certification thereof.

§19.3 Approval of Reference Sample Devices.

(a) All reference sample devices used in conjunction with evidential breath alcohol testing must be approved by the scientific director.

(1) The scientific director will establish and maintain a list of approved reference sample devices by type, manufacturer brand or model designation for use in the state.

(2) A manufacturer or designated representative desiring approval of a reference sample device not on the approved list may submit to the scientific director a production model of the device. Examination and evaluation of the device to determine if it meets the criteria for approval will be done at the discretion of the scientific director. All shipping costs associated with such submissions will be at the expense of the submitting entity.

(b) In order to be approved, a reference sample device must function properly for the purpose for which it was designed and be compatible with the certified instrumentation.

(c) Upon proof of compliance with subsection (b) of this section the reference sample device by type, manufacturer brand and/or model designation will be approved and placed on the scientific director’s approved list.

(1) Inclusion on the scientific director’s list of approved reference sample devices will verify that the equipment by type, brand and/or model meets subsection (b) of this section.

(2) The scientific director may, for cause, rescind the approval of and remove the type, manufacturer brand and/or model designation from the list of approved devices.

(d) The technical supervisor shall determine if a specific reference sample device is of the same type, manufacturer brand and/or model designation as is shown on the scientific director’s approved list and meets the criteria for approval as stated in subsection (b) of this section and when required, shall provide direct testimony or written affidavit of this information.

§19.4 Approval of Techniques, Methods and Programs.

(a) All breath alcohol testing techniques, methods and programs to be used for evidential purposes must have the approval of the scientific director.

(b) Prior to initiating a breath alcohol testing program, an agency or laboratory shall submit an application to the scientific director for approval. If the scientific director deems it appropriate, an on-site inspection may be made by the scientific director or a designated representative to assure compliance with the provisions of the application. An agency applying for approval of a breath alcohol testing program must agree to:

(1) conduct such analyses only for the purposes stated in subsection (c)(8) of this section:
allow access for inspection under subsection (d) of this section; and

(c) All breath alcohol testing techniques, in order to be approved, shall meet, but not be limited to, the following:

(1) a period during which an operator is required to remain in the presence of the subject. An operator shall remain in the presence of the subject at least 15 minutes before the test and should exercise reasonable care to ensure that the subject does not place any substances in the mouth. Direct observation is not necessary to ensure the validity or accuracy of the test result;

(2) the breath alcohol testing instrument and reference sample device must be operated by either a certified operator or technical supervisor and only certified personnel will have access to the instrument;

(3) the use of a system blank analysis in conjunction with the testing of each subject;

(4) the analysis of a reference sample, the results of which must agree with the reference sample predicted value within plus or minus 0.01 g/210 L, or such limits as set by the scientific director. This reference analysis shall be performed in conjunction with subject analyses;

(5) all analytical results shall be expressed in grams of alcohol per 210 liters of breath (g/210 L);

(6) maintenance of any specified records designated by the scientific director;

(7) supervision of certified operators and testing techniques by a technical supervisor meeting the qualifications set forth in §19.6 of this title (relating to Technical Supervisor Certification);

(8) designation that the instrumentation will be used only:

(A) for testing subjects that are suspected of violating any statute or rule that defines intoxication in terms of alcohol concentration; and

(B) in compliance with §19.5(b), (c), and (e) of this title (relating to Operator Certification);

(d) The scientific director or a designated representative may at any time make an inspection of the approved breath alcohol testing agency to ensure compliance with these regulations;

(e) Upon proof of compliance with subsections (a) - (c) of this section, approval will be granted by the scientific director;

(f) Approval of any breath alcohol testing program is contingent upon the applying agency’s agreement to conform and abide by any directives, orders, or policies issued or to be issued by the scientific director regarding any aspect of the breath alcohol testing program; this shall include, but not be limited to, the following:

(1) program administration;

(2) reports;

(3) data, records and forms;

(4) site location and security;

(5) certified evidential instruments should not ordinarily be used for public information programs and dissemination of any such information should be carried out by a certified technical supervisor;

(6) methods of operations and testing techniques;

(7) instruments and reference sample devices;

(8) purposes for which testing is conducted;

(9) operators and technical supervision of operators.

(g) Approval of a breath alcohol testing program may be denied or withdrawn by the scientific director if, based on information obtained by the scientific director, a designated representative of the scientific director, or a technical supervisor, the approved agency or laboratory fails to meet all criteria stated in this section.

(h) Technical supervisors, when required, shall provide expert testimony by direct testimony or by written affidavit concerning the approval of techniques, methods and programs under their supervision.

§19.5. Operator Certification.

(a) Certification.

(1) Prior to certification an applicant must establish proof of participation in a breath test program meeting the requirements set forth in §19.4 of this title (relating to Approval of Techniques, Methods, and Programs).

(2) Conviction history:

(A) persons convicted of a felony or a crime of moral turpitude shall not be eligible to be a certified operator;

(B) persons convicted of a Class A or B misdemeanor within the last ten years shall not be eligible to be a certified operator;

(C) persons receiving a driver license suspension for refusal to submit to a chemical test as per the provisions of Chapter 724 or Chapter 522, Texas Transportation Code following a hearing pursuant to Chapter 524, Texas Transportation Code; or a department determination of a driver license suspension for refusal to submit to a chemical test as per the provisions of Chapter 724 or Chapter 522, Texas Transportation Code within the last ten years shall not be eligible to be a certified operator.

(3) Prior to initial certification as a breath test operator an applicant must successfully complete a course of instruction meeting the criteria set forth in §19.7 of this title (relating to Approval of Courses of Instruction).

(4) Prior to certification an operator of a breath alcohol testing instrument, an applicant must satisfactorily complete examinations, prepared and given by the scientific director or a designated representative, which shall include the following:

(A) a written examination;

(B) a practical examination establishing proficiency in the operation of the instrument and reference sample device on which the operator is to be certified and the proper completion of all required reports and records. The practical examination will involve the completion of simulated subject analyses and/or practice test(s). If the simulated subject analyses and/or practice tests are not completed correctly and/or there are one or more errors in the reports or records the applicant will be offered a second set of simulated subject analyses. Any error(s) in the second set of analyses will result in a failure of the practical examination;

(C) failure of the written and/or practical examination will cause the applicant to be ineligible for reexamination for a period of 30 days. A subsequent failure will require that the candidate attend and satisfactorily complete the initial course of instruction for certification of a breath testing operator.

(5) Upon successful completion of the requirements for certification, the scientific director will issue the individual an operator certificate valid for a period of time designated by the scientific director or until the next examination for renewal unless inactivated or suspended.
(6) If an operator is certified to operate a specific brand and/or model of equipment and is required to be certified on an additional brand and/or model of equipment, the scientific director may waive portions of this section and require only that instruction needed to acquaint the applicant with proper operation of the new brand and/or model of equipment.

(b) Renewal of current certification. In order to maintain current certification, the operator is required to renew certification prior to its expiration date. The minimum requirement for renewal of operator certification will be:

(1) A practical examination in accordance to subsection (a)(4)(B) of this section establishing proficiency of the operator in the operation of the instrument and reference sample device on which the operator is certified and the proper completion of all required reports and records. The operator will be evaluated on the basis to:

(A) use proper techniques;
(B) follow established procedures including, but not limited to, the operation of the instrument and reference sample device and the proper reporting procedures for analysis results;

(2) The satisfactory biennial completion of a course of instruction, the contents of which should include, but not be limited to, topics such as:

(A) a brief review of the theory and operation of the breath alcohol test equipment;
(B) a detailed review of the breath alcohol analysis and reporting procedures;
(C) a discussion of procedural updates resulting from recent court decisions and legislation;
(D) a discussion of current issues in the field of breath alcohol testing;
(E) a written examination

(3) Renewal of certification will be denied and current certification will be inactivated in accordance with subsection (d) of this section when the operator:

(A) fails to follow established procedures;
(B) uses other than proper technique;
(C) fails the practical examination; or
(D) fails the written examination.

(4) An operator who fails renewal will be given the reason for failure and is not eligible to be reexamined for a period of 30 days. Reexamination will be pursuant to subsection (a)(4) of this section. A resulting failure will require that the operator attend and satisfactorily complete the initial course of instruction for certification of a breath test operator in order to regain current certification.

(5) Upon successful completion of the requirements for renewal of certification, the scientific director will issue the individual an operator’s certificate valid for a period of time designated by the scientific director or until next renewal unless inactivated or suspended.

(c) Proficiency requirements.

(1) The scientific director or a designated representative or the operator’s technical supervisor may at any time require an operator to demonstrate proficiency and ability to properly operate the instrument and reference sample device.
responsibility of the inactivated or suspended operator to notify the scientific director in writing of such intent. Recertification shall take place pursuant to the following:

(A) recertification after inactivation for the failure to complete the renewal process prior to the expiration of current certification will be pursuant to subsection (a)(4) of this section;

(B) recertification after inactivation or suspension will be pursuant to subsection (a)(4) of this section;

(C) recertification after an inactivation or suspension period of greater than five years the operator must attend and satisfactorily complete the initial course of instruction for certification of a breath test operator pursuant to subsection (a) of this section.

(D) recertification after a change in instrumentation or testing methodologies will be at the discretion of the scientific director, pursuant to subsection (a)(6) of this section.

(f) Certificate. The issuance of a certificate to the breath test operator shall be evidence that the operator has met the requirements for initial certification and/or renewal of certification.

(g) Verification. The technical supervisor, when required, shall provide direct testimony or by written affidavit verifying all aspects of certification of operators within an assigned area.

§19.6. Technical Supervisor Certification.

(a) The primary function of the technical supervisor is to provide the technical, administrative and supervisory expertise in safeguarding the scientific integrity of the breath alcohol testing program and to assure the breath alcohol testing program’s acceptability for evidential purposes. The technical supervisor, in matters pertaining to breath alcohol testing, is the field agent of the scientific director. Supervision by the technical supervisor in accordance with the provisions stated in these regulations shall include, but not be limited to:

(1) supervision of certified operators in performance of breath alcohol test operations, including the proper completion of forms and records and operator’s compliance with the provisions stated in these regulations;

(2) supervision of certified instrumentation, reference sample devices and affiliated equipment in an assigned area;

(3) supervision of data gathered for initial certification and/or approval of individual instruments and reference sample devices in an assigned area;

(4) supervision of techniques of testing, maintaining scientific integrity and upholding these regulations as they apply to the certification of a total testing program;

(5) selection and supervision of a testing location as it applies to security and technical suitability for testing;

(6) supervision of compliance with the policy of public information and/or demonstrations of breath alcohol testing instruments and equipment;

(7) all technical, administrative and regulatory aspects of breath alcohol testing within a designated area; and

(8) expert testimony by direct testimony or by written affidavit concerning all aspects of breath alcohol testing within an assigned area.

(b) The minimum qualifications for certification as a technical supervisor are:

1. a baccalaureate degree from an accredited college or university with a major in chemistry, or as an alternative, a major in another scientific field with sufficient semester hours in chemistry or other qualifications as determined by the scientific director (For the purposes of these regulations, sufficient hours in chemistry shall be defined as successful completion of the equivalent of a minimum of 18 semester hours of chemistry, no more than 8 of which may be freshman level);

2. satisfactory completion of a course of instruction as set forth in §19.5(a)(3) of this title (relating to Operator Certification);

3. satisfactory completion of technical supervisor training that is approved by the scientific director, the content of which shall include, but not be limited to:

(A) advanced survey of current information concerning alcohol and its effects on the human body;

(B) operational principles and theories applicable to the program;

(C) instrument operations, maintenance, repair and calibration;

(D) legal aspects of breath alcohol analysis;

(E) principles of instruction;

4. knowledge and understanding of the scientific theory and principles as to the operation of the instrument and reference sample device;

5. prior to receiving certification, a technical supervisor candidate must establish proof of engagement in a certified program or a certified school of instruction or proof of pending engagement upon receipt of certification. If the technical supervisor candidate or certified technical supervisor cannot establish proof of being actively engaged in a certified program or certified school of instruction, certification will, at the discretion of the scientific director, be denied or inactivated;

6. Conviction history:

(A) persons convicted of a felony or a crime of moral turpitude shall not be eligible to be a certified technical supervisor;

(B) persons convicted of a Class A or B misdemeanor within the last ten years shall not be eligible to be a certified technical supervisor;

(C) persons receiving a driver license suspension for refusal to submit to a chemical test as per the provisions of Chapter 724 or Chapter 522, Texas Transportation Code, following a hearing pursuant to Chapter 524, Texas Transportation Code; or a department determination of a driver license suspension for refusal to submit to a chemical test as per the provisions of Chapter 724 or Chapter 522, Texas Transportation Code within the last ten years shall not be eligible to be a certified technical supervisor;

(c) Certification.

(1) Upon satisfactory proof to the scientific director by the applicant that the minimum qualifications set forth in subsection (b) of this section has been met, the scientific director will issue certification that will be valid for a period of time designated by the scientific director or until the next examination for renewal unless inactivated or suspended.

(2) Technical supervisor certification may be voluntarily inactivated when it is no longer needed or inactivated at the discretion of the scientific director if the technical supervisor is no longer actively engaged in a certified program or certified school of instruction.

(3) Technical supervisor certification may be suspended only by the scientific director for malfeasance, falsely or deceitfully
obtaining certification or failure to carry out the responsibilities set forth in this title.

(4) A technical supervisor whose certification has been suspended may appeal such action in writing to the director, Texas Department of Public Safety, who will decide whether the action of the scientific director will be affirmed or set aside. The director may reinstate certification of the technical supervisor making such appeal under such conditions deemed necessary and notify the scientific director in writing.

(d) Certificate. The issuance of a certificate to the technical supervisor shall be evidence that the technical supervisor has met the requirements for certification.

(e) Renewal of current certification and recertification. In order to maintain current certification, the Technical Supervisor is required to renew certification prior to its expiration. The scientific director shall determine the minimum requirement for renewal of technical supervisor certification and for recertification after inactivation or suspension.

§19.7. Approval of Courses of Instruction.

(a) Any agency, laboratory, institution, school or college intending to offer a course of instruction for certified operators of evidential breath alcohol testing instruments, must have the course curriculum approved by the scientific director.

(b) The operator course must utilize the most current revision of the Texas Breath Alcohol Testing Program Operator Manual as the primary instructional text and contain, as a minimum, the following hours and areas of instruction:

1. three hours of instruction on the effects of alcohol on the human body;

2. three hours of instruction on the operational principles of the breath alcohol testing instrument to be used. This instruction shall include:

   A. a functional description of the testing method; and
   B. a detailed operational description of the method with demonstrations;

3. five hours of instruction on Texas legal aspects of breath alcohol testing;

4. three hours of instruction on supplemental information which is to include nomenclature appropriate to the field of breath alcohol testing;

5. 10 hours of participation in a laboratory setting operating the breath testing equipment. Laboratory practice will include the analysis of reference samples, as well as the analysis of breath samples from actual drinking subjects and completion of all required records and reports needed for documentation;

6. examination time (approximately three hours) which will be considered part of the course.

(c) Each course of instruction shall be coordinated by or under the general direction or supervision of a certified technical supervisor.

(d) All courses of instruction will be open to the scientific director or a designated representative for inspection thereof.

(e) Upon satisfactory proof of compliance of subsections (a) - (d) of this section to the scientific director, the scientific director will approve the course of instruction and its participants will be eligible to apply for operator certification.

(f) Prior to commencing the course it will be the responsibility of the teaching agency to make arrangements with the office of the scientific director for the administration of such examinations.

(g) Prior to the administration of the examination by the scientific director, it shall be the responsibility of the course of instruction coordinator(s) to provide proof that all students attending the course of instruction have been authorized and approved by the technical supervisor responsible for the technical supervision of the operator upon certification. Failure to provide this authorization will delay the administration of the examination and/or certification until such time as proof of authorization can be documented.

(h) Examinations for operator certification after completion of a course will be in accordance with §19.5(a)(4) of this title (relating to Operator Certification). This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on August 23, 2005.

TRD-200503617

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: October 9, 2005

For further information, please call: (512) 424-2135

SUBCHAPTER B. TEXAS IGNITION INTERLOCK DEVICE REGULATIONS

37 TAC §§19.21 - 19.29

The Texas Department of Public Safety proposes amendments to §§19.21 - 19.29, concerning Texas Ignition Interlock Device Regulations.

The principal reason for the revisions to the IID regulations is to have all definitions of terms and actions in §19.21 displayed in like style. Presently, many of the definitions are entirely too informational and procedural. Therefore, the excessive substantive wording in those definitions was removed and relocated to the appropriate location(s) in the remainder of the sections. Additional concerns since the last amendment of these regulations have also prompted amendments to be incorporated, which will clarify and/or make more flexible the department’s position on certain issues.

Section 19.21 is amended to remove all informational and procedural wording in certain definitions as previously discussed.

Section 19.22 is amended to increase the device approval processing fee from fifty ($50) dollars to five hundred ($500) dollars due to the prolonged and complex evaluation procedures necessary to ensure the device meets the technical requirements of these regulations. The section is also amended to limit the number of devices a manufacturer may have on the approved list in order to increase the effectiveness of the department’s oversight of the industry and to encourage the most updated technology in device design.

Section 19.23 is amended to address the issue of only one rolling retest violation (for failure to deliver it) being recorded even if the vehicle was driven for an extended period of time after the initial failure to deliver the rolling retest sample. The issue was
addressed by requiring subsequent retests at required intervals and recording violations until the test is delivered or the engine is turned off.

Section 19.24 is amended to require the service center and the ignition interlock device to be utilizing the latest version of the manufacturer’s software and to notify the department of software changes. In addition, the amendment requires the manufacturer as well as the service center to maintain customer records and make same available upon request.

Section 19.25 is amended to clarify the definition of calibration confirmation test and requires the vendor’s software be capable of performing, documenting and reporting the result of this test. The amendment also clarifies the protocol to be followed should a service center go out of business.

Section 19.26 is amended to outline the specific protocol wherein a manufacturer could appeal the denial or withdrawal of approval of a device. Current wording only speaks to the fact denial or withdrawal of approval can be appealed, and no protocol is specified.

Section 19.27 is amended to require a designated waiting area so that a customer cannot witness the installation of the device. The department is requiring the vendor software to document the representative performing the monitor check and when it is performed. A major revision added to this section addresses device removal, which is not covered in the present regulations. The amendment further establishes the specific protocol by which the service center could appeal the denial, suspension or revocation of certification.

Section 19.28 is amended to give the inspector the right to require a service representative to demonstrate competency to perform any/all aspects of their job responsibilities that are required by regulation. Also established in this section is the specific protocol by which the service representative can appeal the denial or suspension of certification.

Section 19.29 is amended to establish the specific protocol by which an inspector can appeal the denial or suspension of certification.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the amendments are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the amendments are in effect the public benefit anticipated as a result of enacting the amended sections will be rule clarification, which will enable the department to enforce shortcomings in interlock vendor actions and guide the interlock vendor to more easily regain lost certification in this program. The anticipated cost to small and large businesses that are required to comply with the amendments as proposed will be the $500.00 nonrefundable processing fee required to be submitted along with the request for approval of the Ignition Interlock device as well as the cost of mailing or shipping the device to the department. There is no anticipated adverse economic effect on individuals who are required to comply with the amendments as proposed.

Comments on the proposal may be submitted to Martin Simon, Assistant Manager, Breath Alcohol Test Bureau, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0570, (512) 424-5203.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department’s work; Texas Transportation Code, §521.246, which requires the department to create and maintain these rules, and §521.247 which states the manufacturer shall reimburse the department for any cost incurred in approving the device.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.246 and §521.247 are affected by this proposal.


The following words and terms, when used in this subchapter [underline designated head], shall have the following meanings, unless indicated otherwise:

1. Alcohol--Ethyl alcohol, also called ethanol [Ref:anol].

2. Alcohol concentration--The weight amount of alcohol contained in a unit volume of breath or air, measured in grams of alcohol/210 [Ref:anol/210] liters of breath or air and expressed as grams/210 liters. [Breath alcohol concentration in these regulations shall be designated as “alcohol concentration.”]

3. Alveolar air--[Also called “deep lung air” or “alveolar breath.”] An air sample which is the last portion of a prolonged, uninterrupted exhalation [and which gives a quantitative measurement of alcohol concentration] from which breath alcohol concentrations can be determined. [“Alveolar” refers to the alveoli, which are the smallest air passages in the lungs, surrounded by capillary blood vessels through which an interchange of gases occurs during respiration.]

4. Anticircumvention feature(s)--Any feature or circuitry incorporated into the ignition interlock device [Ignition Interlock Device (IID)] that is designed to prevent human tampering which would cause the device not to operate as intended.

5. Approval--Meeting and maintaining the requirements of these regulations for approval [and placement on the department’s list of approved devices]. Approval may be denied, cancelled, withdrawn, and/or suspended at any time, for cause by the department.

6. Appropriate judicial authority--Court orders or personnel of the Texas judicial system including but not limited to: the court or judge ordering the installation, adult probation or parole authorities, pretrial services authorities and occupational licensing authorities. [A phrase used throughout these regulations that is meant to include personnel or court orders of the Texas judicial system including but not limited to: the actual court order requiring or authorizing installation of an IID, the court (or judge) that ordered or authorized that installation, pretrial services authorities having to do with bail bond requirements in these matters, adult supervision (or adult probation) authorities and/or occupational licensing authorities.]

7. Bogus air sample--Any gas sample other than the unaltered, undiluted, or unfiltered alveolar air sample coming from the individual [required to have an ignition interlock device installed in his/her vehicle].

8. Breath alcohol analysis--The analysis [Analysis] of a sample of the person’s expired alveolar breath to determine the alcohol concentration thereof (of alcohol in the person’s breath).

9. Certification--Meeting[.]

[±A Certification refers to meeting] and maintaining the requirements of [set forth in] these regulations for certification. [Under the provisions of these regulations, certification is granted to:]

[±I inspectors.]
(10) Certified IID inspector[.].--An [Refer to an] individual who meets the requirements [stated] in §19.29 of this title (relating to Ignition Interlock Device Inspector).

(11) Certified service center--Any fixed site or mobile [Refer to any] IID service center, whether fixed site or mobile, meeting and maintaining the requirements [provisions stated] in §19.27 of this title (relating to Certification and Inspection of Service Centers).

(12) Certified service representative--Any [Refer to an] individual who has successfully completed the requirements [stated] in §19.28 of this title (relating to Service Representative) [these regulations] and has received certification from the department to install, inspect, download, calibrate, repair, monitor, maintain, service and/or remove a specific ignition interlock device(s). [Service representative certification is contingent upon compliance with all provisions stated in §19.28 of this title (relating to Service Representatives).]

(13) Costs--The nonrefundable original administrative fees plus any and all costs incurred by the department for testimony and/or approval, or reevaluation, of any device. [Any and all incurred costs and expenses shall be the responsibility of the manufacturer and shall be reimbursed to the department within 30 days. Additionally the reasonable cost of providing legislatively mandated inspections of certified service centers shall be reimbursed to the department in the form of inspection fees payable by either the manufacturer or vendor, whichever is appropriate. Failure to pay or reimburse the department for these reasonable costs shall result in the denial or loss of certification of the affected service center(s).]

(14) Data storage system--A computerized recording of all events monitored by the installed IID, which may be reproduced in the form of required reports.

(15) Department--The unmodified word department in these regulations refers to the Texas Department of Public Safety.

(16) Device--An ignition interlock device [abbreviated in this title as IID].

(17) Director--The chief executive officer of the department.

(18) Emergency bypass--An [a one-time event[, authorized by a service representative] that permits the IID-equipped vehicle to be started without the requirement of passing the breath test. [This event must be recorded in the Data storage system. Also see Illegal Start.]

(19) Filtered air samples--Any mechanism by which there is an attempt to remove alcohol from the human breath sample. [Filters would include, but are not limited to, silica gel, diuretics, cut litter, cigarette filters, water filters, cotton, etc.]

(20) Fixed-site service center--A certified service center that is at a permanent location[, i.e., not mobile].

(21) Free restart--The [condition in which a test is successfully completed and the motor vehicle is started, and then at some point the engine stops for any reason (including stalling). A free restart is the] ability to start the engine again, within a reasonable time as approved by the department, without completion of another breath alcohol analysis. [This free restart does not apply, however, if the IID was awaiting a rolling reset that was not delivered.]

(22) IID--The common abbreviation for ignition interlock device [Ignition Interlock Device used throughout these regulations].

(23) Ignition interlock device [abbreviated in this title as IID].--A device [that is a breath alcohol analyzer that is connected to a motor vehicle ignition. In order to start the motor vehicle engine, a driver must deliver an alveolar breath sample to the IID] which measures an individual’s breath [the] alcohol concentration and prevents the motor vehicle from starting if, [If] the alcohol concentration meets or exceeds the startup set point [on the interlock device, the motor vehicle engine will not start].

(24) Illegal start--The starting of an [An event wherein the] IID-equipped vehicle [is started] without the requisite breath test having been taken and passed [and/or is started when the IID is in a lockout condition or is started by enabling an unauthorized emergency bypass. Any and all of these events shall be recorded in the Data storage system as violations.]

(25) Inactivation--The voluntary or temporary discontinuance of certification.

(26) Interlock--The mechanism which prevents a motor vehicle from starting when the breath alcohol concentration of a person meets or exceeds a preset value.

(27) Lockout condition--A condition [state] wherein the IID will not allow the vehicle to be started until a certified service representative completes a violation reset, downloads the Data storage system and restores the IID to a state that will allow the vehicle to be
(28) Manufacturer--The actual producer of the device.

(29) Manufacturer’s representative--An individual or [and/or] entity designated by the manufacturer to act on behalf of or represent the manufacturer of a device. [May be synonymous with vendor.]

(30) Mobile service center--Any IID facility that has the personnel and equipment capability to be in use separately and simultaneously with its [its] parent fixed site service center, whether set up in a vehicle or temporarily set up at a site with a permanent foundation.

(31) Negative result--A test result indicating that the alcohol concentration is less than the startup set point value.

(32) Positive result--A test result indicating that the alcohol concentration meets or exceeds the startup set point value.

(33) Proficiency test--A test administered by, and in the presence of, an IID inspector or designated representative of the department to establish and/or ascertain the competency of a service representative [with regard to install, inspect, download, calibrate, repair, monitor, maintain, service and/or remove a specific ignition interlock device(s) IID equipment].

(34) Purge--Any mechanism which cleanses or removes a previous breath or reference sample from the device and specifically removes alcohol.

(35) Reference sample device--A device containing a sample of known alcohol concentration. [Recertification--Recertification refers to the regaining of lost certification; for example, certification loss by inactivation, suspension, or revocation. Unless provided for by specific provision in these regulations; application for recertification requires a written request from the applicant to the department. Upon receipt of the request, the applicant will be advised of the necessary procedure to regain certification. Recertification requires the successful completion of requirements stated in §19.27, §19.28 or §19.29 of this title (relating to Certification and Inspection of Service Centers, Service Representative, and Ignition Interlock Device Inspector) as appropriate, and/or additional requirements as stated by the department.]

(36) Renewal of certification--Meeting the requirements of these regulations for renewing certification; for example, a representative renewing current certification, or a representative or operator renewing certification after a period of inactivation or suspension, or a service center renewing certification after a period of inactivation, suspension or revocation. [Reference sample device--A device which generates a headspace gas above a water/alcohol solution that is maintained at a thermostatically controlled temperature. This headspace gas can be used to simulate the breath alcohol concentration of an individual who has been drinking alcoholic beverages and whose alcohol concentration is reflected in an analysis of a breath sample. The results of this analysis are expressed as grams of alcohol/210 liters of breath.]

(37) Retest set point--An [A pre-set or pre-determined] alcohol concentration determined by the department [setting], which is the same [40.03a] as the startup set point, at which[, or above, during a rolling retest, the device will record in the data storage system[,] the high alcohol result as a violation.

(38) Revocation--The immediate cancellation of certification.

(a) Revocation refers to the immediate cancellation of certification. Revocation is an action taken only by the department. To regain certification after revocation requires a written request from the applicant to the department and successful completion of the requirements for certification and/or recertification and/or any additional requirements determined by the department. Revocation invalidates any current IID program certification issued to the revoked entity for the period of revocation and until recertification. Unless provided for by specific provision in these regulations, revocation will apply when the holder of the certification no longer meets the criteria for certification. Examples of cases for which revocation will apply include, but are not limited to, the following:

(i) a certified IID service center that no longer meets the requirements of these regulations because of unliability, incompetence, or violation of these regulations.

(ii) A certified inspector or service representative who is no longer in compliance with the requirements for certification under these regulations including a certified inspector or certified service representative who, subsequent to certification, is convicted of driving while intoxicated, theft, a crime involving moral turpitude, or any offense classified as a felony.

(iii) any case where, in the opinion of the department, continuance of certification would not uphold the scientific integrity of the IID program.

(b) If after the appealed process, the revocation of a service center is sustained, the revoked entity shall be required to replace the IID service and/or the IID as in §19.25(e) of this title (relating to Maintenance and Calibration Requirements).

(c) In the event that no appeal from the revoked service center is forthcoming, the revoked entity shall have 30 days to achieve the requirements of §19.25(e) of this title (relating to Maintenance and Calibration Requirements).

(d) Revocation will be for the purpose of enforcing these regulations and maintaining the scientific integrity of the Texas IID program. A revocation may be appealed to the director, Texas Department of Public Safety.

(39) Rolling retest--A randomly required test subsequent to the initial [After passing the] test allowing the engine to start[, the IID shall require a second test within a randomly variable interval ranging from 5 to 15 minutes. Third and subsequent tests shall be required at intervals not to exceed 45 minutes from the previously requested test for the duration of the travel. See Retest set point].

(40) Rolling retest violation--The violation [An event] recorded in the data storage system when the rolling retest requirement is not met.

(41) Service center--The physical location where the service representatives perform their IID services. Also see certified service center.

(42) Service representative--See Certified service representative.

(43) Startup set point--An [A pre-set or pre-determined] alcohol concentration determined by the department [setting] at which, or above, the device will prevent the ignition of a motor vehicle from operating. That set point [value] shall be an alcohol concentration of 0.030 0.03 g/210 liters of breath.
(42) [444] Suspension--The [Suspension refers to the] immediate cancellation or curtailment of certification [and may be applied to any certified IID entity when, because of unreliability, incompetence, or violation of these regulations that entity is not in compliance with the provisions stated in these regulations or when continuance of such certification in the opinion of the department would not uphold the scientific integrity of the IID program. A suspension can be initiated by an IID inspector or designated representative of the department. Prior to appeal to the director, suspensions may be set aside or continued only after investigation by the department. The minimum period of suspension as determined by the department will be for a period of time not less than 30 days. The IID inspector or a designated representative of the department may recommend a specific period of suspension to the department.]

[A] A suspension cancels any certification issued to a suspended inspector or service representative for a period of suspension until recertification. During a suspension, the suspended entity is barred from providing any service in the IID program.]

[B] A suspension cancels any certification issued to a suspended service center for a period of suspension until recertification. During a suspension, the suspended service center may continue to provide service to those IID customers in existence prior to the suspension, but shall not require new IID customers during the period of suspension.]

[C] To regain certification after the period of suspension requires a written request from the suspended entity to the department. Upon receipt of the written request, the applicant will be advised of the necessary steps to be taken in order to regain certification. Suspension will not be considered by the department to be a disciplinary action but shall be for the purpose of maintaining the scientific integrity of the ignition interlock program and upholding these regulations. A suspension may be appealed to the director, Texas Department of Public Safety.]

(43) [448] Tampering--An overt or conscious attempt to physically disable or otherwise disconnect the IID from its power source and thereby allow the operator to start the engine without taking and passing the requisite breath test. [This attempt; whether successful or not, shall be recorded in the data storage system as a violation.]

(44) [446] Vendor--The manufacturer, the manufacturer’s representative or the person or entity representing the manufacturer, of an approved IID and[,] responsible for the day-to-day operational activities and [the continuing certification] of an IID service center. [Must have manufacturer’s approval for use of a particular approved IID either through purchase or lease agreement. May be synonymous with manufacturer’s representative.]

(45) [442] Violation--Any of several events including but not limited to [such things as] high alcohol concentrations, illegal starts, and failures to present rolling retest, whether from a violation set point or from a retest set point, a rolling retest violation, tampering or an illegal start. These events, recorded in the data storage system, must be reported as per appropriate judicial requirements and which, when accumulated to a total determined by the appropriate judicial authority, shall enter a lockout condition within a period not to exceed 5 days and require a violation reset.

(46) [448] Violation reset--An unscheduled service of the IID and download of the data storage system by the service center required because an accumulation of violations has reached a number (1) predetermined by the department [appropriate judicial authority] that generates a lockout condition. This information shall be reported to the appropriate judicial authority within 48 hours after the violation reset.

(47) [493] Violation set point--An [a pre-set or pre-determined] alcohol concentration determined by the department [setting] at which, or above, the device will record the high alcohol result in the data storage system as a violation.

(48) [504] Withdrawal of approval--Cancellation of approval of an ignition interlock [a] device or reference sample device; to wit, the device(s) not meeting or maintaining these regulations.


(a) All ignition interlock devices to be used in the state pursuant to Texas Transportation Code, Chapter 521, must be approved by the department. These regulations and requirements apply only to IID usage in the Texas judicial system in applications such as [that not limited to] pretrial services (bail bond requirements), adult supervision (probation or parole requirements) and [and/or] occupational licensing requirements. They are not intended to apply to or limit IID use in a voluntary or non-adjudicated scenario such as a parent having an IID placed on a child’s motor vehicle.

(b) The department will establish and maintain a list of approved devices [by model and/or class] for use in the state.

(c) If application is made for approval of a device [by model and/or class] not on the approved list, the following procedures [and standards] shall apply.

(1) A manufacturer or manufacturer’s representative requesting approval of a device must submit a production model of the device, along with a written request for approval. It shall be the responsibility of the manufacturer or the manufacturer’s representative to incur costs of mailing or shipping the device to and from the department. It shall also be the responsibility of the manufacturer or the manufacturer’s representative to submit a certified check or money order in the amount of $500 [500] payable to the Texas Department of Public Safety (this is an administrative approval processing fee and is nonrefundable). In the event of non-approval, additional requests for approval may be limited by the department. The department shall not get involved in research and development procedures of these devices.

(2) Accompanying each device shall be a notarized letter and/or affidavit from a testing laboratory certifying that the submitted device [by model and/or class] meets or exceeds applicable minimum standards for breath alcohol ignition interlock devices established by the National Highway Traffic Safety Administration (NHTSA) at the time approval is requested. [All requirements set forth in §19.23 of this title (relating to Technical Requirements) and §19.24(a) and (b) of this title (relating to Miscellaneous Requirements)] and/or any other requirements as determined by the department. This letter and/or affidavit shall also include:

(A) the name and location of the testing laboratory;

(B) the address and phone number of the testing laboratory;

(C) a description of the tests performed;

(D) copies of the data and results of the testing procedures; and

(E) the names and qualifications of the individuals performing the tests.

(d) Prior to approval of the device, the manufacturer or the manufacturer’s representative shall complete and submit an application approval affidavit available from the department. The notarized application approval affidavit shall be signed by the manufacturer or
the manufacturer’s representative. This approval affidavit shall state that the device meets or exceeds all standards set forth in these regulations and will be calibrated and maintained pursuant to [by model and/or class will be calibrated and maintained pursuant] to these regulations and as designated by the department.

(1) If a device is submitted for approval by a party other than the manufacturer, the submitting party shall submit a notarized affidavit from the manufacturer of the device certifying that the submitting party is an authorized manufacturer’s representative and that it is agreed and understood that any action taken by the department or any cost incurred in accordance with the provisions of these regulations shall ultimately be the responsibility of the manufacturer.

(2) After the device is approved, in order to do business in the Texas IID program, a manufacturer must vend through a certified [Certified] IID service center [Service Center] as described in §19.27 of this title (relating to Certification and Inspection of Service Centers).

(3) In order to effectively inspect and oversee the IID program, the department may limit the number of devices a manufacturer has on the approved list. Wherein a manufacturer or manufacturer’s representative requests approval of a subsequent model device that introduces improvements to the design or technology of a currently approved model, the department may stipulate the time frame by which the currently approved model must be removed from service and replaced by the subsequent model device.

(e) An annual reevaluation of the approved IID, pursuant to Texas Transportation Code, Chapter 521, shall be required in order for continued approval. This reevaluation shall consider those requirements in §§19.23-19.25 of this title (relating to Technical Requirements, Miscellaneous Requirements, and Maintenance and Calibration Requirements). The cost of this reevaluation shall be the same as for the initial approval process noted in subsection (e)(1) of this section.

(f) Vendors shall annually [Annually] provide to the department a written report of each available service and feature of all approved IIDs [made available by the manufacturer]. The department shall make available the form for this report.

(g) The vendor shall notify the department in writing if the [certification or approval or certification] of a device that is approved for use in Texas is or ever has been [suspended, revoked or denied], withdrawn, suspended or revoked in another state, whether such action occurred before or after approval in Texas. This notification shall be made in a timely manner, not to exceed 30 days, after the vendor has received notice of the denial, withdrawal, suspension or [revocation, or denial] of [certification or approval or certification] of the device, whether or not the action is or has been appealed.

(h) Nothing in these regulations shall imply that an IID which was approved under an earlier version of these regulations is no longer approved because of revisions to these regulations, except for legislated requirements such as in subsection (c) of this section or changes in technology as referred to in §19.24(b)(2) of this title (relating to Miscellaneous Requirements) and §19.26(b)(2) of this title (relating to Approval, Denial, and Withdrawal of Approval).


(a) Accuracy. The startup set point value for the interlock device shall be an alcohol concentration of 0.030 g/210 liters of breath. The accuracy of the device shall be 0.030 g/210 liters plus or minus 0.010 g/210 liters. The accuracy will be determined by analysis of an external standard generated by a reference sample device, or other methodologies that may be approved by the department.

(b) Alveolar breath sample. The device shall have a demonstrable feature designed to assure that the breath sample that is measured is essentially alveolar.

(c) Precision. The device shall correlate with a known alcohol concentration of 0.030 [0.034] g/210 liters with accuracy set forth in subsection (a) of this section. A correlation of 95% will be considered reliable precision; 95 of 100 times the device must respond to, detect, and prevent the motor vehicle engine from operating when the operator has an alcohol concentration of 0.030 [0.034] g/210 liters or greater, or any other limits as set by the department.

(1) The proportion of false positive results shall not exceed 5.0%.

(2) The proportion of false negative results shall not exceed 5.0%.

(d) Specificity. A test of alcohol-free samples shall not yield a positive result. Endogenously produced substances capable of being present in the breath shall not yield or significantly contribute to positive results.

(e) Temperature. The device shall meet the requirements of subsections (a) and (c) of this section when used at ambient temperatures of -20 degrees Celsius to 83 degrees Celsius or other limits as set by the department.

(f) Rolling retest. To thwart curbside assistance, after passing the test allowing the engine to start, the IID shall require a rolling retest [second test] within a randomly variable interval ranging from 5 to 15 minutes. In order to alert the driver that a retest is to be required, a warning light and/or tone shall come on. If the engine is intentionally or accidentally shutdown during or after the warning but before retesting, the free restart shall not be operative. The driver will then be afforded sufficient time as determined by the department to retest. During the rolling retest, the retest set point shall be the same as the startup set point. The result of this test will be recorded in the data storage system and any result recorded that is equal to or greater than 0.030 g/210 liters shall be recorded as a violation in the data storage system. Second [Third] and subsequent rolling retests shall be required at random intervals not to exceed 45 minutes from the previously requested test for the duration of the travel. Refusal of any rolling retest requested after a sufficient time as determined by the department shall result in a violation being recorded in the data storage system and cause the IID to request a subsequent rolling retest at least every 10 minutes until a test is recorded or the engine is turned off. Continued refusals shall result in additional violations being recorded in the data storage system until a test is recorded or the engine is turned off. [During the rolling retest, the retest set point shall be the same as the startup set point. In order to alert the driver that a retest is to be required, a warning light and/or tone shall come on. The driver will then be afforded sufficient time to retest. If the engine is intentionally or accidentally shutdown after or during the warning but before retesting, the free restart shall not be operative. The failure to take a retest shall be recorded in the data storage system as a violation.]

(g) Vibrational stability. The device shall meet the requirements of subsections (a) and (c) of this section when subjected to simple harmonic motion having an amplitude of 0.38mm (0.015 inches) applied initially at a frequency of 10 Hz and increased at a uniform rate to 30 Hz in 2 1/2 minutes, then decreased at a uniform rate to 10 Hz in 2 1/2 minutes. The device shall also meet the requirements to simple harmonic motion having an amplitude of 0.19mm (0.0075 inches) applied initially at a frequency of 30 Hz and increased at a uniform rate to 60 Hz in 2 1/2 minutes, then decreased at a uniform rate to 30 Hz in 2 1/2 minutes.

(a) Anticircumvention. The device shall be designed so that anticircumvention features will be difficult to bypass.

(1) Anticircumvention provisions shall include, but not be limited to, prevention or preservation of evidence of cheating by attempting to use bogus or filtered breath samples or bypassing the breath sampling requirements of the device electronically.

(2) The device may use special seals or other methods that record attempts to bypass anticircumvention provisions.

(3) The device shall be checked for evidence of tampering at least once every sixty (60) days or more frequently if the need arises.

(4) When evidence of tampering is discovered, the appropriate judicial authority shall be notified in writing and these records shall be made available upon request to the department.

(b) Operational features.

(1) The device shall be designed to permit a free restart of a motor vehicle’s ignition within a reasonable time as approved by the department after the ignition has been shut off, without requiring a further alcohol analysis.

(2) The device shall also automatically purge alcohol before allowing subsequent analyses. In addition to the operational features of these regulations, the department may impose additional requirements, as needed, depending upon design and functional changes in device technology.

(3) The device shall have a data storage system of sufficient capacity to facilitate the recording and maintaining of all daily driving activities for the period of time elapsed from one maintenance and calibration check as [preceded by $19.25(a)(4)$ of this title (relating to Maintenance and Calibration Requirements)] to the next. All daily driving activity records in this data storage system shall be maintained by the service center and the vendor and shall be made available to the appropriate judicial authority or the department upon request.

(4) The device and the service center shall utilize the most current version of the manufacturer’s software and firmware to ensure compliance with these regulations. A reasonable time as determined by the department will be granted if changes to these regulations require manufacturers to upgrade and/or revise their software and/or firmware.

(5) The device shall record emergency bypasses in the data storage system.

(6) When violations trigger a lockout condition requiring a violation reset, the device will enable a unique auditory and/or visual cue that will warn the driver that the vehicle ignition will enter the lockout condition after 72 hours. This event will be uniquely recorded in the data storage system and will simultaneously start a clock that culminates in the actual lockout condition.

(c) Product liability. The manufacturer of the device shall carry liability insurance covering product liability, including coverage in Texas with a minimum policy limit of $1 million.

(d) Service support. The vendor [manufacturer] shall ensure responsibility for service support within a maximum of 48 hours after notification of a reported malfunction. This support shall be in effect during the period the device is required to be installed in a motor vehicle.

(e) Modifications. Once a device [by model and/or class] has been approved, no modification in design or operational concept may be made without prior written consent of the department. This does not include replacement or substitution of repair parts to maintain the device nor software changes that do not modify the operational concept of the device. However, the department is to be notified by the manufacturer of any subsequent software or firmware updates to the existing approved IID.

(f) Warning label. A label warning against tampering, circumventing, or misuse shall be affixed to each device.

(g) Safety. The device shall be designed to comply with generally recognized safety requirements.

(h) Specifications [Specification] and operating instructions. Manufacturers shall provide a precise set of specifications and detailed operating instructions to the department with each device submitted for approval, a precise set of specifications, which describe the features of the device concerned in the evaluation of its performance. A set of detailed operating instructions shall be supplied with each device.

(i) Product indemnity. The manufacturer shall provide a signed statement that the manufacturer shall indemnify and hold harmless the state of Texas, the department and its officers, employees, and agents from all claims, demands, and actions, as a result of damage or injury to persons or property which may arise, directly or indirectly, out of any act or omission by the manufacturer or their representative relating to the installation, service, repair, use and/or removal of an IID.

(j) General. Any other requirements as may be determined necessary by the department to ensure that the device functions properly and reliably.

§19.25. Maintenance and Calibration Requirements.

(a) The device shall be inspected, maintained, and checked for calibration [calibrated for] accuracy and operational performance at least once every sixty (60) days and more frequently, if necessary, as specified by the department [or the appropriate judicial authority]. This maintenance and calibration check will be performed by a certified IID service center as described in §19.27 of this title (relating to Certification and Inspection of Service Centers).

(b) The maintenance and calibration check will consist of, but not be limited to, a check of the device to determine that the device is properly functioning in accordance with the following sections:

(1) Accuracy--§19.23(a) of this title (relating to Technical Requirements):

(A) The device shall be calibrated before placing into service. The calibration described herein shall verify the IID accuracy to be within plus or minus 0.010 g/210 liters of the reference sample predicted value.

(B) Upon return to the service center as in subsection (a) of this section, the device shall be subjected to a calibration confirmation test. This test shall consist of introducing to the device a known alcohol concentration from a reference sample device, the analysis of which indicates the device’s agreement with the known concentration. The vendor’s software shall be capable of performing, documenting and reporting the result of this calibration confirmation test. The test result described herein shall verify the accuracy of the IID to be within plus or minus 0.010 g/210 liters of the reference sample predicted value.

(i) Should the device fail the calibration confirmation test referred to in subsection (b)(1)(B) of this section not agree within plus or minus 0.010 g/210 liters of the reference sample predicted value, the device
shall be recalibrated so as to restore the accuracy described in subsection (b)(1)(A) of this section before the device may be returned to service.

2. anticircumvention—§19.24(a) of this title (relating to Miscellaneous Requirements); and

3. operational features—§19.24(b) of this title (relating to Miscellaneous Requirements).

(c) Maintenance and calibration records shall be maintained by the manufacturer, the manufacturer’s representative, and/or the vendor and shall be provided upon request to the department and/or any appropriate judicial authority.

(d) If at any time the device fails to meet the provisions of this section, the device shall be removed from service or calibrated and/or repaired, and these records shall be made available upon request to the department and/or any appropriate judicial authority [and upon request to the department].

(e) A manufacturer shall be responsible for providing continuing service by a certified service center during the installation period, without interruption, should a certified service center go out of business or be revoked.

1. If the out of business or revoked service center is being replaced by [a] the manufacturer, [shall make] all reasonable efforts shall be made to obtain customer [participant] records and data from the [a certified] service center being replaced and provide them to [a] new certified service center that is within 25 miles of the service center that is going out of business or being revoked. The department and the appropriate judicial authority shall be notified of this event as soon as possible.

2. If the out of business or revoked service center is not replaced, the manufacturer shall retain the records and data as required in subsection (c)(1) of this section. The department and the appropriate judicial authority shall be notified of this event as soon as possible.

(A) The manufacturer whose out of business or revoked service center is not replaced shall be responsible for, and shall bear the cost of, removal of the original IID and replacement with another approved IID, regardless of the manufacturer of the device being substituted, if another manufacturer’s device is available at a certified service center that is no more than 25 miles from the service center that is going out of business or being revoked. The manufacturer shall also determine that each participant with an existing, installed IID is able to obtain the required service within a similar distance, no more than 25 miles further than previously, of the participant’s residence or place of business.

(B) The manufacturer shall make every reasonable effort to notify all customers [participants] of the change of the certified service center or replacement of the device 30 days before the change or replacement will occur, or as soon as is possible.

3. If neither subsection (c)(1) nor subsection (c)(2) of this section can be accomplished, the manufacturer shall be responsible for notifying the customers, the department, [clients] and the appropriate judicial authority that service will be terminated within 60 days, and then removing the devices at no cost to the customers [clients] in question.


(a) All IID service centers conducting business in this state, whether fixed site or mobile, must have the approval of and be certified by the department.

(b) To initiate certification for an IID service center, a vendor or the IID manufacturer’s representative shall submit an application to the department for approval. The application, available from the department, shall show the physical location of the service center, the [brand and/or model of the] ignition interlock device(s) to be merchandised and the reference sample device(s) to be used. The application shall also contain a statement acknowledging permission from the IID manufacturer to vend the IID described by the application. Only IIDs listed on the approved list referenced in §19.22(a) of this title (relating to Procedure for Device Approval) may be merchandised. A vendor applying for certification of an IID service center must agree to:

1. allow access for inspection under subsection (d) of this section,

2. comply with subsection (g) of this section,

3. comply with §19.24(c) [subsection (e) of §19.24] of this title (relating to Miscellaneous Requirements) concerning product liability and liability insurance requirements, and

in any motor vehicle meets or exceeds the minimum standards of these regulations and is the same device [model and/or class] approved by the department. It will further be the responsibility of the manufacturer to provide expert or other required testimony in any civil or criminal proceedings as to the method of manufacture of the device, how said device functions, and the testing protocol by which the device was approved. In the event it should become necessary for the department to provide testimony in any civil or criminal procedures involving the approval or use of the device, the manufacturer shall reimburse the department for any costs incurred in providing such testimony. Failure to provide this reimbursement shall result in withdrawal of approval for the device.

(b) The approval of a device may be denied or withdrawn by the department if:

1. the device, entity, or person fails to meet the requirements [requirement] for approval or is no longer in compliance with all provisions of [under] the Texas ignition interlock device regulations; or

2. changes in IID technology are such that continued approval of the device would, as determined by the department, not be in the best interest of the state of Texas.

(c) Appeal of denial or withdrawal of approval. An applicant whose application for device approval has been denied or whose device approval has been withdrawn may appeal such action as follows: [The denial or withdrawal of an approval may be appealed to the director, Texas Department of Public Safety.]

1. The appeal shall be in writing and shall be received by the department no later than twenty (20) days after receipt of the letter notifying the manufacturer of the action being taken by the department. No enforcement action will be taken by the department during this twenty (20) day period. Written request for appeal should be mailed to: Texas Department of Public Safety, Scientific Director, Breath Alcohol Test Bureau, P.O. Box 4087, Austin, Texas 78773-0570.

2. A request for appeal shall be governed by the provisions of Chapter 2001 of the Texas Government Code, and the procedures found in Chapter 29 of this title (relating to Practice and Procedure).

3. If the department does not receive a timely request for appeal, the department may deny the application for device approval, or sustain the withdrawal of approval without a hearing.

§19.27. Certification and Inspection of Service Centers.

(a) All IID service centers conducting business in this state, whether fixed site or mobile, must have the approval of and be certified by the department.

(b) To initiate certification for an IID service center, a vendor or the IID manufacturer’s representative shall submit an application to the department for approval. The application, available from the department, shall show the physical location of the service center, the [brand and/or model of the] ignition interlock device(s) to be merchandised and the reference sample device(s) to be used. The application shall also contain a statement acknowledging permission from the IID manufacturer to vend the IID described by the application. Only IIDs listed on the approved list referenced in §19.22(a) of this title (relating to Procedure for Device Approval) may be merchandised. A vendor applying for certification of an IID service center must agree to:

1. allow access for inspection under subsection (d) of this section,

2. comply with subsection (g) of this section,

3. comply with §19.24(c) [subsection (e) of §19.24] of this title (relating to Miscellaneous Requirements) concerning product liability and liability insurance requirements, and
(4) comply with §19.24(d) [subsection (d) of §19.24] of this title (relating to Miscellaneous Requirements) concerning service support requirements.

(c) [All] IID testing protocol [techniques], in order to be approved, shall meet, but not be limited to, the following:

(1) A certified IID service center shall be located in a facility which properly and successfully accommodates installing, inspecting, downloading, calibrating, repairing, monitoring, maintaining, servicing and/or removing a specific IID device(s). A designated waiting area that is separate from the installation area is to be provided for the customer. The customer is not to witness the installation of the IID. The service center must incorporate the use of analysis of a reference sample such as headspace gas from a mixture of water and [a known weight of] alcohol [at a known temperature], the results of which must agree with the reference sample predicted value as in §19.25(b)(1)(A) and (B) of this title (relating to Maintenance and Calibration Requirements), or other methodologies that may be approved by the department. Preparatory documentation (such as certificate of analysis) on the reference sample solution(s) shall be available to the department. Only reference sample devices approved by the department may be used in certified IID operations.

(2) All analytical results shall be expressed in grams of alcohol per 210 liters of breath (g/210L). The startup set point shall be an alcohol concentration of 0.030 g/210 liters of breath.

(3) [24] Services rendered by the IID service center must be performed by a properly trained and certified service representative. IID service centers shall maintain sufficient staff to ensure an acceptable level of service. Monitor checks shall be scheduled in a manner such as not to deprive the customer [client] of an acceptable level of service. The IID vendor’s software shall document the representative performing the monitor check and when it was performed. The IID service center must at all times be staffed with at least one certified service representative. Potential service representative candidates may train in the certified IID service center only under the direct supervision of a currently certified service representative. The potential service representative candidate will be given a reasonable time as determined by the department to train before being required to take and pass the IID service representative examination.

[24] All analytical results shall be expressed in grams of alcohol per 210 liters of breath (g/210L).

(4) The applicant must agree to submit, maintain or make available any specified records designated by the department, including but not limited to:

(A) submitting violation(s) if any, of any court order to the appropriate judicial authority, not later than 48 hours after the vendor discovers the violation,

(B) maintaining complete records of each device installation for five years from the date of the removal, and

(C) making all IID records available, either by inspection or via copy to any appropriate judicial authority and upon request to the department.

(5) All anticircumvention features must be activated on any installed IID.

(6) The device must be installed and inspected in accordance with any applicable court order. Furthermore, the service center, through the certified IID representative(s), shall perform a visual inspection of the vehicle, the device, and the device’s wiring to ensure no tampering or circumvention has occurred during the monitoring period. In the case wherein the customer [client] returns to the service center as in §19.25(a) of this title (relating to Maintenance and Calibration Requirements) absent their vehicle, or in the case wherein an individual other than the customer returns with the vehicle, such fact(s) [fact] shall be made available to the appropriate judicial authority.

(7) The applicant must agree to abide by certain conditions for the removal of an IID, including but not limited to the following:

(A) No IID shall be removed without authorization from the appropriate judicial authority and such removal shall be documented and the records retained by the service center.

(B) All certified service representatives and service centers are prohibited from removing the device of another vendor except in an emergency or a special circumstance authorized by the appropriate judicial authority or the department. All such removals are to be documented and reported to the department. The removal records are to be retained by the service center.

(C) When a customer desires to change from one vendor to another, it shall be the responsibility of the original installing vendor to obtain removal authorization from the appropriate judicial authority. Upon authorized removal, a final report shall be made to the appropriate judicial authority, thus ensuring no data being omitted. The appropriate judicial authority should then further dictate the procedure by which the customer shall acquire another vendor’s device.

(D) Certified service representatives in violation of the procedures outlined herein may have their certification inactivated or suspended. Certified service centers found in violation of these procedures may have their certification inactivated, suspended or revoked.

(e) An IID inspector or a designated representative of the department may at any time make an inspection of the certified IID service center to ensure compliance with these regulations.

(f) A designated custodian of records, when required, shall be provided by the vendor to testify in court and provide testimony concerning the interpretation of any data storage system records, as required by these courts and to answer questions concerning certification of the IID program.

(g) Certification of the IID service center is contingent upon the applicant’s agreement to conform and abide by any directives, orders, or policies issued or to be issued by the department regarding any aspect of the IID service center; this shall include, but not be limited to, the following:

(1) program administration;

(2) reports;

(3) records and forms;

(4) inspections;

(5) methods of operations and testing protocol [techniques];

(6) personnel training and qualifications;

(7) criminal history considerations for service representatives; and
(8) records custodian.

(h) Certification of an IID service center may be denied, [withdrawn] inactivated, suspended[,] or revoked by the department if a vendor, service center, service representative, or IID equipment fails to meet all criteria stated in this section, or if the vendor violates or is not in compliance with any of these regulations or if the vendor violates any law of this state that applies to the vendor. [An IID service center whose pending application for certification has been denied, or an IID service center whose certification has been withdrawn, inactivated, suspended or revoked may appeal such action in writing to the director, who will decide whether the action of the department will be affirmed or set aside. The director may allow the pending application for certification of the IID service center, or the director may reinstate certification of the IID service center appealing the withdrawal, inactivation, suspension or revocation of certification under such conditions deemed necessary.]

(1) Service center certification denial. Certification of an IID service center may be denied if a vendor, service center, service representative or IID equipment fails to meet all criteria stated in this section, or if the vendor has violated or is not in compliance with any IID regulation. Furthermore, a vendor’s request to open additional service centers may be denied if there is pending action against the vendor for any violation of these regulations.

(2) Service center inactivation. Inactivation refers to the voluntary or temporary discontinuance of certification. Unless specifically stated otherwise, this loss of certification will be an administrative program control as opposed to suspension or revocation for violation of these regulations or for unviability or incompetence. Inactivation may be initiated by anyone having authority to suspend or revoke, or by the certified service center in case of voluntary surrender of certification. In questionable cases, the decision to accept inactivation or invoke suspension or revocation will be determined by the department. A service center that no longer meets all the requirements for certification shall be inactivated. Inactivation shall be used for administrative program control to safeguard the scientific integrity of the IID program.

(3) Service center suspension. Suspension refers to the immediate curtailment of certification and may be applied to the service center when, because of unviability, incompetence, or violation of these regulations the service center is not in compliance with the provisions stated in these regulations or when continuance of such certification in the opinion of the department would not uphold the scientific integrity of the IID program. A suspension can be initiated by an IID inspector or designated representative of the department. The minimum period of suspension will be for a period of time not less than 30 days. The IID inspector or a designated representative of the department may recommend a specific period of suspension to the department. A suspension curtails any certification issued to the service center for a period of suspension until renewal of certification. During a suspension, the suspended service center may continue to provide service to those IID customers in existence prior to the suspension, but shall not acquire new or transferred IID customers during the period of suspension. The appropriate judicial authorities shall be notified when a service center is suspended. Suspension shall be for the purpose of maintaining the scientific integrity of the IID program and enforcing these regulations.

(4) Service center revocation. Revocation refers to the immediate cancellation of certification. Revocation cancels any certification issued to the revoked service center for the period of revocation and until renewal of certification. Unless provided for by specific provision in these regulations, revocation will apply when the service center no longer meets the criteria for certification or no longer meets the requirements of these regulations because of unviability, incompetence, or violation of these regulations, or in any case where, in the opinion of the department, continuance of certification would not uphold the scientific integrity of the IID program. If after the allowed appeals process, the revocation of a service center is sustained, the revoked service center shall be required to replace the IID service and/or the IID as in §19.25(e) of this title (relating to Maintenance and Calibration Requirements). In the event that no appeal from the revoked service center is forthcoming, the revoked service center shall have 30 days to achieve the requirements of §19.25(e) of this title (relating to Maintenance and Calibration Requirements). The appropriate judicial authorities shall be notified when a service center is revoked. Revocation shall be for the purpose of maintaining the scientific integrity of the IID program and enforcing these regulations.

(i) Appeal of denial, suspension or revocation. An IID service center whose pending application for certification has been denied, or an IID service center whose certification has been suspended or revoked may appeal such action as follows:

(1) The appeal shall be in writing and shall be received by the department no later than twenty (20) days after receipt of the letter notifying the service center of the action being taken by the department. No enforcement action will be taken by the department in the twenty (20) day period. Written request for appeal should be mailed to: Texas Department of Public Safety, Scientific Director, Breath Alcohol Test Bureau, P.O. Box 4087, Austin, Texas 78773-0570.

(2) A request for appeal shall be governed by the provisions of Chapter 2001 of the Texas Government Code, and the procedures in Chapter 29 of this title (relating to Practice and Procedure).

(3) If the department does not receive a timely request for appeal, the department may deny the application for certification or sustain the suspension or revocation of certification without a hearing.

(i) [§] The renewal of certification [Recertification] of a service center whose certification has been [withdrawn] inactivated, suspended or revoked will require a written request from the applicant to the department and successful completion of the original requirements for certification as outlined in subsection (b) of this section and/or other requirements as determined by the department.

§19.28. Service Representative.

(a) Initial certification.

(1) In order to apply for certification as a service representative of an ignition interlock device service center, an applicant must successfully attain the following:

(A) proof of employment by an ignition interlock device service center that meets the requirements set forth in §19.27 of this title (relating to Certification and Inspection of Service Centers); and

(B) documentation from the aforementioned employer that the applicant is currently trained in all necessary aspects of the specific IIDs involved in the vendor’s [vendor’s] service center.

(C) If a service representative is certified to work with a specific device [brand and model of equipment] and is required to be certified on an additional device [brand and model of equipment], the department may waive portions of subsection (a)(1)(B) of this section and require only that instruction needed to acquaint the applicant with proper operation of the new device [brand and model of equipment].

(2) Prior to initial certification as a service representative of an ignition interlock device service center, an applicant must satisfactorily complete a written examination which shall cover [the] regulatory and other aspects of the Texas IID Program.
(A) Failure of the initial written examination will cause the applicant to be ineligible for reexamination for a period of 30 days.

(B) A subsequent failure will be handled the same as an initial failure.

(3) An applicant who has been convicted of driving while intoxicated, theft, a crime involving moral turpitude, or any offense classified as a felony, within five years prior to the date of filing of the applicant’s application for certification as an IID service representative is not eligible for certification. For purposes of this section, a conviction means the applicant was adjudicated guilty by a court of competent jurisdiction.

(4) The department, with advance notice to IID vendors, may impose additional requirements for service representative certification should the need be warranted.

(5) Upon successful completion of the requirements for initial certification, the department will issue the individual a service representative’s certificate valid for a period of time designated by the department unless certification is [withdrawn, inactivated or, suspended, or revoked].

(b) Proficiency requirements.

(1) The IID inspector or designated representative of the department may at any time require a service representative to demonstrate the competency to install, inspect, download, calibrate, repair, monitor, maintain, service and/or remove a specific ignition interlock device(s).

(2) It is the responsibility of the individual service representative to maintain proficiency.

(3) Failure to pass a proficiency test as defined in §19.21 of this title (relating to Explanation of Terms and Actions) will result in the service representative’s certification being suspended for thirty (30) days.

(c)[ba] Renewal of current certification. The service representative is required to renew certification prior to its expiration date. The minimum requirement for renewal of service representative certification will be:

(1) a biennial written acknowledgement from the service representative’s employing IID vendor that this service representative is both:

(A) employed by the vendor in the capacity of a service representative, and

(B) currently trained in all necessary aspects of the IID's involved in the vendor’s service center.

(2) a biennial written acknowledgement from the service representative that he or she still meets the requirement of subsection (a)(3) of this section.

(3) Renewal of certification will be denied and current certification will be inactivated when the service representative[s]

[A(A)] fails to furnish the proper documentation required in this subsection, subsections (b)(1A) and (B) of this section, or

[b(B)] fails to meet the requirements of subsection (a)(3) of this section.

(4) Upon successful completion of the requirements for renewal of certification, the department will issue the individual a service representative’s certificate valid for a period of time designated by the department or until next renewal unless certification is [withdrawn, inactivated or, suspended, or revoked].

(d) [ica] Certification of the service representative may be denied, [withdrawn, inactivated or, suspended or revoked] by the department if the service representative fails to meet all criteria stated in this section, or if the service representative violates or is not in compliance with any of these regulations [the requirements of these regulations. A person whose pending application for certification has been denied, or a service representative whose certification has been withdrawn, inactivated, suspended or revoked may appeal such action to the director, who will decide whether the action of the department will be affirmed or set aside. The director may allow the pending application for certification as an IID service representative, or the director may reinstate certification of the IID service representative appealing the withdrawal, inactivation, suspension or revocation of certification under such conditions deemed necessary].

(1) Service representative certification denial. Certification of an IID service representative may be denied if a service representative fails to meet all criteria stated in this section or if the service representative has violated or is not in compliance with any IID regulation. Furthermore, a service representative’s request for certification may be denied if there is pending action against the service representative for any violation of these regulations.

(2) Service representative inactivation. Inactivation refers to the voluntary or temporary discontinuance of certification. Unless specifically stated otherwise, this loss of certification will be an administrative program control as opposed to suspension for violation of these regulations or for unavailability or incompetence. Inactivation may be initiated by anyone having authority to suspend or revoke, or by the certified representative in case of voluntary surrender of certification. In questionable cases, the decision to accept inactivation or invoke suspension will be determined by the department. Inactivation shall be used for administrative program control to safeguard the scientific integrity of the IID program. It may be used in, but not limited to, the following situations:

(A) a service representative terminates employment under which certification was acquired and new employment does not require certification, or the new location of the service representative cannot be ascertained; or

(B) a service representative fails to renew current certification and reverts to an inactive status.

(3) Service representative suspension. Suspension refers to the immediate cancellation of certification and may be applied to the service representative when, because of unreliability, incompetence, or violation of these regulations the service representative is not in compliance with the provisions stated in these regulations or when continuance of such certification in the opinion of the department would not uphold the scientific integrity of the IID program. A suspension may also be applied when a representative, subsequent to certification, is convicted of driving while intoxicated, theft, a crime involving moral turpitude, or any offense classified as a felony. A suspension can be initiated by an IID inspector or designated representative of the department. The minimum period of suspension as determined by the department will be for a period of time not less than 30 days. The IID inspector or a designated representative of the department may recommend a specific period of suspension to the department. A suspension cancels any certification issued to the service representative for the period of suspension until renewal of certification. During a suspension, the suspended representative is barred from providing any service in the IID program. Suspension shall be for the purpose of maintaining the scientific integrity of the IID program and enforcing these regulations.

(e) Appeal of denial or suspension. A service representative whose pending application for certification has been denied or a service
representative whose certification has been suspended may appeal such action as follows:

(1) The appeal shall be in writing and shall be received by the department no later than twenty (20) days after receipt of the letter notifying the service representative of the action being taken by the department. No enforcement action will be taken by the department during this twenty (20) day period. Written request for appeal shall be mailed to: Texas Department of Public Safety, Scientific Director, Breath Alcohol Test Bureau, P.O. Box 4087, Austin, Texas 78773-0570.

(2) A request for appeal shall be governed by the provisions of Chapter 2001 of the Texas Government Code, and the procedures found in Chapter 29 of this title (relating to Practice and Procedure).

(3) If the department does not receive a timely request for appeal, the department may deny the application for certification or sustain the suspension of certification without a hearing.

(f) [adi] Renewal [Recertification] of certification of a service representative whose certification has been [withdrawn] inactivated or[s] suspended [or revoked] will require a written request from the applicant to the department and successful completion of the original requirements for certification as outlined in subsection (a) of this section and/or other requirements as determined by the department.

§19.29. Ignition Interlock Device Inspector

(a) The minimum qualifications for certification as an IID inspector are:

(1) graduation from a standard senior high school or the equivalent plus two (2) or more years responsible work experience. College may be substituted for experience on a year-per-year basis.

(2) the satisfactory completion of IID inspector training that is approved by the department, the content of which shall include, but not be limited to familiarity with:

(A) record keeping appropriate to approved IIDs in use in the state of Texas;

(B) operational principles and theories applicable to the program; and

(C) legal aspects of the IID program.

(3) Knowledge and understanding of the scientific theory and principles as to the operation of the IID and reference sample device.

(4) Persons who are currently engaged in business with or employed by an IID manufacturer or an IID vendor shall not be eligible to become a certified IID inspector.

(5) An applicant who has been convicted of driving while intoxicated, theft, a crime involving moral turpitude, or any offense classified as a felony, within five years prior to the date of filing of the applicant’s application for certification as an IID inspector is not eligible for certification. For purposes of this section, a conviction means the applicant was adjudicated guilty by a court of competent jurisdiction.

(6) The department, with advance notice, may impose additional and/or different requirements for IID inspector certification should the need be warranted.

(7) Upon satisfactory proof to the department by the applicant that the minimum qualifications of this subsection have been met, the department will issue a certificate that will be valid unless certification is [withdrawn] inactivated or[s] suspended [or revoked for cause].

(b) Duties. A certified IID inspector will make an onsite inspection of each service center as needed or as directed by the department. Such an inspection will include but not be limited to verification of:

(1) Any and all IID technical requirements as per §19.23 of this title (relating to Technical Requirements).

(2) Any and all IID miscellaneous requirements as per §19.24 of this title (relating to Miscellaneous Requirements).

(3) Any and all IID maintenance and calibration requirements as per §19.25 of this title (relating to Maintenance and Calibration Requirements).

(4) Any and all service center requirements as per §19.27 of this title (relating to Certification and Inspection of Service Centers).

(5) Any and all service representative requirements as per §19.28 of this title (relating to Service Representative).

(c) Costs. Vendors shall reimburse the department for the reasonable cost of conducting each inspection of the vendor’s facilities under this section.

(1) The department may conduct more inspections for cause, such as complaints from judicial authorities, adult supervision authorities, or customers [clients] at an additional cost to the service center being inspected.

(2) The calculated cost per inspection will be standardized throughout the IID program unless there are individual vendor circumstances that require additional costs to the department and will consequently be passed through to the affected vendor(s).

(d) Certification of an IID inspector may be denied, [withdrawn] inactivated or[s] suspended [or revoked] by the department if the inspector fails to meet all criteria stated in this section, or if the inspector violates or is not in compliance with any of these regulations [the requirements of these regulations. A person whose pending application for certification has been denied, or an IID inspector whose certification has been withdrawn, inactivated, suspended or revoked may appeal such action to the director, who will decide whether the action will be affirmed or set aside. The director may allow the pending application for certification as an IID inspector, or the director may reinstate certification of the IID inspector appealing the withdrawal, inactivation, suspension or revocation of certification under such conditions deemed necessary].

(1) IID inspector certification denial. Certification of an IID inspector may be denied if an IID inspector fails to meet all criteria of this section, or if the IID inspector has violated, or is not in compliance with any of these regulations. Furthermore, an IID inspector’s request for certification may be denied if there is pending action against the inspector for any violation of these regulations.

(2) IID inspector inactivation. Inactivation refers to the voluntary or temporary discontinuance of certification. Unless specifically stated otherwise, this loss of certification will be an administrative program control as opposed to suspension for violation of these regulations or for unreliability or incompetence. Inactivation may be initiated by anyone having authority to suspend or revoke, or by the certified IID inspector in case of voluntary surrender of certification. In questionable cases, the decision to accept inactivation or invoke suspension will be determined by the department. An IID inspector who terminates employment under which certification was acquired and new employment does not require certification, or whose new location cannot be ascertained shall be inactivated. Inactivation shall be used for administrative program control to safeguard the scientific integrity of the IID program.
Chapter 29 of the department rules was put in place to provide consistent procedures for occupational licensing and administratively contested matters in areas regulated by the department. Several sections of Texas Transportation Code (TRC), including Chapter 521, that apply to driver licenses were made exempt from these rules; the ALR process for driver license suspension has its own unique set of rules. However, TRC Chapter 521 also contains provisions for regulation of the Ignition Interlock Device industry, including the authority for the department to take enforcement action. Therefore, it is necessary to provide procedural rules to set the parameters in situations where an administrative hearing is requested on enforcement on an Ignition Interlock matter. The amendment to §29.2 would satisfy this need.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the amendment is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the amendment is in effect the public benefit anticipated as a result of enforcing the amended section will be to clarify and streamline contested case procedures relating to the Ignition Interlock Program. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Wayne Mueller, Texas Department of Public Safety, Office of General Counsel, P.O. Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department’s work.

Texas Government Code, §411.004(3) is affected by this proposal.

§29.2. Scope.

These rules shall govern the procedure for the institution, conduct and determination of all contested cases arising under the department’s jurisdiction with the exception of cases arising under Texas Transportation Code, Chapters 521, 522, 524, and 724. These rules, however, do apply to contested cases brought under the Ignition Interlock Program, Texas Transportation Code, §§521.247, 521.2475, and 521.2476. These rules do not apply to internal personnel matters of the department.

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

Filed with the Office of the Secretary of State on August 23, 2005.
TRD-200503613
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: October 9, 2005
For further information, please call: (512) 424-2135

CHAPTER 29. PRACTICE AND PROCEDURE

37 TAC §29.2
The Texas Department of Public Safety proposes an amendment to §29.2, concerning Practice and Procedure.

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(3) IID inspector suspension. Suspension refers to the immediate cancellation of certification and may be applied to the IID inspector when, because of unreliability, incompetence, or violation of these regulations the IID inspector is not in compliance with the provisions stated in these regulations or when continuance of such certification in the opinion of the department would not uphold the scientific integrity of the IID program. A suspension may also be applied when an inspector, subsequent to certification, is convicted of driving while intoxicated, theft, a crime involving moral turpitude, or any offense classified as a felony. A suspension can be initiated by a designated representative of the department. The minimum period of suspension as determined by the department will be for a period of time not less than thirty (30) days. The designated representative of the department may recommend a specific period of suspension to the department. A suspension cancels any certification issued to the inspector for a period of suspension until renewal of certification. During a suspension, the suspended inspector is barred from providing any service in the IID program. Suspension shall be for the purpose of maintaining the scientific integrity of the IID program and enforcing these regulations.

(e) Appeal of denial or suspension. An IID inspector whose pending application for certification has been denied, or an IID inspector whose certification has been suspended may appeal such action as follows:

(1) The appeal shall be in writing and shall be received by the department no later than twenty (20) days after receipt of the letter notifying the IID inspector of the action being taken by the department. No enforcement action will be taken by the department during this twenty (20) day period. Written request for appeal should be mailed to: Texas Department of Public Safety, Scientific Director, Breath Alcohol Test Bureau, P.O. Box 4087, Austin, Texas 78773-0570.

(2) A request for appeal shall be governed by the provisions of Chapter 2001 of the Texas Government Code, and the procedures found in Chapter 29 of this title (relating to Practice and Procedure).

(3) If the department does not receive a timely request for appeal, the department may deny the application for certification or sustain the suspension of certification without a hearing.

(f) [Presumably a typographical error, as no text follows the bracketed section header.]

[The proposed rule text continues with the details of the amendment process and considerations.]

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**PROPOSED RULES  September 9, 2005  30 TexReg 5747**
CHAPTER 46. CONTRACTING TO PROVIDE ASSISTED LIVING AND RESIDENTIAL CARE SERVICES

SUBCHAPTER B. PROVIDER CONTRACTS 40 TAC §46.13

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §46.13, concerning housing options, in Chapter 46, Contracting to Provide Assisted Living and Residential Care Services.

Background and Purpose

The purpose of the amendment is to revise requirements for providers contracting to provide assisted living and residential care services through the Community Based Alternatives Assisted Living/Residential Care (CBA AL/RC) Program and the Community Care for the Aged and Disabled Residential Care (CCAD RC) Program to comply with Health and Safety Code, §247.069, as added by Senate Bill 1055 of the 79th Legislature. Section 247.069 requires DADS to allow an individual receiving services through the community based alternatives or the residential care programs to choose an assisted living facility without regard to the number of units in the facility if the facility meets certain requirements.

Section-by-Section Summary

The proposed amendment to §46.13 allows the residential care non-apartment setting of the referenced programs to exceed a capacity of 16 beds if the facility meets certain requirements. Currently, such a setting may not have a capacity that exceeds 16 beds.

The amendment also replaces references to the Texas Department of Human Services (DHS) with references to DADS and clarifies that a residential care non-apartment setting must not exceed double occupancy.

Fiscal Note

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

Small Business and Micro-business Impact Analysis

DADS has determined that there is no adverse economic effect on small businesses or micro-businesses or on businesses of any size as a result of enforcing or administering the amendment, because the amendment does not impose any additional requirements on businesses.

Cost to Persons and Effect on Local Economies

DADS does not anticipate that there will be an economic cost to persons who are required to comply with the amendment. The amendment will not affect a local economy.

Public Benefit

Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is that consumers will have a greater choice of living arrangements in residential care non-apartment settings.

Taking Impact Assessment

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

Public Comment

Questions about the content of this proposal may be directed to Rudy Gomez at (512) 438-3740 in DADS' Community Services Policy Development and Support unit. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-035, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the Texas Register.

Statutory Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §247.069, which requires DADS to allow an individual receiving services through the community based alternatives or the residential care programs to choose an assisted living facility without regard to the number of units in the facility, if the facility meets certain requirements.


§46.13. Housing Options.

(a) Setting. A facility must specify in the contract the type(s) of setting(s) it uses to provide assisted living services according to the following guidelines:

(1) (No change.)

(2) Residential care apartment. A residential care apartment setting is a living unit that is a private space with connected sleeping, kitchen, and bathroom areas and adequate storage space. The bedroom must be double occupancy. The living unit must have private kitchen and bath facilities.

(A) Size. Residential care apartments must have a minimum of 350 square feet of space per client. Indoor common areas used by [Texas] Department of Aging and Disability [Human] Services (DADS) [DHS] clients must be included in computing the minimum square footage. The portion of the common area allocated must not exceed usable square footage divided by the maximum number of individuals who have access to the common areas.

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

(3) Residential care non-apartment. A residential care non-apartment setting is a living unit that does not meet either the definition
of an assisted living apartment or a residential care apartment. A living unit [residential care non-apartment] must not exceed [be] double occupancy. The facility must be:

(A) a freestanding building not physically attached to another licensed facility and have a capacity of 16 or fewer beds; or

(B) a building that:

(i) has never been licensed by DADS as anything other than an assisted living facility;

(ii) is not physically attached to a nursing facility licensed under Texas Health and Safety Code, Chapter 242;

(iii) was constructed before September 1, 2005; and

(iv) meets all other requirements of this chapter.

(A) The facility that specifies the residential care non-apartment setting must be a freestanding building not physically attached to another licensed facility.)

(B) The facility must be licensed as an assisted living facility with a capacity of 16 or fewer beds.

(4) Personal Care 3. A Personal Care 3 setting is only available in the Community Based Alternatives (CBA) Program, and must meet the following qualifications:

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

(D) Sixty percent or more of the total clients served each month must require one-to-one staff assistance. One-to-one assistance is determined by a value of three or more on the DADS [HHS] Client Assessment, Review, and Evaluation form in one or more of the following activities of daily living:

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

(b) (No change.)

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

Filed with the Office of the Secretary of State on August 23, 2005.

TRD-200503625
Phoebe Knauer
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 9, 2005
For further information, please call: (512) 438-3734

CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED

SUBCHAPTER J. 1915(c) MEDICAID HOME AND COMMUNITY-BASED WAIVER SERVICES FOR AGED AND DISABLED ADULTS WHO MEET CRITERIA FOR ALTERNATIVES TO NURSING FACILITY CARE

40 TAC §48.6033, §48.6034

( Editor’s note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §48.6033 and §48.6034, concerning general contracting requirements and housing options for assisted living and residential care providers in the Community Based Alternatives (CBA) Program, in Chapter 48, Community Care for Aged and Disabled.

Background and Purpose

The purpose of the repeal is to delete rules that are duplicative and, therefore, are no longer necessary. The current requirements for contractors providing assisted living and residential care services are found in 40 TAC §46.11 and §46.13 in DADS’ Contracting to Provide Assisted Living and Residential Care Services chapter. An amendment to 40 TAC §46.13 is proposed elsewhere in this issue of the Texas Register.

Section-by-Section Summary

The repeal is proposed to delete the general contracting requirements and the requirements for housing options for providers contracting to provide assisted living and residential care services to individuals receiving services through the CBA Program. The current general contracting requirements are found in 40 TAC §46.11. The current provisions concerning housing options are found in 40 TAC §46.13.

Fiscal Note

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years after the repeal, there are no foreseeable implications relating to costs or revenues of state or local governments.

Small Business and Micro-business Impact Analysis

DADS has determined that the proposed repeal will have no adverse economic effect on small businesses or micro-businesses, or on businesses of any size, because the requirements are found in other sections of the Texas Administrative Code.

Cost to Persons and Effect on Local Economies

DADS does not anticipate that there will be an economic cost to persons who are affected by the repeal. The repeal will not affect a local economy.

Public Benefit

Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years after the repeal, the public benefit expected as a result of repealing the sections is that DADS will no longer have two sets of rules governing general contracting requirements and housing options for providers of assisted living and residential care services under the CBA Program, thus minimizing the potential for confusion.

In addition, the repeal will assist DADS in reducing the number of special provisions that may otherwise complicate the application of DADS’ rules to the CBA Program. DADS has determined that any Takings Impact Assessment notes the text of the following sections proposed for repeal might not be published.

For any questions, please contact Gordon Taylor, DADS Chief Financial Officer, at (512) 438-3734.
Questions about the content of this proposal may be directed to Rudy Gomez at (512) 438-3740 in DADS’ Community Services Policy Development and Support unit. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-035, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the Texas Register.

Statutory Authority
The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

$48.6033. Assisted Living/Residential Care Services General Contracting Requirements.

§48.6034. Housing Options in Assisted Living/Residential Care Services.

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

Filed with the Office of the Secretary of State on August 23, 2005.

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Phoebe Knauer
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 9, 2005
For further information, please call: (512) 438-3734

CHAPTER 50. §1915(c) CONSOLIDATED WAIVER PROGRAM

40 TAC §50.28

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §50.28, concerning housing options in assisted living and residential care services, in Chapter 50, §1915(c) Consolidated Waiver Program.

Background and Purpose
The purpose of the amendment is to revise requirements for providers contracting to provide assisted living and residential care services through the Consolidated Waiver Program to comply with Health and Safety Code, §247.069, as added by Senate Bill 1055 of the 79th Texas Legislature. Section 247.069 requires DADS to allow an individual receiving assisted living or residential care services to choose an assisted living facility without regard to the number of units in the facility if the facility meets certain requirements.

Section-by-Section Summary
The proposed amendment to §50.28(d) allows the residential care non-apartment setting of the Consolidated Waiver Program to exceed a capacity of 16 beds if the facility meets certain requirements. Currently, such a setting may not have a capacity that exceeds 16 beds.

The amendment also clarifies that a residential care non-apartment setting must not exceed double occupancy.

Fiscal Note
Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

Small Business and Micro-business Impact Analysis
DADS has determined that there is no adverse economic effect on small businesses or micro-businesses or on businesses of any size as a result of enforcing or administering the amendment, because the amendment does not impose any additional requirements on businesses.

Cost to Persons and Effect on Local Economies
DADS does not anticipate that there will be an economic cost to persons who are required to comply with the amendment. The amendment will not affect a local economy.

Public Benefit
Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is that consumers will have a greater choice of living arrangements in residential care non-apartment settings.

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

Public Comment
Questions about the content of this proposal may be directed to Alfredo Cervantes at (512) 438-3769 in DADS’ Community Services Policy Development and Support unit. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-035, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the Texas Register.
commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §247.069, which requires DADS to allow an individual receiving services through the community based alternatives or the residential care programs to choose an assisted living facility without regard to the number of units in the facility, if the facility meets certain requirements.


§50.28. Housing Options in Assisted Living/Residential Care Services.

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

(d) A residential care non-apartment setting is a licensed assisted living facility that has living units that do not meet either the definition of an assisted living apartment or a residential care apartment. A living unit must not exceed [living units may be] double occupancy. The facility must be:

(1) a freestanding building with a licensed capacity of 16 or fewer beds; or

(2) a building that:

(A) has never been licensed by the Department of Aging and Disability Services as anything other than an assisted living facility;

(B) is not physically connected to a nursing facility licensed under Texas Health and Safety Code, Chapter 242;

(C) was constructed before September 1, 2005; and

(D) meets all other requirements of this chapter.

[4] be freestanding; and

[2] be licensed for 16 or fewer beds.

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

Filed with the Office of the Secretary of State on August 23, 2005. TRD-200503627
Phoebe Knauer
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 9, 2005
For further information, please call: (512) 438-3734

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

The Texas Department of Transportation (department) proposes amendments to §§1.1, 1.2, and 1.5, concerning the Texas Transportation Commission (commission), the Texas Department of Transportation (department), and public hearings.

EXPLANATION OF PROPOSED AMENDMENTS

Transportation Code, §201.102, requires the commission to develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the executive director and staff of the department. Sections 1.1 and 1.2 were adopted to implement §201.102.

Transportation Code, §201.802, requires the commission to develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and speak on any issue under the jurisdiction of the commission. Sections 1.3, 1.4, and 1.5 were adopted to implement §201.802.

Section 1.1(b) lists the duties of the commission. The section is amended to add the regulation of the distribution and sale of motor vehicles and for the protection of consumers who purchase new motor vehicles. House Bill 2702, 79th Legislature, Regular Session, 2005, abolished the Motor Vehicle Board and transferred its rulemaking powers to the commission. Section 1.1(b) is also amended to delete the provision concerning commission authorization to charge a toll for the use of one or more lanes on a segment of the state highway system for the purpose of congestion mitigation. The statute granting this power was re-codified and consolidated with the commission’s other toll powers so that this item no longer merits a separate listing.

Section 1.2(e) describes the duties of the Motor Vehicle Board. This subsection is deleted due to the provisions of House Bill 2702 that abolish the board.

Section 1.5(a) lists the subjects of public hearings to be held by the commission or its designee. The item describing public input regarding the design and environmental impact of transportation projects is revised to correct a cross-reference to the department’s environmental review and public involvement rules. The item concerning converting a non-tolled highway to a toll project is revised to reflect re-codification of the department’s toll statutes. The item concerning transferring a state highway to various entities is deleted due to statutory changes made by House Bill 2702.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enacting the amendments. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Richard Monroe, General Counsel, Texas Department of Transportation, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Mr. Monroe has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be the availability to the public of information describing the duties and responsibilities of the department and the commission. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Richard Monroe, General Counsel, Texas Department of Transportation, Commission (commission), the Texas Department of Transportation (department), and public hearings.
Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 10, 2005.

SUBCHAPTER A. ORGANIZATION AND RESPONSIBILITIES

43 TAC §1.1, §1.2

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE: Transportation Code, §201.102 and §201.802.

§1.1. Texas Transportation Commission.

(a) (No change.)

(b) Commission responsibilities.

(1) The Texas Transportation Commission, with the advice and recommendations of the executive director, will:

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

(D) award contracts necessary for the improvement of the state highway system, as provided by Transportation Code, Chapter 223, and §§9.10-9.21 [§§9.110-9.20] of this title (relating to Highway Improvement Contracts);

(E) - (H) (No change.)

(I) provide for the development and operation of toll [turnpike] projects on the state highway system;

(J) - (R) (No change.)

(S) provide for the regulation of the distribution and sale of motor vehicles and for the protection of consumers who purchase new motor vehicles; authorize the department to change a toll for the use of one or more lanes on a segment of the state highway system for the purposes of congestion mitigation;

(T) - (AA) (No change.)

(2) (No change.)

(c) (No change.)

(d) Chair of the commission.

(1) The chair of the commission, with the advice and recommendations of the executive director and the executive director’s staff, shall:

(A) - (I) (No change.)

(J) serve as the departmental liaison with the governor and the Office of State-Federal Relations to maximize federal funding for transportation;

(K) - (M) (No change.)

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

§1.2. Texas Department of Transportation.

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

(4e) Motor Vehicle Board. The Motor Vehicle Board of the Texas Department of Transportation (board) is an independent board within the department. The board has broad powers relating to the regulation of motor vehicle dealers, manufacturers, and others. The board’s staff is the department’s Motor Vehicle Division. The executive director will, through the offices of the department, provide equipment, facilities, property, and services necessary to carry out the division’s purposes, powers, and duties. The executive director will allocate department resources as the executive director determines necessary and appropriate to meet the needs of the division and the other offices of the department.

(c) [4f] Automobile Theft Prevention Authority. The Automobile Theft Prevention Authority (authority) is an independent authority within the department. The authority undertakes a variety of programs designed to reduce thefts of motor vehicles. The authority’s staff is included within the department’s Vehicle Titles and Registration Division.

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

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

TRD-200503748

Richard D. Monroe

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: October 9, 2005

For further information, please call: (512) 463-8630

SUBCHAPTER B. PUBLIC MEETINGS AND HEARINGS

43 TAC §1.5

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE: Transportation Code, §201.102 and §201.802.

§1.5. Public Hearings.

(a) Subject of hearings. The commission may hold public hearings to:

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

(3) provide for public input regarding the design, schematic layout, and environmental impact of transportation projects, in accordance with Transportation Code, §203.021, and §2.42 of this title (relating to Federal-Aid Transportation Projects [Highway Construction Projects: Federal Aid]) and §2.43 of this title (relating to Non-Federal-Aid Transportation Projects) [Highway Construction Projects: State Funds];

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

(6) receive comments from interested persons prior to converting a segment of the non-tolled state highway system to a toll project [facility of the department] under Transportation Code, §228.303 [§262.0044];

(7) receive comments from interested parties prior to approving any financial assistance under Transportation Code, §21.111, relating to aviation facilities development; and

(45) receive comments from interested parties prior to transferring a state highway to a regional mobility authority, regional
tollway authority, or a county operating under Transportation Code, Chapter 234; and

(8) [§9] provide, when deemed appropriate by the commission or when otherwise required by law, for public input regarding any other issue under the jurisdiction of the commission.

(b) Authorized representative. The executive director or an employee of the department designated by the executive director may conduct public hearings held under subsection (a)(1), (3), (7), and (8) [§9] of this section.

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

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

Filed with the Office of the Secretary of State on August 30, 2005.
TRD-200503780
Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 9, 2005
For further information, please call: (512) 463-8630

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SUBCHAPTER F. ADVISORY COMMITTEES
43 TAC §§1.82, 1.84, 1.85

The Texas Department of Transportation (department) proposes amendments to §§1.82, 1.84, and 1.85, concerning advisory committees.

EXPLANATION OF PROPOSED AMENDMENTS

The department proposes amendments to its rules governing advisory committees to reflect recently enacted legislation, extend committee sunset dates, and to make minor revisions.

Section 1.82 prescribes rules governing the operations and procedures of department advisory committees that are created specifically by state law.

Section 1.82(c) currently requires the filing of an open meeting notice to be coordinated through the department’s general counsel. To acknowledge that individuals other than the general counsel may review, approve, and file a notice, §1.82(c) is amended to require notice to be coordinated through the department’s Office of General Counsel.

Section 1.82(d) currently provides that advisory committee members are not entitled to receive compensation for serving as members. This rule was originally adopted due to the lack of authority under the general appropriations act to reimburse committee members for their necessary expenses. The current appropriations act does allow reimbursement if approved by the governor and the Legislative Budget Board. To allow for a circumstance where the department may wish to seek approval to reimburse committee members, §1.82(d) is amended to provide that the department may, if authorized by law and the department’s executive director, reimburse a committee member for reasonable and necessary travel expenses.

Section 1.82(i) currently provides that each statutory advisory committee is abolished December 31, 2005. This sunset date was established to comply with Government Code, §2110.008. The department determines that its statutory advisory committees are necessary to improve communication between the department and the public. Therefore, §1.82(i) is amended to revise the sunset date to December 31, 2007.

Section 1.84 creates the department’s statutory advisory committees and describes the committees’ purpose and duties.

Section 1.84(d) creates the Border Trade Advisory Committee. To comply with Senate Bill 183, 79th Legislature, Regular Session, 2005, §1.84(d) is amended to: (1) include the governor as a party to the exchange of communications facilitated by the committee; (2) state that the membership of the committee shall be as provided by Government Code, §772.010; (3) authorize the commission to alter the terms of some members to provide for staggered terms; and (4) provide that the committee may not be abolished as provided by §1.82.

Section 1.85 provides for the creation and operating procedures of advisory committees that are not created by statute.

Section 1.85(a)(1) authorizes the creation of project advisory committees for the purpose of facilitating, evaluating, and achieving support and consensus from the affected community and governmental entities in the initial stages of a highway improvement project. Recognizing that the legislature continues to expand the department’s authority to develop aviation, rail, and transit projects, §1.85(a)(1) is amended to allow the creation of this type of committee for a “transportation” project, instead of just “highway improvement” project.

Section 1.85(a)(4) provides for the creation of a Bicycle Advisory Committee. To comply with Senate Bill 602, 79th Legislature, Regular Session, 2005, §1.85(a)(4) is amended to add a new duty for the committee: advise and make recommendations to the commission on the development of bicycle tourism trails. To codify current department practice, §1.85(a)(4) is also amended to add another new duty for the committee: provide recommendations on the selection of projects concerning the Safe Routes to School Program. To be consistent with new §1.85(d), the authority to reimburse members of the committee for their travel expenses is deleted.

Section 1.85(c) currently provides that each advisory committee created under §1.85 is abolished December 31, 2005. This sunset date was established to comply with Government Code, §2110.008. The department determines that each committee created under §1.85 is necessary to improve communication between the department and the public. Therefore, §1.85(c) is amended to revise the sunset date to December 31, 2007.

Section 1.85(d) is added to allow the department, if authorized by law and the department’s executive director, to reimburse advisory committee members for reasonable and necessary travel expenses.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Richard Monroe, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.
PUBLIC BENEFIT

Mr. Monroe has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be enhanced communication between the department and the public. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Richard Monroe, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 10, 2005.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.114, which requires the commission to establish a Border Trade Advisory Committee; Transportation Code, §201.003, which establishes an Aviation Advisory Committee; Transportation Code, §455.004, which establishes a Public Transportation Advisory Committee; and Government Code, Chapter 2110, which governs the operations of state agency advisory committees.


§1.82. Statutory Advisory Committee Operations and Procedures.

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

(c) Meetings.

(1) Open meeting requirements. Advisory committees shall post and hold all meetings in accordance with the provisions applicable to meetings of the commission under the Texas Open Meetings Act, Government Code, Chapter 551. Filing of notice of open meetings with the Secretary of State shall be coordinated through the department’s Office of General Counsel [general counsel].

(2) Scheduling of meetings. Meeting dates, times, places, and agendas will be set by the officer designated under subsection (f) of this section. Any committee member may suggest the need for a meeting or an agenda item, provided that the committee may only discuss items that are within the committee’s and the department’s jurisdiction. The officer designated under subsection (f) of this section will provide notice of the time, date, place, and purpose of meetings to the members, by mail, email, telephone or any combination of the three [telephone or both], at least 10 calendar days in advance of each meeting. All meetings must take place in Texas and must be held in a location that is readily accessible to the general public.

(3) (No change.)

(4) Removal. A committee member may be removed at any time without cause by the person or entity that appointed the member or by that person’s [person] or entity’s successor.

(5) - (7) (No change.)

(d) Reimbursement. The department, if authorized by law and the executive director, reimburse a member of a committee for reasonable and necessary travel expenses. Current rules and laws governing reimbursement of expenses for state employees shall govern reimbursement of expenses for advisory committee members. [Advisory committee members are not entitled to receive compensation for serving as members.]

(e) - (h) (No change.)

(i) Duration. Except as otherwise specified in this subchapter, each statutory advisory committee is abolished December 31, 2007 [2005], unless the commission amends its rules to provide for a different date.

§1.84. Statutory Advisory Committees.

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

(d) Border Trade Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §201.114, the Border Trade Advisory Committee provides a forum for the exchange of communications among the commission, the department, the governor, and committee members representing border trade interests. The committee’s advice and recommendations will provide the governor, the commission, and the department with a broad perspective regarding the effect of transportation choices on border trade in general and on particular communities. The members of the committee also provide an avenue for interested parties to express opinions with regard to border trade issues.

(2) Membership. The border commerce coordinator designated under Government Code, §772.010, shall serve as the chair of the committee. The commission will appoint the other members of the committee in accordance with Transportation Code, §201.114. The commission will appoint [success] members to staggered three-year terms expiring on August 31 of each year, except that the commission may establish terms of less than three years for some members in order to stagger terms. [The initial membership of the committee will consist of two members whose terms expire on August 31, 2002; two members whose terms expire on August 31, 2003; and three members whose terms expire on August 31, 2004. In appointing members, the commission may consider all relevant facts, including the desirability of geographic and occupational diversity.]

(3) - (4) (No change.)

(5) Rulemaking. Sections 1.82(i) and [Section] 1.83 of this subchapter do [does] not apply to the Border Trade Advisory Committee.

§1.85. Department Advisory Committees.

(a) Creation.

(1) Project advisory committees.

(A) Purpose. The executive director may authorize a district engineer to create, by written order, an ad hoc project advisory committee composed of the following members as may be deemed appropriate by the district engineer: department staff; affected property owners and business establishments; technical experts; professional consultants representing the department; and representatives of local governmental entities, the general public, chambers of commerce, and the environmental community. A project advisory committee shall serve the purpose of facilitating, evaluating, and achieving support and consensus from the affected community and governmental entities in the initial stages of a transportation [highway improvement] project. Advice and recommendations of a committee provide the department with an enhanced understanding of public, business, and private concerns about a project from the development phase through the implementation phase, thus facilitating the department’s communications.
and traffic management objectives, resulting in a greater cooperation between the department and all affected parties during project development and construction.

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

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

(4) Bicycle Advisory Committee.

(A) (No change.)

(B) Duties. The committee shall:

(ii) in accordance with Transportation Code, §201.9025, advise and make recommendations to the commission on the development of bicycle tourism trails;

(iii) provide recommendations on the selection of projects under Chapter 25, Subchapter I of this title (relating to Safe Routes to School Program); and

(iv) review and make recommendations on items of mutual concern between the department and the bicycling community.

(C) (No change.)

[D] Reimbursement. The department may reimburse a member of the Bicycle Advisory Committee for reasonable and necessary travel expenses. Current rules and laws governing reimbursement of expenses for state employees shall govern reimbursement of expenses for advisory committee members.

(5) (No change.)

(b) (No change.)

(c) Duration. Except as otherwise specified in this section, a committee created under this section is abolished December 31, 2007, unless the commission amends its rules to provide for a different date.

(d) Reimbursement. The department may, if authorized by law and the executive director, reimburse a member of a committee for reasonable and necessary travel expenses. Current rules and laws governing reimbursement of expenses for state employees shall govern reimbursement of expenses for advisory committee members.

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

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

TRD-200503749

Richard D. Monroe

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: October 9, 2005

For further information, please call: (512) 463-8630

CHAPTER 9. CONTRACT MANAGEMENT

SUBCHAPTER A. GENERAL

43 TAC §9.1

The Texas Department of Transportation (department) proposes amendments to §9.1, concerning claims for purchase contracts.

EXPLANATION OF PROPOSED AMENDMENTS

House Bill 1940, 79th Legislature, Regular Session (2005) amended Government Code, Chapter 2260. That chapter contains the procedure for resolving contract claims that arise under the State Purchasing and General Services Act, Government Code, Chapter 2155. The Texas Transportation Commission (commission) has previously adopted §9.1 to implement that procedure.

The proposed amendments make three changes to the current rule. First, §9.1(b)(3) is amended to update the definition of director of contract services to reflect the incorporation of the former, Contract Services Office into the Office of General Counsel. Second, §9.1(d)(1) is amended to provide that negotiations will start no later than 120 days after a claim is received. This change makes the rule consistent with the statutory change made by House Bill 1940. And third, the reference to §1.21 is changed to update the subchapter title.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the section as proposed.

Richard D. Monroe, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Mr. Monroe has also determined that for each of the first five years the section is in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be to ensure that the public has access to accurate information regarding the claims process for purchase contracts. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Richard D. Monroe, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 10, 2005.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, under Government Code, §2260.052(c), which requires each state agency with rulemaking authority to adopt rules governing the negotiation of claims under Government Code, Chapter 2260.

CROSS REFERENCE TO STATUTE: Government Code, Chapter 2260.

§9.1. Claims for Purchase Contracts.

(a) (No change.)

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

(1) - (2) (No change.)
The Texas Department of Transportation (department) proposes amendments to §§9.15, 9.17, and 9.18, concerning highway improvement contracts.

EXPLANATION OF PROPOSED AMENDMENTS

Transportation Code, Chapter 223, Subchapter A, prescribes the method by which the department receives competitive bids for the improvement of highways that are a part of the state highway system. Pursuant to this authority, the Texas Transportation Commission (commission) has previously adopted §§9.10-9.21 to specify the process by which the department will administer and manage highway improvement contracts.

Section 9.15(b)(1)(H) is revised to state that a proposal will not be accepted or read if, when required, the bid does not include a fully completed historically underutilized business subcontracting plan as prescribed by §9.54(c)(1) of this title (relating to Historically Underutilized Business (HUB) Program). This revision is necessary to provide clarity regarding specific HUB plan requirements associated with bid acceptance or rejection by the department.

Section 9.17(d) is revised to increase the maximum bid amount from $100,000 to $300,000 for the possible award of a maintenance contract to the second lowest bidder when the lowest bidder withdraws their bid after bid opening. This revision is necessary in order to implement statutory revisions to Transportation Code, §223.0041, as contained in SB 573, 79th Legislature, Regular Session, 2005.

Section 9.18(c) is revised to allow for an alternative form of performance and payment bond on maintenance contracts. This revision is necessary in order to implement statutory revisions to Transportation Code, §223.042, as contained in HB 2659, 79th Legislature, Regular Session, 2005.

Revisions to §§9.15, 9.17 and 9.18 also include minor formatting changes. To be consistent, references to "this title" have been changed to "this chapter."

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the section as proposed.

Thomas Bohuslav, P.E., Director, Construction Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Mr. Bohuslav has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amended sections will be will be to further the department’s mission to provide an efficient and fair process of administering the award or rejection of highway improvement contracts. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Thomas Bohuslav, P.E., Director, Construction Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 10, 2005.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §§223.001-223.016, which requires the department to competitively bid highway improvement contracts.

CROSS REFERENCE TO STATUTE: Transportation Code, §223.0041 and §223.042.
§9.17. Award of Contract.

(a) The commission may reject any and all bids opened, read, and tabulated under §9.15 and §9.16 of this chapter (relating to Notice of Letting and Issuance of Proposals). It will reject all bids if:

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

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

(d) For a maintenance contract involving a bid amount of less than $300,000 [$100,000], if the lowest bidder withdraws its bid after bid opening, the executive director may recommend to the commission that the contract be awarded to the second lowest bidder.

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

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


(a) Contract execution.

(1) Except as provided in paragraphs (2) and (3) of this subsection, within 15 days after written notification of award of a contract, the successful bidder must execute and furnish to the department the contract with:

(A) a performance bond and a payment bond, if required and as required by the Government Code, Chapter 2253, with powers of attorneys attached, each in the full amount of the contract price except as provided by subsection (c) of this section, executed by a surety company or surety companies authorized to execute surety bonds under and in accordance with state law (Department interpretations made in accordance with §9.16(b)(2) of this chapter (relating to Tabulation of Bids) will be used to determine the contract amount for providing a performance bond and payment bond, if required, and as required by the Government Code, Chapter 2253.);

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

(2) (No change.)

(3) Within the time specified in the contract, the successful bidder on a construction contract containing a DBE or SBE goal, who is not a DBE or SBE, must submit all the information required by the department in accordance with §9.53(c) of this chapter (relating to Disadvantaged Business Enterprise (DBE) Program) and §9.55(c) of this chapter (relating to Small Business Enterprise (SBE) Program). The successful bidder must comply with paragraph (1) of this subsection within 15 days after written notification of acceptance by the department of the successful bidder’s documentation to achieve the DBE or SBE goal.

(b) (No change.)

(c) Performance or payment bonds [bond]. For [routine] maintenance contracts [in which the contractor assumes responsibility for maintaining a portion of a highway facility for a set period of time], the department may require that a performance or payment bond:

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

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

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

TRD-200503751
Richard D. Monroe
General Counsel
Texas Department of Transportation

Earliest possible date of adoption: October 9, 2005
For further information, please call: (512) 463-8630

SUBCHAPTER G. CONTRACTOR SANCTIONS

43 TAC §9.106

The Texas Department of Transportation (department) proposes amendments to §9.106 concerning contractor sanctions.

EXPLANATION OF PROPOSED AMENDMENTS

The Texas Department of Transportation’s contractor sanction rules set forth the circumstances under which contractors may be sanctioned and the procedures that must be followed. The commission has previously adopted §§9.100-9.106 to specify the process by which the department will administer and manage highway improvement contracts.

Section 9.106(a)(5) and (a)(6) are combined to provide that sanctions may be imposed if a contractor fails to execute a highway improvement contract after a bid is awarded and fails to honor a bid guaranty submitted under §9.14(d) of this chapter (relating to Submittal of Proposal). A contractor will no longer be sanctioned for failure to execute a contract if the bid guaranty is honored, because collection of the bid guaranty is sufficient. This revision is necessary to protect the integrity of the department’s competitive bidding process and clarify the specific instances when sanctions would apply in the event an awarded highway improvement is not executed.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendment. There are no anticipated economic costs for persons required to comply with the section as proposed.
Thomas Bohuslav, P.E., Director, Construction Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Mr. Bohuslav has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing or administering the amended section will be to further the department’s mission to provide an efficient and fair process of administering contractor sanctions. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Thomas Bohuslav, P.E., Director, Construction Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 10, 2005.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE: None.


(a) Grounds. The executive director may sanction a contractor for the following reasons:

(1) conviction of a bidding crime, a plea of guilty or nolo contendere to a charge of a bidding crime, or a public admission to a bidding crime, whether made by the contractor or by an individual or entity that acted on behalf of the contractor;

(2) conviction of the contractor for an offense indicating a lack of moral or ethical integrity, such as bribery or payment of kickbacks or secret rebates to agents of a governmental entity, if the offense reflects on the business practices of the contractor;

(3) commission of acts indicating a lack of moral or ethical integrity and reflecting on the business practices of the contractor, if the executive director has probable cause to believe that the acts have been committed;

(4) disqualification of the contractor by a state or by an agency of the federal government for any of the reasons listed in this section;

(5) the contractor fails to execute a highway improvement contract after a bid is awarded;

[6a] unless the contractor honors a bid guaranty submitted under §9.14(d) of this chapter (relating to Submittal of Proposal);

[6b] rejection of a bid by the commission because of contractor error twice in a three year period;

(7) [4] failure of the contractor to notify the department promptly of a conviction of a bidding crime or debarment for any reason by a state or by an agency of the federal government; or

(8) [4] the contractor is declared in default on a highway improvement contract.

(b) Sanction levels.

(1) Level 1. A 50% reduction in bidding capacity for no more than 12 months.

(2) Level 2. Debarment of the contractor for no more than 12 months.

(3) Level 3. Debarment of the contractor for no more than 36 months.

(4) Level 4. Permanent debarment of the contractor.

(c) Exception. Debarment under subsection (a)(4) of this section may not be for more than the period of debarment established by the state or federal agency on whose actions the debarment is based.

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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Richard D. Monroe
General Counsel
Texas Department of Transportation

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For further information, please call: (512) 463-8630

CHAPTER 25. TRAFFIC OPERATIONS

The Texas Department of Transportation (department) proposes the repeal of Subchapter G, §§25.400 - 25.409, and the simultaneous proposal of new Subchapter G, §§25.400 - 25.409 concerning the Information Logo Sign and Tourist-Oriented Directional (TOD) Sign Program.

EXPLANATION OF PROPOSED REPEALS AND NEW SECTIONS

Senate Bill 1137, 79th Legislature, Regular Session, 2005, requires the department to develop a TOD sign program for wineries or businesses related to agriculture or tourism. The legislation also directs the department to develop rules covering the operation and implementation of this program.

House Bill 2453, 79th Legislature, Regular Session, 2005, also requires the department to add a new service category to the Specific Information Logo Sign Program for pharmacies operating 24-hours a day.

The proposed rules for new Subchapter G are designed to implement the provisions of Senate Bill 1137 and House Bill 2453 as well as make general changes and updates to the existing Information Logo Sign Program. Many of the provisions in the rules were developed when the program was originally implemented in 1992. The Information Logo Sign Program is now fully operational and many of the original program guidelines are no longer necessary. The proposed rules have been developed to improve readability, reflect the statutorily mandated "best value" approach in the program contract, reflect current program management practices and simplify the existing program rules. The subchapter title has also been changed to reflect current practices.

Section 25.400. Purpose. Existing §25.400, Purpose, is repealed and replaced with new §25.400, Purpose, which is to establish the policies and procedures for the implementation of the Logo and TOD sign program. Changes to this section include
the addition of the TOD sign program and deletion of the term "urban highways" to correspond to the new definition of eligible highways.

Section 25.401. Definitions. Existing §25.401, Definitions, is repealed and replaced with new §25.401, Definitions. Section 25.401 defines certain words and terms used in the subchapter. The majority of the terms remain unchanged in the proposed new language. Various terms have been added to this section as necessary under the new TOD sign program including "major portion," "TOD sign panel," "TOD sign program," "TOD sign assembly," and "trailblazer sign."

Terms have also been added or amended to reflect the changes required in the Specific Information Logo Sign Program as required under House Bill 2453, including "pharmacy services," "primary motorist service," and "specific information logo sign assembly."

The terms "interstate highway" and "major shopping area" are no longer included. Location on an interstate highway is not required for participation in the Information Logo Sign Program and the definition of "retail shopping mall" has been modified and incorporated into proposed new §25.406 regarding Major Shopping Area Guide Signs.

Section 25.402. Information Logo and TOD Sign Program. Existing §25.402, Information Logo Sign Program, is repealed and replaced with new §25.402, Information Logo and TOD Sign Program. Section 25.402 addresses the issuance of a contract to develop, operate, and maintain both Logo and TOD signs.

New §25.402 requires the selected contractor to market the program statewide to have maximum impact. The vendor is required to contact all businesses participating in current sign programs to coordinate continued involvement. The contractor is required to obtain approval of the site plans prior to initiating the work. The contractor is required to provide annual reports and other reports as required by the department. The contractor is also required to supply monthly information regarding all participating entities and the location information for each sign.

New §25.402 prohibits the installation of signs by anyone other than the contractor, approved subcontractors, or the department. It also requires that the contractor maintain the signs.

New §25.402 provides the parameters for the fee the contractor can assess for installing and maintaining Logo and TOD signs. It also sets the requirements for payments to the contractor for the depreciated value of installed signs due to termination of the contract.

Specific requirements related to annual meetings, bonding, required permits/licenses and records required to be provided by the contractor are no longer included in the rule. These provisions will be included in the program contract as deemed necessary by the department.

The department is no longer required to inspect and monitor sign installation as part of this subchapter. The department considers this a routine and customary part of its duties and believes it is unnecessary to include as part of the program rules.

Section 25.403. Request for Proposals.

Existing §25.403 and §25.404 regarding notice, proposal submission and contract award procedures are repealed and replaced with proposed §25.403, Request for Proposals. The repealed sections have provisions that utilize the standard low-bid highway construction contract. All future information logo and TOD sign program contracts will be awarded based on the best value provided to the state. New §25.403 details the issuance of the request for proposal (RFP), proposal evaluation and what constitutes an eligible proposal. The prior provisions regarding contract selection were based on highway maintenance contract procedures, which will no longer be utilized. With the proposed language, the program will be managed under a purchase of services contract which includes the best value determination. With the new RFP format, details such as maximum proposal length, response dates, and contract award provisions are not necessary and will be included in the RFP.

The department will select the contractor based on the listed evaluation criteria. The evaluation criteria were selected as a basis to determine the contractor’s ability to fulfill the program obligations. The proposals must show a full understanding of the project and the capability to undertake and perform the program obligations. The proposal must also address the approach or course of action for meeting the goals of the program. The proposal must document sufficient financial resources to carry out all functions. In addition, the proposal will be evaluated on the proposed cost to the participating businesses. The department will evaluate the proposals based on the plan presented and the services offered against the fees charged to achieve the best value to the state.

Due to the importance of reviewing complete proposals, a proposal that fails to comply with all requirements contained in the RFP will be ineligible for review and selection. This enables the department to conduct a fair and impartial selection. In addition, a proposal will be ineligible if it fails to guarantee the department recover the greater of the costs of implementing the program or at least 10% of the collected fees.

Section 25.404. Specifications for Information Logo Signs. Existing §25.404, Evaluation, is repealed and replaced with new §25.404, Specifications for Information Logo Signs. Minor changes have been made to this section to incorporate the 24-hour pharmacies into the specific Information Logo Sign Program, as required by House Bill 2453, and to make other minor changes to reflect current program practices.

"Pharmacy" sign priority for logo signs complies with the requirements of the United States Department of Transportation, Federal Highway Administration. In addition, the logo sign assembly is required to have the legend "24 HOUR Rx" displayed with pharmacy logos to ensure that the traveling public is aware that these businesses are open 24 hours a day.

Section 25.404 allows the word "PROPANE" to be included as supplemental information on logos for gas stations. The department believes this will be beneficial to the traveling public by providing additional information for those motorists seeking propane.

Section 25.404 also includes some changes to the major shopping area guide signs. Language is added to clarify that major shopping area guide signs are not installed as overhead signs. This reflects current practice within the program. It also changes the major shopping sign to a blue background to match other signs in the Information Logo and TOD sign programs. This will allow department personnel to readily identify these as signs maintained by a contractor.

With the full implementation of the program the department has found many of the existing rules unnecessary. The proposed
rules no longer include the requirement that the department approve Specific Information Logo signs with more than two services prior to installation. The rule allows for no more than three types of services per sign assembly.

Also deleted from existing §25.404 is the language regarding close proximity interchanges. The former language allowed a logo sign assembly to contain the logos for businesses that are located at more than one highway exit. This provision does not reflect current practice by the department and therefore is not included in the proposed new language.

Section 25.405. Commercial Establishment Eligibility. Existing §25.405, Specifications for Information Logo Signs, regarding general and specific information for commercial establishment eligibility, is repealed and replaced with §25.405, Commercial Establishment Eligibility. New or changed provisions include the following.

Non-self service gas stations are no longer required to have tire repair capabilities. The department believes that this requirement placed an unfair burden on non-self service stations.

Food establishments are required to serve meals that are prepared on site. This is included to ensure that food establishments participating in the program operate as full-service restaurants rather than as convenience facilities offering pre-packaged foods.

All camping facilities are no longer required to offer "modern sanitary facilities designed to service recreational vehicles. The department believes that not all camping sites should be required to have these types of facilities to participate in the program.

The provisions related to the eligibility for a pharmacy to receive a specific information logo sign are added as per the requirements of House Bill 2453. These include requirements that the pharmacy be open for business 24 hours of each day and provide pharmacy services as defined in the subchapter. In addition, pharmacies are excluded from the provisions that allow commercial establishments to be farther than three miles from the eligible highways as required under the federal Manual of Uniform Traffic Control Devices.

The provisions related to variances are modified to note that no variances may be requested for the eligibility requirements for pharmacies. The statute specifically requires that only 24-hour pharmacies are allowed to participate in the program.

References to the "director's designee" are deleted since the revised definition of executive director now specifically includes the director's designee. This is not a substantive change.

Section 25.406. Major Shopping Area Eligibility. Existing §25.409, Major Shopping Area Eligibility, regarding the eligibility criteria for an entity to receive a major shopping area guide sign, is repealed and replaced with new §25.406, Major Shopping Area Eligibility. Section 25.406 establishes the criteria for a major shopping area to reflect recent trends in retail facilities. When the program was originally implemented, enclosed shopping malls were the typical applicants for this type of signing. Many shopping areas are now smaller in total size, not totally enclosed and consist of separate buildings of a unified theme.

New §25.406 allows the department greater flexibility in the type of documentation an applicant must submit to the department when requesting a variance from certain eligibility requirements. This change will allow the department to request less documentation if warranted.


New §25.407 details the selection process for situations where there are more eligible business establishments than available sign spaces. New §25.407 allows the contractor, upon approval by the department, to set an application deadline for spaces on new or existing logo sign assemblies. The date is no longer specifically stated. This will allow for greater flexibility in establishing deadlines for participating businesses and also allow these dates to be more closely tailored to the overall beginning and end of the contract between the program contractor and the department. The department will ensure that any dates proposed by the contractor will not cause any undue hardship on program participants.

Section 25.407 includes information regarding the removal of business logo and major shopping area signs. It establishes the process for removal if the business ceases to exist, relocates and is no longer eligible, does not meet the requirements, or does not provide the replacement logo panel as requested. It also provides that if a major shopping area guide sign or logo sign is removed permanently due to actions of the department, that the participation agreement between the major shopping area or business is cancelled and that any funds paid to the program contractor will be refunded on a prorated basis.

Section 25.408. TOD Sign Program Operation. New §25.408 is proposed to provide guidelines and eligibility requirements for participation in the TOD sign program as required by Senate Bill 1137.

New §25.408 specifies all general and specific requirements that an applicant must meet to obtain a TOD sign panel. As required by Senate Bill 1137, to be eligible for a TOD sign panel a facility must be a winery, farm, ranch, or other tourist-oriented destination.

Section 25.408 requires that to be eligible for a TOD sign panel, a major portion of a facility's visitors must have traveled more than 50 miles from the facility. Fifty miles was selected as the appropriate distance to determine tourist visitors due to the unique geography of the state. Texas is a large state and it is not uncommon for motorists to travel up to 50 miles on a single trip while simply conducting normal business or activities. The department believes this represents a reasonable distance to determine which visitors reside out of an eligible facility's general area.

The facility must provide a tourist-oriented service or product of significant interest to the traveling public. The department's goal is to ensure that an entity receiving a TOD sign panel is an actual tourist destination.

Additional general requirements are dictated by statute and are included in the rule for the reader's convenience. The facility is required by statute to comply with various state and federal laws regarding public accommodations. The facility must be located within 5 driving miles of an eligible highway as required by the state and federal Manual on Uniform Traffic Control Devices and be in compliance with the federal Highway Beautification Act of 1965.
The facility must also provide modern restrooms, drinking water, and be clean and in good repair as required for information logo sign participants. The department feels that these requirements reflect the reasonable expectations of the motoring public.

The proposed new §25.408 creates three categories of eligible facilities that may apply for a TOD sign panel: wineries, agrotourism facilities and other commercial tourist-oriented facilities. This corresponds to language contained in Senate Bill 1137.

Wineries are required to produce wine on their premises, to conduct regularly scheduled tours or provide tours as requested, to market their product on premise, to have a wine tasting area on premise and have a winery permit as issued by the state of Texas. These requirements are designed to ensure that wineries receiving a TOD sign panel will be of interest to tourists and provide the types of activities and products tourists typically associate with wineries.

New §25.408 does not require standard hours of operation for a winery to receive a TOD sign panel. The department under stands that many wineries operate on a limited schedule centered on weekends. The department believes that such a limitation could prevent a large number of wineries from participating in the program.

New §25.408 also adds specific requirements for entities wishing to receive a TOD sign panel under the agrotourism category. To be eligible to receive a sign, an agrotourism facility must produce an agricultural product, devote a minimum of five acres to the production of an agricultural product, conduct tours or provide them upon request, market the product on the premises and be open 12 months a year or during the normal seasonal business period. The list outlines in new §25.408(a)(2)(B) contains the requirements under the Major Agricultural Interest Sign Program that was repealed under Senate Bill 1137.

These requirements ensure that facilities receiving a TOD sign panel under the agrotourism category actually produce an agricultural product of significant interest to the public. The entity is required to stay open 12 months a year, or during the normal seasonal period for that type of business, to ensure that the public will be able to locate agrotourist attractions.

Various examples of eligible agrotourism facilities are provided, although this list is not intended to reflect every eligible facility.

New §25.408(a)(2)(C) adds specific requirements for the third category of an eligible facility, the tourist-oriented commercial businesses or entities. These types of facilities must produce a unique product or service of interest to tourists, be open for business at least five days a week including a Saturday or Sunday and be an independent enterprise that is not part of a franchise or national chain.

This category of facility is required to be open a minimum of five days a week because they serve tourist needs as well as serve as tourist attractions. The department believes that the public will have an expectation that these types of facilities, if included on the TOD sign panel, will be open for a significant portion of time.

The department also adds the requirement that such a facility not be part of a franchise or national chain. The department believes that this will be consistent with the requirement that all eligible facilities provide a unique or unusual product or service of interest to tourists.

Various examples of eligible commercial facilities are provided, although this list is not intended to reflect every eligible facility.

New §25.408(a)(3) provides a list of ineligible facilities for TOD sign panels. The department believes that these facilities are not consistent with the goal of the project to provide information regarding tourist attractions to the public. This list does not include all ineligible facilities but provides a sample of the types of businesses or locations that will not qualify.

Section 25.408 also provides that the department will make the final determination regarding an applicant’s eligibility to participate in the TOD sign program.

Section 25.408 requires the facility to submit an application to the program contractor and for the contractor to verify all information as stated in the application. The section also requires the department to act to approve or disapprove an application within certain time limitations as required under Senate Bill 1137.

The proposed new language in §25.408 describes the specifications for TOD sign panels. Each TOD sign must meet all applicable provisions of the state and federal Manual on Uniform Traffic Control Devices and be fabricated and installed according to department requirements.

Section 25.408 sets out the general requirements for placement of TOD sign assemblies within state highway right-of-ways. These provisions are included to ensure that TOD signs do not interfere with existing traffic control devices and are installed in a way that does not detract from motorist safety.

New §25.408 includes an order of priority for the assignment of TOD sign panels. The section allows for placement of no more than nine TOD sign panels per intersection approach. The department anticipates in some limited areas there might be more TOD sign applications than available panels. To address this type of situation the department is proposing a priority list derived from the language of Senate Bill 1137. The bill specifically lists wineries, and then generally states businesses related to agriculture or tourism including a farm, ranch, or other tourist activity. Since wineries are specifically listed, the department has listed them first on the priority list followed by agrotourism and then other tourist-oriented businesses. The department believes this interpretation and priority listing is in accord with the statute and the intent of the legislation.

New §25.408 proposes that each assembly have no more than three TOD sign panels. The department believes that this will allow reasonable accommodation of most facilities wishing to participate in the program while ensuring that intersection approaches are not unduly crowded by the signs. The sign composition will be dictated by the available space and will include information allowed under the federal Manual of Uniform Traffic Control Devices at the department’s discretion.

New §25.408(d) requires that facilities that wish to participate in the program, but that are located more than one turn off the eligible state highway, must place additional trailblazer signs directing motorists to the facility before the TOD sign panel will be installed. The participating facility is responsible for all costs and issues associated with the installation and maintenance of these trailblazer signs. This provision is added to ensure that motorists will be able to find the eligible facility when it is not located directly on an eligible portion of the state highway system.

Section 25.408 also provides for the conditions under which the department or program contractor may remove a TOD
sign panel. This language is consistent with the provisions for specific logo and major shopping area signs.

Section 25.409. Appeal. Existing §25.408, Appeal, regarding appeals by both the contractor and businesses, or tourist entities, is repealed and new §25.409, Appeal, is proposed. The new rule does not alter the appeal process for claims by the contractor. As required by Transportation Code, §201.112, appeals by the contractor fall under the contract claim provisions of §§1.21-1.26.

The provisions regarding appeals by participating businesses and entities have been changed to provide a more streamlined and efficient approach. The appeals will now be made directly to the Director of the Traffic Operations Division. Section 25.409 states that the request must be in writing and received within 30 days of the adverse decision. The language provides the information the petition must include to ensure that the director will have the information needed to make a timely and well-informed decision. The department believes this new appeal process will allow participants a more flexible, streamlined approach to resolving any issues between themselves and the program contractor.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the repeals and new sections as proposed are in effect, there will be no significant fiscal implications for the state as a result of enforcing or administering the repeals and new sections. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Carlos A. Lopez, P.E., Director, Traffic Operations Division, has certified that there may be positive impact on local economies or overall employment as a result of enforcing or administering the repeals and new sections.

PUBLIC BENEFIT

Mr. Lopez has also determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the repeals and new sections will be a more efficient operation of the Information Logo Sign Program, increased informational signing provided regarding state tourist attractions, implementation of House Bill 2453, and implementation of the TOD sign program as required under Senate Bill 1137. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeals and new sections may be submitted to Carlos A. Lopez, P.E., Director, Traffic Operations Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 10, 2005.

SUBCHAPTER G. SPECIFIC INFORMATION LOGO SIGN PROGRAM

43 TAC §§25.400 - 25.409


STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically Transportation Code, §391.091, which provides the commission with the authority to establish rules regarding the Information Logo Sign Program and Transportation Code, §391.099, which provides the commission with the authority to establish rules for the TOD Sign Program.

CROSS REFERENCE TO STATUTE: Transportation Code, §391.091 et seq.

§25.400. Purpose.

§25.401. Definitions.

§25.402. Information Logo Sign Program.


§25.405. Specifications for Information Logo Signs.


§25.408. Appeal.

§25.409. Major Shopping Area Eligibility.

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

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

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Richard D. Monroe

General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-8630

SUBCHAPTER G. INFORMATION LOGO SIGN AND TOURIST-ORIENTED DIRECTIONAL SIGN PROGRAM

43 TAC §§25.400 - 25.409

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically Transportation Code, §391.091, which provides the commission with the authority to establish rules regarding the Information Logo Sign Program and Transportation Code, §391.099, which provides the commission with the authority to establish rules for the TOD Sign Program.

CROSS REFERENCE TO STATUTE: Transportation Code, §391.091 et seq.

§25.400. Purpose.

Transportation Code, §391.091 and §391.099, requires the department to contract with a person, firm, group, or association in the State of Texas to erect and maintain information logo and tourist-oriented directional signs within eligible highway rights of way. It further requires the commission to adopt rules necessary to administer and enforce this signing program, and to regulate the content, composition, placement, erection, and maintenance of these signs within eligible highway rights of way. The sections in this subchapter prescribe the policies and procedures for the implementation of this program.

§25.401. Definitions.

30 TexReg 5762 September 9, 2005 Texas Register
The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Business logo--A separate sign panel of specified dimensions attached to a specific information logo sign assembly and containing the commercial establishment name, symbol, brand, trademark, or combination.

(2) Commercial establishment--A privately owned business or corporation offering one or more of the primary motorist services.

(3) Commission--The Texas Transportation Commission.

(4) Contractor--A person, firm, group, or association in the State of Texas that acts as the authorized agent of the department in the operation of the specific information logo or the tourist-oriented directional (TOD) sign program.

(5) Department--The Texas Department of Transportation.

(6) Driveway access--A vehicle entrance, built in compliance with state and local standards and regulations, for use by the public providing access from a public street or highway to a commercial establishment or major shopping area.

(7) Dual logo--A panel on a specific information logo sign containing the names of either:

(A) Two food establishments in a shared space under common ownership; or

(B) A gas and food establishment in a shared space under common ownership.

(8) Eligible highway--

(A) For information logo signs, a controlled access highway on the designated state highway system; or

(B) For TOD signs and participating facilities, a non-controlled access highway located on the designated state highway system outside the corporate limits of a municipality with a population of 5,000 or more.

(9) Executive director--The executive director of the Texas Department of Transportation or his or her designee.

(10) Gross building area--Square footage of usable area within a building, or series of buildings, that is considered usable by the retail businesses and the public.

(11) Information logo sign--A specific information logo sign assembly or a major shopping area guide sign.

(12) Interchange--The intersection of the centerlines of an eligible highway and a crossroad.

(13) Major portion--Fifty-one percent or more.

(14) Major shopping area guide sign--A rectangular supplemental sign panel imprinted with the name of the retail shopping area as it is commonly known to the public and containing directional information.

(15) Major shopping area ramp sign--A supplemental sign with the common name of the major shopping area, directional arrows, and/or distances placed near an eligible highway exit ramp or access road.

(16) Multiple crossroad interchange--An interchange in which one exit in a direction of travel from an eligible highway provides the only point of access for two or more crossroads; the center of a multiple crossroad interchange is the midpoint of the intersection of the centerline of the eligible highway and centerlines of the affected crossroads.

(17) Pharmacy services--The act of accepting and filling prescriptions by or under the supervision of a pharmacist licensed by the State of Texas.

(18) Primary motorist service--Gas, food, lodging, camping, or 24-hour pharmacy services available to the traveling public.

(19) Ramp business logo--A reduced size separate sign panel of specified dimensions attached to a ramp sign and containing the commercial establishment name, symbol, brand, trademark, or combination.

(20) Ramp sign--A supplemental sign with ramp business logos or the name of the major shopping area, directional arrows, and distances placed near an eligible highway or eligible highway exit ramp.

(21) Specific information logo sign assembly--A rectangular supplemental sign imprinted with the words "GAS," "FOOD," "LODGING," "CAMPING," or "24 HOUR RX" or with a combination of those words, and the names (or business logos) of commercial establishments offering those services.

(22) State--The State of Texas.

(23) Texas MUTCD--Texas Manual on Uniform Traffic Control Devices for Streets and Highways, latest edition, issued by the Texas Department of Transportation.

(24) TOD sign assembly--An official sign structure erected under the TOD sign program containing one or more TOD panels and located on a TOD sign program eligible highway as defined in this subchapter.

(25) TOD sign panel--An individual sign panel of a business or entity participating in the TOD program contained on a TOD sign assembly.

(26) TOD sign program--Tourist-oriented directional sign program.

(27) Traiblazer sign--A sign used in conjunction with the TOD sign program off of the designated state highway system that indicates the direction to the participating business or entity.

§25.402. Information Logo Sign and TOD Sign Program.

(a) Program. The department may award a contract or contracts to a person, firm, group, or association in the State of Texas, for an initial period not to exceed five years, to develop, operate, and maintain information logo and TOD signs at appropriate locations along eligible highways subject to the terms and conditions of the subsection.

(b) Marketing. In marketing the information logo and TOD sign program, the contractor shall market the program to have maximum statewide implementation under the terms and conditions contained in the program contract.

(c) Site plans. Prior to construction of an information logo sign at an approved location, the contractor must submit a site plan to the department. Upon approval of the site plan, the contractor may begin work at the location described.

(d) Contacting participating businesses. In the first three months of a contract between the department and the contractor, the contractor shall contact all participating businesses with logo or TOD sign panels to:

(1) notify the businesses of the new contract between the department and the contractor; and

(2) coordinate whether the participating businesses will renew if space is available.
(e) Cooperation with other contractors. The contractor is required to cooperate with any contractor working on the state highway system as well as any other contractors operating other sign programs within the state. Upon request by a potential lessee, the department, or a member of the public, the contractor will furnish the name, address, and telephone number of other information logo sign or TOD sign contractors.

(f) Annual report. The contractor shall furnish an annual report to the department. The annual report will include the contractor’s financial statement, number of logo sign assemblies erected, number of major shopping area guide signs erected, number of TOD sign assemblies and panels erected, and number of participation agreements completed. Other reports may also be required throughout the year as determined by the department.

(g) Program information.

1. The contractor shall furnish an electronic inventory to the department in a format or formats of the department’s choice. This inventory shall include, but not be limited to:
   (A) a list of all businesses participating in the program;
   (B) information on all participating businesses including addresses, key contacts, and phone numbers;
   (C) location information for each information logo sign including:
      (i) roadway;
      (ii) exit number or crossroad; and
      (iii) direction;
   (D) information for each TOD sign including:
      (i) roadway and crossroad;
      (ii) number of TOD sign panels per TOD sign assembly;
      (iii) direction; and
      (iv) county; and
   (E) date of expiration of the contract between each participating business and the program contractor.

2. The inventory shall be updated and provided to the department on a monthly basis.

(h) Installation by contractor. Installation of information logo and TOD signs may only be performed by the contractor, a subcontractor approved by the department, or, in emergency situations, by the department. In the event that the department undertakes installation or other duties of the contractor, the contractor shall immediately remit to the department the specified fee or cost of such work.

(i) Department review. Prior to installation, the design and location of information logo and TOD signs must be submitted to the department for review.

(j) Sign relocation or removal. If the department determines that additional regulatory, warning, or guide signing is needed, existing or planned information logo or TOD signs shall be removed or relocated by the contractor as directed by the department and at the sole expense of the contractor. If the department determines that construction or maintenance activities within the eligible highway rights of way will create conditions where existing information logo or TOD signs will not be in compliance with Transportation Code, Chapter 391, or provisions of this title, the contractor shall:

1. remove the business logos and ramp business logos of the affected commercial establishments;
2. remove the information logo signs and ramp signs;
3. remove the TOD signs; and
4. reimburse advance rental fees paid by participating businesses or entities prorated as of the date of removal of the business logos, major shopping area guide signs, or TOD signs.

(k) Sign maintenance. The information logo and TOD signs shall be maintained by the contractor in a manner and condition that is a distinct benefit to the safety of the public, benefit to the participating businesses or entities, and to the satisfaction of the department.

(l) Fees. The contractor shall assess a fee for the installation, annual rental, covering, maintenance, and replacement costs for the signs and shall remit to the department the amount specified in the contract no later than the seventh business day following the last day of the month such fees are received by the contractor.

1. Reduced fees. The contractor shall reduce the annual rental fee by a prorated amount for each calendar day when:
   (A) the business or ramp business logo(s), or the major shopping area guide sign has not been erected; or
   (B) a previously erected business, ramp business logo, major shopping area guide sign, or TOD sign is obscured from view of the motorists for a period of time exceeding 10 consecutive calendar days.

2. Non-reducible fee. A contractor may not reduce the annual fee for the period a business logo, ramp business logo, or major shopping area guide sign, or TOD sign is covered at the request of the participating business or entity.

(m) Termination.

1. Contractor termination. If the contractor terminates the contract or defaults prior to the conclusion date of any five-year term, ownership of the contract rights and any rights in the information logo or TOD signs constructed at the various interchanges and intersections shall immediately pass to and vest in the department on the effective date of termination, and the contractor shall not be entitled to any compensation.

2. Department termination. If the department terminates the contract, before the contract’s termination date, for reasons other than default by the contractor, the contractor will be paid for the depreciated value, as established by the department, for each of the information logo or TOD signs erected. The percentages are as follows (based on elapsed time since sign installation and the expiration year’s statewide average square foot bid price for a similar ground mounted sign):
   (A) less than one year—90%;
   (B) one year or more but less than two years—50%;
   (C) two years or more but less than three years—25%; or
   (D) three years or more—0%.


   (A) If the contract terminates at its specified termination date, the existing contractor is not awarded the contract, and the existing contractor’s contract contains payment terms for economic value at the end of the specified termination date, then the subsequent contractor will pay the department the following economic value based on elapsed time since sign installation and the expiration year’s statewide average square foot bid price for a similar ground mounted sign:
      (i) less than one year—90%;
(iii) one year or more but less than two years—50%;

(ii) two years or more but less than three years—25%;

or

(iv) three years or more—0%.

(B) The department shall pay the existing contractor the amount indicated in subparagraph (A) of this paragraph.

(C) Specific information logo ramp signs will not be eligible for consideration.

(D) An existing specific information logo sign contractor receiving a new contract will not be eligible for compensation upon expiration of the contract.

(E) The department will provide an estimate of the economic value of these signs in the department’s request for offer.

(n) Sale, transfer, and assignment of contract. The contractor shall not sell, transfer, assign, or otherwise dispose of the contract or any portion thereof, or of its right, title, or interest therein, without the prior written consent of the department.

§25.403 Request for Proposals.

(a) Notice. The department will publish a request for proposals for the information logo and TOD sign program.

(b) Evaluation. The department will determine the best value to the state by evaluating the contractor’s:

(1) proposed team and the time commitment for each team member;

(2) capability for undertaking and performing the work;

(3) understanding of the project;

(4) quality of services offered;

(5) financial resources and ability to perform the work;

(6) approach or course of action to meeting the goals and objectives;

(7) ability to meet the schedule;

(8) proposed percentage to be paid to the department from fees collected from program participants;

(9) proposed amount for the fees that will be charged to participants in the program; and

(10) ability to fulfill any other criteria listed in the request for proposal.

(c) Ineligible proposal. The department will not consider a proposal that:

(1) fails to comply with any requirement contained in the request for proposals issued under this section; or

(2) fails to guarantee a fee to be paid to the department of at least 10% of the fees collected from program participants, or a percentage as specified by the department in the request for proposals of the fees collected from program participants sufficient to cover the department’s costs to administer the program.

§25.404 Specifications for Information Logo Signs.

(a) Specific information logo signs.

(1) Design. A specific information logo sign assembly shall:

(A) have a blue background with a white reflective border;

(B) contain a principal legend equal in height to the directional legend;

(C) meet the applicable provisions of the Texas MUTCD;

(D) have background material that conforms with department specifications for reflective sheeting;

(E) be fabricated, erected, and maintained in conformance with department specifications and fabrication details;

(F) provide vertical spacing and horizontal spacing for a balanced appearance of business logos.

(2) Content. A specific information logo sign shall contain:

(A) word legends for the following services: GAS, FOOD, LODGING, CAMPING, or "24 HOUR Rx";

(B) the exit number or, if exit numbers are not applicable, "NEXT EXIT:");

(C) no more than six business logos on one logo sign assembly;

(D) no more than three types of services on a sign assembly; and

(E) no more than two dual logos.

(3) Placement. Subject to approval of the department, a specific information logo sign shall be installed or placed:

(A) to conform to the following order of placement along the direction of travel: PHARMACY, CAMPING, LODGING, FOOD, GAS;

(B) according to the following priorities where available space is limited: GAS, FOOD, LODGING, CAMPING, and PHARMACY;

(C) to take advantage of natural terrain;

(D) to have the least impact on the scenic environment;

(E) to avoid visual conflict with other signs within the highway right-of-way;

(F) with a lateral offset equal to or greater than existing guide signs;

(G) at least 800 feet from the previous interchange and at least 800 feet from the exit direction sign at the interchange from which the services are available;

(H) without blocking motorists’ visibility of existing traffic control and guide signs;

(I) in locations that are not overhead;

(J) where a motorist, after following the sign(s), can conveniently re-enter the highway and continue in the original direction of travel; and

(K) at least 800 feet between two large guide signs, but not excessively spaced.

(4) Existing signs. Existing regulatory, warning, destination, guide, recreation, and cultural interest signs will not be removed; provided, however, that subject to the written approval of the department, such existing signs may be relocated by special permission of the department at the sole expense and responsibility of the contractor and only to the extent necessary to accommodate logo signs.

(b) Business logos.
(1) Design. A business logo:
   (A) may not exceed 48 inches in width or 36 inches in height;
   (B) may be any color or combination of colors; and
   (C) may only be fabricated, erected, and maintained in conformance with current department specifications for aluminum signs and reflective sheathing.

(2) Content. A business logo may:
   (A) consist of a registered trademark or a legend message identifying the name or abbreviation of the commercial establishment;
   (B) contain supplemental information, limited to the word "DIESEL," or "PROPANE" on a gas logo, or "PROPANE" on a camping or gas logo, or the words "24 HOURS" on a gas or a food logo, the words "DIESEL," "PROPANE," and "24 HOURS" not to exceed six inches in height;
   (C) contain a message, symbol, or trademark only if the message, symbol, or trademark does not resemble an official traffic control device; and
   (D) contain text, symbols, or advertising only if the text, symbols, or advertising are related to the primary service of the specific information logo sign.

(1) Ramp signs.

(1) Design. A ramp sign shall:
   (A) meet the applicable provisions of the Texas MUTCD;
   (B) have a blue background with a white reflective border;
   (C) conform with the latest department specifications for reflective sheeting for the background material of the sign; and
   (D) be fabricated, erected, and maintained in conformance with the current department specifications for aluminum signs and roadside signs.

(2) Placement. Subject to approval by the department, a ramp sign may be placed along an exit ramp or access road, or at an intersection of an access road and crossroad when a commercial establishment’s building or on-premise signing is not visible from that exit ramp, access road, or intersection.

(3) Content. A ramp business logo shall:
   (A) be no larger than 24 inches in width and 18 inches in height;
   (B) contain directional arrows and distances; and
   (C) be a duplicate of the business logo erected on a specific information logo sign.

(d) Dual logos.

(1) An establishment may have two names displayed on a single logo sign panel if the establishment consists of:
   (A) two food outlets in a shared space under common ownership; or
   (B) gas and food outlets in a shared space under common ownership.

(2) The fee to a participating business for a dual logo will be the same as to the charge for a standard logo.

(3) No more than two dual logos may be installed per logo sign.

(4) Dual logos may not be installed on a specific information logo sign unless all available spaces for the "FOOD" or "GAS" specific service categories are full.

(5) If demand for space on a logo sign exceeds the available number of spaces, businesses requesting a dual logo must follow the same drawing process as described in §25.407 of this subchapter.

(e) Major shopping area guide signs.

(1) Design. A major shopping area sign shall:
   (A) have a blue background with a white reflective legend and border;
   (B) meet the applicable provisions of the Texas MUTCD;
   (C) have background, legend, and border material that conforms to department specifications for reflective sheeting;
   (D) not be illuminated externally or internally; and
   (E) be fabricated, erected, and maintained in conformance with department specifications and fabrication details.

(2) Content. A major shopping area guide sign shall:
   (A) contain the name of the major shopping area as it is commonly known to the public; and
   (B) contain the exit number or, if exit numbers are not applicable, other directional information.

(3) Placement. Subject to approval of the department, a major shopping area guide sign shall be installed or placed:
   (A) independently mounted;
   (B) to take advantage of natural terrain;
   (C) to have the least impact on the scenic environment;
   (D) to avoid visual conflict with other signs within the highway right-of-way;
   (E) with a lateral offset equal to or greater than existing guide signs;
   (F) for both directions of travel on the eligible urban highway;
   (G) without blocking motorists’ visibility of existing traffic control and guide signs; and
   (H) in locations that do not include overhead installation.

(4) Existing signs. Existing regulatory, warning, destination, guide, recreation, and cultural interest signs will not be removed; provided, however, that subject to the written approval of the department, such existing signs may be relocated by special permission of the department at the sole expense and responsibility of the contractor and only to the extent necessary to accommodate major shopping area guide signs.

(f) Major shopping area ramp signs.

(1) Design. A major shopping area ramp sign shall:
   (A) have a blue background with a white reflective legend and border;
   (B) meet the applicable provisions of the Texas MUTCD;
(C) have background, legend, and border material that conforms to department specifications for reflective sheeting;

(D) be fabricated, erected, and maintained in conformance with department specifications and fabrication details; and

(E) not be illuminated internally or externally.

(2) Content. A ramp sign shall contain:

(A) the name of the major shopping area as it is commonly known to the public; and

(B) directional arrows and distances.

(3) Placement. Subject to approval of the department, the major shopping area ramp sign(s) may be placed along an exit ramp or access road, or at an intersection of an access road and crossroad if the major shopping area driveway access, buildings, or parking areas are not visible from that exit ramp, access road, or intersection.

§25.405 Commercial Establishment Eligibility.

(a) General requirements for specific information logo sign eligibility. To be eligible to have a business logo placed on a specific information logo sign, a commercial establishment must:

(1) offer at least one primary motorist service;

(2) be located with driveway access to the access road (frontage road), ramp, or intersecting crossroad;

(3) be visible, or have on-premise signing visible, from the commercial establishment’s driveway access or the exit ramp, access road, crossroad, or intersection (or for an establishment that provides lodging, be visible from an eligible highway or an interchange on an eligible highway and be located on a street that is not more than two turns off the access or frontage road to the highway); and

(4) be located not farther than three miles from an interchange on an eligible highway, but if no gas, food, lodging, or camping service participating or willing to participate in the specific information logo sign program is located within three miles of an interchange, the department may approve commercial establishments of the same service:

(A) if located not farther than six miles from the interchange;

(B) nine miles from the interchange if no service participating or willing to participate is located six miles from the interchange;

(C) 12 miles from the interchange if no service participating or willing to participate is located nine miles from the interchange; or

(D) 15 miles from the interchange if no service participating or willing to participate is located 12 miles from the interchange;

(5) comply with all applicable laws concerning the provisions of public accommodations without regard to race, religion, color, sex, or national origin; and

(6) post its hours of operation on or near the main entrance so that they are visible to the public during open and closed hours.

(b) Specific services eligibility. In addition to the general requirements for eligibility to have a business logo placed on a specific information logo sign, a commercial establishment must meet the requirements for at least one of the following primary motorist services:

(1) Gas. To be eligible to have a business logo placed on a specific information logo sign carrying the legend "GAS," a commercial establishment must provide:

(A) vehicle services, including fuel, oil, and water;

(B) restroom facilities and drinking water;

(C) continuous operation for at least 12 hours per day, seven days a week; and

(D) a telephone accessible to the public,

(2) Food. To be eligible to have a business logo placed on a specific information logo sign carrying the legend "FOOD," a commercial establishment must provide:

(A) a license or other evidence of compliance with public health or sanitation laws, if required by law;

(B) continuous operation at least 10 hours a day to serve two meals a day prepared on site, six days a week;

(C) seating capacity for at least 16 people;

(D) public restrooms; and

(E) a telephone accessible to the public.

(3) Lodging. To be eligible to have a business logo placed on a specific information logo sign carrying the legend "LODGING," a commercial establishment must provide:

(A) a license or other evidence of compliance with laws regulating facilities providing lodging, if required by law;

(B) at least 10 rooms; and

(C) a telephone accessible to the public.

(4) Camping. To be eligible to have a business logo placed on a specific information logo sign carrying the legend "CAMPING," a commercial establishment must provide:

(A) a license or other evidence of compliance with laws regulating camping facilities, if required by law;

(B) adequate parking accommodations; and

(C) drinking water.

(5) Pharmacy. To be eligible to have a business logo placed on a specific information logo sign carrying the legend "24 HOUR Rx," a commercial establishment must:

(A) be open for business 24 hours of each day; and

(B) provide pharmacy services 24 hours of each day.

(c) Multiple services eligibility. If a commercial establishment offers more than one primary motorist service, it will be eligible to display a business logo for each of those services on the appropriate specific information logo sign, provided that:

(1) minimum criteria for the service as described in §25.404 of this subchapter (relating to Specifications for Information Logo Signs) are met;

(2) the additional business logo(s) would not prevent participation by another eligible commercial establishment whose sole service would be displaced; and

(3) a business logo space is available.

(d) Variances.

(1) A person may request a variance from the information logo sign program. Requests for variances will only be considered if the existing requirements preclude participation in the program.

(2) A variance may be requested for a waiver of:

(A) an eligibility requirement except for the requirements listed in subsections (a)(1), (2) except that an exception may be
asked for an intersecting crossroad if the roadway with driveway access fees into the frontage road of the eligible highway and is easily accessible or visible from that intersection. (5), and (6), and (b) of this section;

(B) location of the establishment;
(C) placement of the sign; or
(D) type of highway, except the highway must be on the state highway system and for logo signs at or near a grade-separated intersection.

(3) Variances may not be requested for restrictions regarding dual logos.

(4) A person may submit a request for a variance to the department’s local district engineer indicating:

(A) which requirement of the program it does not meet; and

(B) the variance requested.

(5) The department may require additional documentation following generally accepted engineering standards, which may include, but not be limited to:

(A) traffic studies;
(B) maps indicating ramps, major arterials, ingress and egress points, existing signs and distances;
(C) traffic flow analysis including traffic counts to and from the commercial establishment or major shopping area;
(D) crash data and analysis; and
(E) detailed site plan of the commercial establishment or major shopping area, including but not limited to available parking, driveways, and location in reference to eligible highways.

(6) The executive director may grant a variance if he or she determines it is feasible to place the sign at the requested location and the sign meets the requirements of the Texas MUTCD; and

(A) the variance will substantially promote traffic safety;
(B) the variance will substantially improve traffic flow;
(C) an overpass, highway sign or other highway structure unduly obstructs the visibility of an existing commercial sign; or
(D) the variance is necessary to substantially improve the efficiency and effectiveness of communicating information needed by people to safely and efficiently use the transportation system.

(7) The executive director will indicate the reason for granting or denying a variance in writing.


(a) Eligibility criteria. To be eligible to have a major shopping area guide sign, the major shopping area must:

(1) consist of a group of 10 or more retail and other commercial establishments that:

(A) have a gross building area of not less than 650,000 square feet;
(B) is located within close proximity to one another;
(C) employs a unifying theme carried out by individual shops in their architectural design;
(D) has a minimum of two anchor businesses, with a combined gross building area of not less than 150,000 square feet; and

(E) is planned, developed, owned, and managed as a single property;

(2) be located not farther than three miles from an interchange with an eligible urban highway; and

(3) be located with driveway access to the eligible urban highway access road (frontage road), ramp, intersecting crossroad or city street.

(b) Variances.

(1) A person may request a variance from the requirements of the major shopping area guide sign program. A request for a variance will only be considered if the existing requirements preclude participation in the program.

(2) A variance may be requested for waiver of the requirement of:

(A) eligibility;
(B) location of the major shopping area;
(C) placement of the sign; or
(D) type of highway, except the highway must be on the state highway system.

(3) A person may submit a request for a variance to the department’s local district engineer indicating:

(A) which requirement of the program it does not meet; and

(B) the variance requested.

(4) The department may require additional documentation following generally accepted engineering standards, which shall include, but not be limited to:

(A) traffic studies;
(B) maps indicating ramps, major arterials, ingress and egress points, existing signs and distances;
(C) traffic flow analysis including traffic counts to and from the major shopping area;
(D) crash data and analysis; and
(E) detailed site plan of the major shopping area, including but not limited to available parking, driveways, and location in reference to eligible urban highways.

(5) The executive director may grant a variance if he or she determines it is feasible to place the sign at the location and the sign meets the requirements of the Texas MUTCD; and

(A) the variance will substantially promote traffic safety;
(B) the variance will substantially improve traffic flow;
(C) an overpass, highway sign or other highway structure unduly obstructs the visibility of an existing commercial sign; or
(D) the variance is necessary to substantially improve the efficiency and effectiveness of communicating the information needed by people to safely and efficiently use the transportation system.

(6) The executive director will indicate the reason for granting or denying a variance in writing.

(7) A variance will not be granted if the executive director finds that:
(A) a major shopping area is located on an intersecting
crossroad or city street whose name can be easily identified with the ma-
jor shopping area and has existing advance and exit guide signs; or

(B) the major shopping area parking is so insufficient that it
causes undue congestion of the roadway system.
§25.407  Logo Sign Program Operation.
(a) Commercial establishment and major shopping area
application.
(1) Applications for commercial establishments or major shopping
areas desiring to participate in the information logo sign
program are available upon request from the department.
(2) A commercial establishment or major shopping area de-
siring to participate in the information logo sign program must submit an
application to the contractor and verify that all requirements are met. Ap-
lications must be submitted to the location as stated on the application
form. The contractor will verify the eligibility of each applicant.
(3) For commercial establishments, a separate application is
required for each primary motorist service per interchange per direc-
tion of travel. Only one application per commercial establishment per
primary motorist service per direction of travel per interchange will be
accepted.
(4) Applications will be reviewed by the contractor and ap-
licants will be notified in writing if qualified or rejected. Rejected appli-
cations will be returned and deficiencies noted.
(5) Rejected applicants may resubmit their application
when the noted deficiencies have been corrected.
(6) To be eligible for the selection process for the available
business logo space(s), available first alternate position, or available sec-
ond alternate position, a commercial establishment must have submitted
a qualified application before the commercial establishment application
deadline.
(7) The commercial establishment application deadline for
the initial installation for a new or existing logo sign assembly drawing
will be set as specified by the contractor and approved by the department.
(8) Qualified applications received after the commercial estab-
ishment application deadline will be placed on file and considered el-
igible for future drawings.
(b) Commercial establishment selection.
(1) Available business logo space(s) and relative place-
ment of business logos on the specific information logo sign, available
first alternate position, and available second alternate position will be
awarded by drawing of the qualified applications received before the
commercial establishment application deadline. The relative placement of
business logos in available space(s), in order of selection, is upper left,
upper middle, upper right, lower left, lower middle, and lower right.
For a specific information logo sign that includes more than one service,
the relative placement of business logos in available space(s), in order
of selection, is left to right and top to bottom for each portion of the sign
designated for each service.
(2) The drawing will be held publicly by the contractor on
a date specified by the contractor and approved by the department in the
presence of two or more department employees. When business logo
spaces become available, additional drawings will be held publicly as
needed in the presence of two or more department employees. Additional
drawings of qualified applicants will be held no earlier than 20 days
nor later than 45 days after the commercial establishment application
deadline.
(3) When a business logo space(s) becomes available, the
first and second alternates have first right of refusal, respectively, for the
available business logo space. If the first alternate accepts an available
business logo space, the second alternate then becomes the first alternate
with first right of refusal for any existing or future available business logo
space. Any remaining available business logo space(s), available first
alternate position, or available second alternate position are awarded by
the drawings.
(4) If the number of qualified applicants is less than or equal
to the number of available business logo space(s) at the time of the com-
mercial application deadline, the available spaces will be awarded to the
qualified applicants. The random drawing will determine only the rela-
tive placement of the business logo signs in the available space(s).
(5) The contractor shall notify the commercial establish-
ment by certified mail of the award of specific information business
logo sign space within 10 calendar days of the date of the award. To
accept the award, the commercial establishment must execute a written
participation agreement with the contractor within 30 calendar days of the
date of the award. The participation agreement shall be in a form
as prescribed by the department and shall, at a minimum, contain all
applicable provisions prescribed by this undesignated head.
(c) Responsibilities and rights of commercial establishment.
(1) The commercial establishment must provide a business
logo and, if necessary, ramp business logo(s) within 60 days of notifica-
tion by the contractor of the contractor’s intent to erect the specific infor-
mation logo signs or ramp signs:
(2) A commercial establishment may renew its participation
agreement with the contractor on an annual or multi-year basis no later
than the date specified by the contractor and approved by the department.
If the commercial establishment does not renew the agreement with the
contractor, the contractor will remove the business logo at the end of the
participation agreement, and will make the vacated space(s) available to
other commercial establishments pursuant to subsection (b) of this sec-
tion.
(d) Covering of business logo. A business logo and the ramp
business logo(s) of a commercial establishment may be covered by the
contractor if the commercial establishment is temporarily closed for a
period not exceeding 30 calendar days. Unless removed pursuant to
subsection (e) of this section, the business logo and ramp business logo(s)
will remain covered until the commercial establishment reopens.
(e) Removal of business logo.
(1) A business logo of a participating commercial establish-
ment shall be removed by the contractor if the commercial establishment:
(A) ceases to exist;
(B) fails to pay the annual rental fee or other fees within
30 calendar days of the due date as specified on the agreement;
(C) is temporarily closed for more than 30 calendar days;
(D) does not meet the minimum eligibility requirements
of §25.405 of this subchapter, and all corrections are not made within 30
calendar days of written notification;
(E) is sold, and the new commercial establishment does
not continue the original primary motorist service or does not meet the
minimum requirements for the primary motorist service;
(F) has not provided a replacement business logo sign
within 60 calendar days of written notification that the business logo is
missing, damaged, broken, or faded; or
(G) relocates and is no longer eligible for participation in the program.

(2) Removal of a business logo by the contractor will include the removal of the commercial establishment’s ramp business logo sign(s).

(3) If the business logo is removed due to the default of the commercial establishment to perform within the terms of the participation agreement and this subchapter, the participation agreement is terminated between the commercial establishment and the contractor. All funds paid to the contractor by the commercial establishment are forfeited. Upon removal of a business logo, the vacated space becomes available pursuant to subsection (b) of this section. A replacement commercial business is selected, as stated in the commercial establishment selection process.

(4) If the business logo is removed permanently due to actions of the department, the participation agreement is terminated between the commercial establishment and the contractor. Advance funds paid to the contractor by the commercial establishment will be pro-rated as per the date of removal, and any remaining amounts refunded to the commercial establishment.

(f) Responsibilities and rights of the major shopping area. The major shopping area may renew its participation agreement with the contractor on an annual or multi-year basis at a date specified by the contractor and approved by the department. If the major shopping area does not renew the agreement with the contractor, the contractor will remove the guide signs and ramp signs at the end of the participation agreement.

(g) Covering or removal of major shopping area guide sign.

(1) A major shopping area guide sign(s) of a major shopping area may be covered by the contractor if:

(A) the major shopping area is temporarily closed for a period not exceeding 30 calendar days; or

(B) the department finds the parking is so insufficient that it causes undue congestion to the state highway system.

(2) A major shopping area guide sign of a major shopping area may be covered until:

(A) the property reopens; or

(B) the department finds there is now sufficient parking.

(3) A major shopping area guide sign of a participating major shopping area shall be removed by the contractor if the major shopping area:

(A) ceases to exist;

(B) fails to pay the annual rental fee or other fees within 30 calendar days of the due date as specified in the agreement;

(C) is temporarily closed for more than 30 calendar days;

(D) does not meet the minimum eligibility requirements of §25.406 of this subchapter, and all corrections are not made within 30 calendar days of written notification;

(E) is sold, and the new major shopping area does not continue as a public retail business; or

(F) does not correct the parking insufficiency within 90-days notice by the department.

(4) Removal of a major shopping area guide sign by the contractor will include the removal of the major shopping area’s ramp sign(s).

(5) If the major shopping area guide sign is removed due to the default of the major shopping area to perform within the terms of the participation agreement and the requirements as stated herein, the participation agreement is terminated between the major shopping area and the contractor. All funds paid to the contractor by the major shopping area are forfeited.

(6) If the major shopping area guide sign is removed permanently due to actions of the department, the participation agreement is terminated between the major shopping area and the contractor. Advance funds paid to the contractor by the major shopping area will be pro-rated as per the date of removal, and any remaining amounts refunded to the major shopping area.

§25.408. TOD Sign Program Operation.

(a) Eligibility. A facility eligible for a TOD sign panel is a winery or other business or non-profit entity including a farm, ranch or other tourist activity that meets the following requirements:

(1) General criteria. An eligible facility must:

(A) derive a major portion of its income or visitors during the normal business season from highway users not residing within 50 miles from the facility;

(B) provide a tourist-oriented service or tourist-oriented product of significant interest to the traveling public;

(C) comply with all state and federal laws relating to:

(i) provision of public accommodation without regard to race, religion, color, age, sex, or national origin; and

(ii) licensing and approval of service facilities; and

(D) be located within five driving miles from the eligible highway;

(E) provide modern restroom facilities and drinking water;

(F) be clean and in good repair; and

(G) be in compliance with provisions regarding illegal signs as defined in the Highway Beautification Act of 1965 (23 USC 131).

(2) Specific requirements. In addition to the general requirements, an eligible facility must meet the following specific requirements for at least one of the following categories of TOD sign panels.

(A) Wineries. To be eligible for a TOD sign panel a winery must:

(i) produce wine on the premises;

(ii) conduct regularly scheduled public tours of the grounds or facilities or provide such tours upon walk-up request;

(iii) market the product on the premises as a retail sale;

(iv) have a wine tasting area on the premises; and

(v) have a winery permit issued by the State of Texas.

(B) Agritourism. An applicant must:

(i) To be eligible for a TOD sign panel an agritourism applicant must:

(I) sow, cultivate, or produce an agricultural product on site;

(II) devote a minimum of five acres of land to the production of an agricultural product;
(III) conduct regularly scheduled public tours of the grounds or facilities or provides such tours upon walk-up request;

(IV) market the product on the premises as a retail sale; and

(V) be open twelve months a year or during the normal seasonal period.

(ii) Examples of eligible agritourism businesses include, but are not limited to, farms, ranches, nurseries, greenhouses, herb farms, wildflower farms, and farmers markets.

(C) Other commercial tourist-oriented businesses or entities.

(i) To be eligible for a TOD sign panel, an eligible commercial tourist-oriented applicant must:

(I) produce a unique or unusual commercial or non-profit service or product of significant interest to the tourist community;

(II) be open for business at least five days a week that includes being open on Saturday and/or Sunday; and

(III) be an independent enterprise that is not part of a franchise or national chain.

(iii) Examples of eligible commercial tourist-oriented businesses include, but are not limited to, art/craft centers, art galleries, auction houses, amphitheaters, amusement parks, antique businesses, aquariums, arboreums, arenas, auditoriums, bed and breakfasts, boat landings/marinas, civic centers, concert halls, equestrian centers, fairgrounds, golf courses, museums, natural attractions, pavilions, stadiums, water oriented businesses, and wildlife preserves.

(3) Ineligible facilities. Facilities excluded from participation in the TOD sign program include, but are not limited to, adult entertainment facilities, animal shelters, cemeteries, convenience stores, funeral homes, gas stations, industrial parks or plants, media facilities, local jails, local police or sheriffs’ offices, movie theaters, office parks, radio stations, television stations, truck terminals, post offices, medical facilities, retirement homes, veterans facilities, veterinary facilities, mobile home parks, and residential or commercial subdivisions.

(4) Final determination of eligibility. The department will make all final determinations regarding an applicant’s eligibility to participate in the TOD sign program.

(b) Application.

(1) Applications for eligible facilities desiring to participate in the TOD sign program are available upon request from the department.

(2) An eligible facility desiring to participate in the TOD sign program must submit an application to the contractor and verify that all eligibility requirements are met. Applications must be submitted to the location stated on the application form. The contractor will verify the eligibility of each applicant.

(3) Applications will be reviewed by the contractor and applicants will be notified in writing of the application being approved or disapproved according to the following schedule:

(A) Within 30 days the contractor will notify the business that:

(i) the application has been received; and

(ii) that the application is complete, or that additional information is required to complete the application.

(B) The contractor will approve or disapprove the application:

(i) within 60 days after the business submits the application if no additional information is required; or

(ii) within 30 days after the date the business submits all of the additional information requested by the contractor under subparagraph (A) of this paragraph.

(c) Specifications for TOD sign assemblies and sign panels.

(1) Sign assembly. A TOD sign assembly shall:

(A) have a blue background with a white reflective border;

(B) meet all applicable provisions of the MUTCD;

(C) have background material which conforms with department specifications for reflective sheeting; and

(D) be fabricated, erected, and maintained in conformance with department specifications and fabrication details.

(2) Order of priority. TOD sign panels will be assigned to eligible facilities in the following priority: wineries, agritourism, and other commercial tourist-oriented businesses.

(3) Content. A TOD sign panel will contain no more than the following items as space limitations will allow:

(A) a maximum of two lines of text describing the name of the eligible facility;

(B) a directional arrow indicating the direction of and distance to the eligible facility; or

(C) a symbol or icon depicting the type of eligible facility as designed and approved by the department.

(4) Panel limitations. Each TOD sign assembly may have no more than three TOD sign panels.

(5) Placement. Subject to approval by the department, a TOD sign assembly shall be installed or placed:

(A) only on TOD eligible highways as defined in this subchapter;

(B) to take advantage of natural terrain;

(C) to have the least impact on the scenic environment;

(D) to avoid visual conflict with other signs within the highway right-of-way;

(E) with a lateral offset equal to or greater than existing guide signs;

(F) in advance of the intersection or business entrance on the TOD eligible highway;

(G) at least 200 feet from any other traffic control devices; and

(H) so that it does not block motorists’ visibility of existing traffic control and guide signs.

(6) Maximum number of TOD sign assemblies. The maximum number of TOD sign assemblies will be limited to three per intersection approach subject to the placement requirements contained in this subchapter.

(7) Existing signs. Existing regulatory, warning, destination, guide, recreation, and cultural interest signs will not be removed; provided, however, that subject to the written approval of the department,
such existing signs may be relocated by special permission of the department at the sole expense and responsibility of the contractor and only to the extent necessary to accommodate TOD signs.

(d) TOD trailblazer signs.

(1) At each turn required to be made by the traveling public from a TOD sign to the participating facility, a TOD trailblazer sign shall be in place directing the turn.

(2) Any costs associated with installation and maintenance of trailblazer signs is the responsibility of the participating facility and is not part of the TOD contract between the department and contractor.

(3) No TOD sign will be installed until all necessary trailblazer signs have been installed by the participating facility.

(4) When trailblazer signs are required to be installed off the state highway system, it will be the participating facility’s responsibility to contact the private property owner or appropriate local jurisdiction for approval to install these signs.

(5) If at any time the department determines that trailblazer signing off the state highway system is not adequate to direct the motorist, the participating facility shall be notified. If action is not taken by the participating facility to correct this problem within 60 days, the TOD sign panel on the state highway system shall be removed or covered at the discretion of the department.

(e) TOD sign panel order. Order of placement of TOD sign panels will be determined by the department so as to maximize the number of participating businesses.

(f) Removal of TOD sign panel.

(1) A TOD sign panel of an eligible facility shall be removed by the contractor if the facility:

(A) ceases to exist;

(B) fails to pay the annual rental fee or other fees within 30 calendar days of the due date as specified in the agreement;

(C) does not meet the minimum requirements as stated in subsection (a) of this section, and all corrections are not made within 30 calendar days of written notification;

(D) is sold, and the new eligible facility does not continue the original tourist-oriented activity or service, or does not meet the minimum requirements for a TODS eligible facility; or

(E) relocates and is no longer eligible for participation in the program.

(2) If the TOD sign panel is removed due to the default of the eligible facility to perform within the terms of the participation agreement and this subchapter, the participation agreement is terminated between the eligible facility and the contractor. All funds paid to the contractor by the eligible facility are forfeited. Upon removal of a TOD sign panel, the vacated space becomes available pursuant to the procedures contained in this subchapter.

(3) If the TOD sign panel is removed permanently due to actions of the department, the participation agreement is terminated between the eligible facility and the contractor. Advance funds paid to the contractor by the eligible facility will be pro-rated as per the date of removal, and any remaining funds refunded to the commercial establishment.

(g) Seasonal facilities. Seasonal facilities may participate in the TOD sign program provided they meet the general eligibility criteria for participation in the program.

(h) Existing winery signs. Wineries that currently have signs maintained by the department will be eligible to participate in the TOD sign program.

(i) Variants. Variations may not be requested for any eligibility requirements for TOD sign panels as described in this section.

(j) Allocation process for excess demand. The contractor will hold a public drawing to assign TOD sign panel spaces when there are more eligible facilities wishing to participate in the program than TOD panel spaces available at a given location.

(1) To be eligible for the selection process for the available TOD space(s), an eligible facility must have submitted a qualified application before the TOD sign program application deadline.

(2) The application deadline for the initial installation for a new or existing TOD sign assembly drawing will be set at a date specified by the contractor and approved by the department.

(3) Qualified applications received after the deadline will be placed on file and considered eligible for future drawings.

(4) Selection.

(A) Available TOD sign panel space(s) on the specific TOD sign assembly will be awarded by drawing of the qualified applications received before the application deadline.

(B) Spaces will be awarded based on the following priority: wineries, agritourism and other commercial tourist-oriented businesses.

(C) The drawing will be held publicly by the contractor at a date specified by the contractor and approved by the department in the presence of two or more department employees. When additional TOD sign panel spaces become available, additional drawings will be held as needed at a date specified by the contractor and approved by the department.

(D) The contractor shall notify applicants by certified mail of the award of the TOD sign panel space within 10 calendar days of the date of the award. To accept the award, the applicant must execute a written participation agreement with the contractor within 30 calendar days of the date of the award. The participation agreement shall be in a form as prescribed by the department and shall, at a minimum, contain all applicable provisions prescribed in this subchapter.

§25.409. Appeal.

(a) Contractor. A contractor may appeal any adverse decision by the department by filing a petition for an administrative hearing pursuant to §§1.21-1.26 of this title (relating to Procedures in Contested Cases). Any dispute as to the terms of the contract will be governed by §9.2 of this title (relating to Contract Claim Procedure).

(b) Commercial establishment or TOD facility. A commercial establishment or TOD facility may petition the Traffic Operations Division director (director) to appeal an adverse decision of the program contractor.

(1) The petition must be in writing and received by the director at 125 E. 11th Street, Austin, Texas 78701-2483 within 30 days of the contractor’s adverse decision.

(2) The petition must include:

(A) an explanation of the adverse decision made by the contractor;

(B) statement of facts as to why the contractor’s decision is in error; and

(C) other information as stated above.
(C) any supporting documentation to be considered by the director, such as drawings or photographs.

(3) The decision by the director is final.

(4) If the petition is denied the department will send a written decision to the petitioner stating the reasons for denial.

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

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

TRD-200503754
Richard D. Monroe
General Counsel
Texas Department of Transportation

Earliest possible date of adoption: October 9, 2005

For further information, please call: (512) 463-8630

SUBCHAPTER K. MAJOR AGRICULTURAL INTEREST SIGN PROGRAM

43 TAC §§25.700 - 25.708

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

The Texas Department of Transportation (department) proposes the repeal of §§25.700 - 25.708, concerning the Major Agricultural Interest Sign Program.

EXPLANATION OF PROPOSED REPEALS

Senate Bill 1137, 79th Legislature, Regular Session, 2005, repealed all provision in the Transportation Code regarding the Major Agricultural Interest Sign Program. Under this same bill agricultural entities were incorporated into the Tourist-Oriented Directional Sign Program.

Provisions regarding program eligibility, contract award procedures, program operations and sign specifications are included in the proposed new rules for §§25.400 - 25.409 which are simultaneously being published in this edition of the Texas Register.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each of the first five years the repeals as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeals. There are no anticipated economic costs for persons required to comply with the repeals as proposed.

Carlos Lopez, P.E., Director, Traffic Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals.

PUBLIC BENEFIT

Mr. Lopez has also determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing or administering the repeals will be a more efficient operation of the Information Logo Sign Program. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeals may be submitted to Carlos Lopez, P.E., Director, Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 10, 2005.

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §391.099 which provides the commission the authority to establish rules for the Tourist-Oriented Sign Program.

CROSS REFERENCE TO STATUTE: Transportation Code §391.099.

§25.700. Purpose.
§25.701. Definitions.
§25.702. Program.
§25.705. Specifications.
§25.706. Eligibility.
§25.708. Appeal.

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

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

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Richard D. Monroe
General Counsel
Texas Department of Transportation

Earliest possible date of adoption: October 9, 2005

For further information, please call: (512) 463-8630

CHAPTER 29. MAINTENANCE

SUBCHAPTER C. OPERATION OF STATE-OWNED FERRIES

The Texas Department of Transportation (department) proposes the repeal of §29.48 and simultaneously proposes new §29.48, concerning boarding priorities of state owned ferries.

EXPLANATION OF PROPOSED REPEAL AND NEW SECTION

Transportation Code, §342.004, allows the department to adopt rules to establish a system under which an owner of a motor vehicle may apply to the department for issuance of a sticker for a vehicle that entitles the vehicle to have priority in boarding the Galveston-Port Bolivar ferry and the Port Aransas ferry operated by the department. Pursuant to this authority, the Texas Transportation Commission (commission) has previously adopted §29.48 to specify which vehicles shall have priority boarding of a ferry.

The department proposes the repeal of §29.48 and simultaneously proposes new §29.48 in a revised form. New §29.48(a)(1) outlines special boarding situations, such as ambulances and other vehicles transporting sick or injured persons, fire department vehicles, medical doctors en route to an emergency, law
enforcement officers engaged in the performance of an official duty, U.S. Coast Guard vehicles responding to marine emergencies, school buses, and funeral processions. Vehicles with special boarding situations will receive priority over all other vehicles boarding the ferry.

New §29.48(a)(2) outlines the various fees for an annual permit for the Galveston/Bolivar and Port Aransas ferries of $400, $600, or $800 based on types of vehicles with one to three axles. These fees are based on anticipated construction and operating costs to provide priority boarding, with construction costs amortized over a 10-year period. In order to ensure that there is sufficient demand for annual permits to justify the costs of instituting the program, the department will not begin issuing stickers for a ferry location until at least 400 applications are received for that location. An annual permit will be effective for 12 months from the month it is issued. Upon completion of a permit application and payment of required fees, a boarding priority permit and windshield sticker will be issued. Future adjustment in the fee may be made after the number of applicants is established.

Section 29.48(a)(3) provides for the ferry captain or ferry operations manager, at their own discretion, to allow priority boarding for humanitarian reasons. All other vehicles shall board in order of arrival after priority boarding is completed.

FISCAL NOTE
James Bass, Chief Financial Officer, has determined that for each of the first five years the repeal and new section as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal and new section. There will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT
Zane Webb, P.E., Director, Maintenance Division, has determined that for each year of the first five years the repeal and new section is in effect, the public benefit anticipated as a result of enforcing or administering the section will be reduced waiting time for those who participate in priority boarding. There will be no adverse economic effect on small businesses.

PUBLIC HEARING
Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct two public hearings to receive comments concerning the proposed rules. The first public hearing will be held at 7:00 p.m. on September 19, 2005, at the Civic Center at 710 West Avenue A in Port Aransas, Texas. The second public hearing will be held at 6:00 p.m. on September 21, 2005, at the Ball High School, 4115 Avenue O, Galveston, Texas. Both meetings will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register at the meeting site starting one hour before the scheduled meeting. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Randall Dillard, Director, Public Information Office, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two working days prior to the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS
Written comments on the proposed repeal and new section may be submitted to Zane Webb, P.E., Director, Maintenance Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 10, 2005.

43 TAC §29.48

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

STATUTORY AUTHORITY:
The repeal is proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and, more specifically, Transportation Code, §342.004, which authorizes the commission to adopt rules to establish a priority boarding system.

CROSS REFERENCE TO STATUTE: Transportation Code, §342.004.

§29.48. Boarding Priorities.

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

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

43 TAC §29.48

STATUTORY AUTHORITY:
The new section is proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and, more specifically, Transportation Code, §342.004, which authorizes the commission to adopt rules to establish a priority boarding system.
CROSS REFERENCE TO STATUTE: Transportation Code, §342.004.

§29.48. Boarding Priorities.

(a) Priority boarding for vehicles is divided into three categories as follows: priority boarding for special situations, priority boarding by annual permit, and priority boarding for humanitarian purposes.

(1) Special situation boarding is for the following vehicles, in no specific order of priority. These vehicles shall have priority boarding over all other vehicles in boarding a ferry:

(A) ambulances when transporting sick or injured persons, or when responding to or returning from medical emergencies;

(B) other vehicles transporting sick or injured persons;

(C) fire department vehicles when responding to or returning from fire or medical emergencies;

(D) medical doctors who are en route for the emergency care of the sick or injured;

(E) law enforcement officers when engaged in the performance of an official duty;

(F) U.S. Coast Guard vehicles when responding to or returning from marine emergencies;

(G) school buses when going to or returning from school functions; and

(H) funeral processions.

(2) Priority boarding for vehicles by annual permit shall meet the following conditions:

(A) No more than 50% of the ferry capacity will be allocated to priority boarding by annual permit during high demand periods;

(B) The fee for an annual permit for the Galveston/Bolivar or Port Aransas ferry is:

(i) $400 for a one or two axle vehicle, including a motorcycle, car, pickup truck, or van;

(ii) $600 for a bus, motor home, or a single unit truck with up to three axles; and

(iii) $800 for a multi-unit truck or other vehicle with more than three axles.

(C) An annual permit expires 12 months after issuance.

(D) An application for an annual permit shall be submitted by the vehicle owner on a form prescribed by the department, which shall at a minimum include the vehicle license plate number, state of registration, name of applicant, and mailing address. The application will state acceptable methods of payment.

(E) The department will not issue priority boarding stickers for a ferry location until it has received at least 400 applications for that location.

(F) A priority boarding sticker will be issued to each applicant upon payment of the permit fee.

(G) The sticker issued for the permit shall be placed near the upper left corner of the front windshield.

(3) The ferry captain or ferry operations manager may, at his or her sole discretion, allow a vehicle priority over all other vehicles for humanitarian purposes. Scheduled routine doctor’s office visits are not considered to be sufficient reason for granting priority boarding for humanitarian purposes.

(b) Vehicles that do not qualify for priority boarding under subsection (a) of this section shall be boarded in order of arrival after priority boarding is completed.

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

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

TRD-200503759
Richard D. Monroe
General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8630

 PROPOSED RULES  September 9, 2005  30 TexReg 5775
TITLE 10. COMMUNITY DEVELOPMENT
PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION
CHAPTER 313. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS (SIRP)

10 TAC §313.27
The Texas Residential Construction Commission withdraws the proposed amendment to §313.27 which appeared in the June 24, 2005 issue of the Texas Register (30 TexReg 3710).

Filed with the Office of the Secretary of State on August 24, 2005.
TRD-200503684
Susan Durso
General Counsel
Texas Residential Construction Commission
Effective date: August 24, 2005
For further information, please call: (512) 463-9638

TITLE 22. EXAMINING BOARDS
PART 14. TEXAS OPTOMETRY BOARD
CHAPTER 273. GENERAL RULES

22 TAC §273.4
The Texas Optometry Board withdraws the proposed amendment to §273.4 which appeared in the June 17, 2005 issue of the Texas Register (30 TexReg 3511).

Filed with the Office of the Secretary of State on August 24, 2005.
TRD-200503679
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: August 24, 2005
For further information, please call: (512) 305-8502
TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL

SUBCHAPTER B. QUARANTINE REQUIREMENTS

4 TAC §20.12

The Texas Department of Agriculture (the department) adopts an amendment to §20.12, concerning a suppressed area under the department’s cotton pest control program, without changes to the proposal as published in the July 15, 2005, issue of the Texas Register (30 TexReg 4089). The amendment is adopted to add the Panhandle Boll Weevil Eradication Zone (the Panhandle Zone) to the list of suppressed areas in §20.12. The addition of the Panhandle Zone to the list of suppressed areas will minimize the risk of artificial re-infestation of the area by boll weevils, thereby protecting the investment that cotton producers and the State of Texas have made to eradicate the pest. Once the boll weevil is reduced to low levels or eradicated from cotton producing areas of the state, fewer insecticide applications should be necessary to produce high quality cotton. In other eradicated areas of the United States, it is estimated that growers are saving an average of $36 per acre in reduced pesticide applications and earning an additional $42 per acre from increased cotton yield. Preventing re-infestation by boll weevils in restricted areas may enable Texas cotton producers to achieve similar results.

In accordance with §20.12, the Texas Boll Weevil Eradication Foundation (the foundation) recommended that the department declare the Panhandle Zone as suppressed. The foundation provided scientific documentation acceptable to the department, which indicates that movement of regulated articles into this zone presents a threat to the success of boll weevil eradication. The data provided indicates that boll weevil numbers for the 2004 cotton crop year were below the requirement of an average of 0.025 boll weevils per trap per week. Consequently, the Commissioner of Agriculture declared the Panhandle Zone to be suppressed on June 14, 2005.

No comments were received on the proposal.

The amendment to §20.12 is adopted in accordance with the Texas Agriculture Code (the Code), §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A: §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests; and §74.122, which provides the department with the authority to adopt rules relating to quarantining areas of Texas that are infested with the boll weevil, including rules addressing the storage and movement of regulated articles into and out of a quarantined area.

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

Filed with the Office of the Secretary of State on August 24, 2005.

TRD-200503666
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture

For further information, please call: (512) 463-4075

TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 301. GENERAL PROVISIONS

10 TAC §301.3

The Texas Residential Construction Commission adopts new Title 10, Part 7, Chapter 301, §301.3, concerning an advisory committee to assist the commission in the review of amendments to the limited warranties and performance standards adopted in Title 10, Part 7, Chapter 304 of the Texas Administrative Code. The commission adopts the new section with changes to the proposed text as published in the June 24, 2005, issue of the Texas Register (30 TexReg 3702).

The new section sets forth the purpose and membership requirements for an advisory committee to be appointed by the commission to assist in the review and development of amendments to the Limited Warranties and Building and Performance Standards adopted in Chapter 304 of this title.

The new section is adopted to provide a mechanism that allows for regular and reasoned review of the residential construction performance standards adopted by the commission. The committee shall review and evaluate proposed changes to the performance standards made either by the public or internally by the commission, and make recommendations to the commission.

The proposed new section was published for comment in the June 24, 2005, issue of the Texas Register (30 TexReg 3702).
The commission received comments and suggested changes to the proposed rule section from Gregory A. Harwell (Harwell). Harwell commented that subsection (e)(3) as stated is vague and potentially creates an over-representation of lawyers representing consumer interests. Harwell suggested that the committee include three homeowners and a lawyer from the consumer side and three builders and a lawyer from the industry side. This would create a more balanced representation required by Chapter 2110 of the Government Code. Harwell offered alternative language to address his concerns about representation in subsection (e)(3). Mr. Harwell’s points are well taken and the commission has revised the section to broaden the language of subsection (e)(3) to include other stakeholders; although it did not adopt Harwell’s suggested language verbatim.

Harwell also suggested changes to subsection (e)(5) and (8) to increase the number of lawyers whose practices include representation of consumers and builders. Again, Mr. Harwell has offered good suggestions and the commission has revised the referenced subsection in accordance with those suggestions.

All comments regarding the section, including any not specifically referenced herein, were fully considered by the commission. The commission has made other minor modifications to the proposed rule text for the purpose of clarifying its intent and improving style and readability.

The new section is adopted under Property Code §408.001, which provides generally authority for the commission to adopt rules necessary for the implementation of Title 16 and Chapter 430, which requires the commission to adopt rules for establishing limited warranties and building and performance standards. The new section is also adopted in accordance with Texas Government Code Chapter 2110, regarding agency advisory committees.

The statutory provisions affected by the adoption are set forth in the Title 16, Property Code Chapter 430, and §408.001, which provides generally authority for the commission to adopt rules for establishing limited warranties and building and performance standards. The new section is also adopted in accordance with Texas Government Code Chapter 2110, regarding agency advisory committees.

The statutory provisions affected by the adoption are set forth in the Title 16, Property Code Chapter 430 and §408.001 and Government Code Chapter 2110. No other statutes, articles, or codes are affected by the adoption.

§301.3. Warranties and Performance Standards Advisory Committee.

(a) The commission shall appoint an advisory committee to be referred to as the Warranties and Performance Standards Advisory Committee.

(b) The purpose of the committee is to provide a mechanism that allows for regular and reasoned review of the residential construction performance standards adopted by the commission. The committee shall review and evaluate proposed changes to the performance standards made either by the public or internally by the commission, and make recommendations to the commission.

(c) The commission shall contract with the Construction Science Department, College of Architecture, Texas A&M University, for an individual to serve as presiding officer for the committee. This position shall be non-voting except in the case of a tie.

(d) The Executive Director shall appoint a member of the commission staff to serve and assist the committee. This position shall be non-voting. This person shall keep minutes of committee meetings and prepare those minutes for approval by the presiding member of the committee and shall assist the presiding officer in preparing the reports required for submission to the commission under subsection (m) of this section.

(e) The commission shall appoint to the committee members from each of the following industry and consumer interests:

1. One third-party inspector certified by the commission under Chapter 303 of this title.
2. One professional engineer certified by the commission under Chapter 303 of this title.
3. Two persons not licensed by the State Bar of Texas, knowledgeable in the construction industry, who have provided a material amount of assistance on behalf of consumers or homeowner interests in legal and non-legal matters.
4. Two persons who are homeowners, who are not builders and who do not own and are not employed or otherwise engaged in a trade involving residential construction.
5. One attorney licensed in the State of Texas with a significant history of representing consumers in the area of alleged home construction disputes with builders.
6. Three persons, each of whom is a registered builder or representative of registered builders under Chapter 303 of this title. It is the desire of the commission that these members will represent remodelers and builders of differing volumes of registered homes.
7. One person who is a representative of a trade association that is composed of builders, remodelers and associate members related to residential construction.
8. One attorney licensed in the State of Texas with a significant history of representing builders in the area of alleged home construction disputes with homeowners.

(f) Removal of members. Members of the committee serve at the pleasure of the commission. The commission may remove a member from the committee by a majority vote of the commission.

(g) Conditions of membership. The term of office for each member appointed by the commission shall be staggered for a two-year term. Half of the initial appointments will be for a three-year term and half will be for a two-year term to achieve staggered terms thereafter. A member whose term has expired shall continue to serve until a qualified replacement is appointed by the commission. In the event that a member appointed by the commission cannot complete his or her term or is removed by the commission, the commission shall appoint a qualified replacement to serve the remainder of the term.

(h) No compensation. Committee members appointed by the commission shall serve without compensation. Committee members appointed by the commission are not entitled to reimbursement from the commission for travel and per diem incurred in the performance of their official duties.

(i) Meetings. The committee shall meet twice a year unless directed otherwise by the commission. The committee shall be subject to meeting at the call of the presiding member. A quorum shall consist of a majority of the committee membership.

(j) Notice of meeting. The presiding member shall coordinate with the commission to ensure all interested parties are provided with reasonable notice of the meeting. All public notices of upcoming meetings shall encourage interested parties to make suggested changes to the performance standards to the committee for its consideration. Each notice of meeting shall include information on how to submit to the committee suggested changes to the performance standards. All meetings shall be conducted in accordance with Chapter 551 of the Government Code and notices of meetings shall be posted in compliance with Chapter 551 of the Government Code.

(k) Public participation. Any interested person may submit suggested changes to the performance standards to the committee.
(1) A suggested change to the performance standards must be received by the committee no later than thirty days before the committee’s next public meeting.

(2) A suggested change to the performance standards shall be in writing and shall include a brief explanation of the performance standard, the reason the new or amended performance standard should be adopted or repealed, and complete text for the suggested change.

(3) All proposed text to amend a performance standard shall be indicated by striking through the words, if any, to be deleted from the current performance standard and by underlining the words, if any, to be added to the current performance standard.

(4) The submission to the committee of a suggested change to the performance standards shall not be considered a petition for rulemaking under §301.2 of this chapter.

(l) Reports. Not later than thirty days after each committee meeting, the presiding member shall prepare a report to the commission. The report shall contain the minutes of the meeting, a memo summarizing the meeting and recommendations by the committee.

(m) Recommendations. If the committee recommends a change to the performance standards, the committee shall submit a draft rule to the commission for consideration for rulemaking. The committee shall attach the original suggested change to the draft rule. The committee shall also report to the commission a synopsis of all suggested changes submitted to the committee that the committee declined to recommend. The commission shall consider the committee’s report at the first public commission meeting following submission of the committee’s report.

(n) Evaluation of costs and effectiveness. The commission shall evaluate the committee annually. Evaluation shall be conducted by an evaluation team appointed by the Executive Director. The evaluation team shall report to the commission in open meeting each August of findings regarding the committee’s work, usefulness, and the costs related to the committee’s existence, including the cost of agency staff time spent in support of the committee. The commission shall report this information to Legislative Budget Board biennially in connection with the commission’s request for appropriations.

(o) The Warranties and Performance Standards Advisory Committee shall be abolished on December 31, 2010, unless otherwise continued by a majority vote of the commission prior to the date of expiration.

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

Filed with the Office of the Secretary of State on August 23, 2005.

TRD-200503624
Susan Durso
General Counsel
Texas Residential Construction Commission
Effective date: September 12, 2005
Proposal publication date: June 24, 2005
For further information, please call: (512) 463-9638

CHAPTER 303. REGISTRATION
SUBCHAPTER E. TEXAS STAR BUILDER PROGRAM

10 TAC §303.300
The Texas Residential Construction Commission adopts new Title 10, Part 7, Chapter 303, Subchapter E, §303.300, relating to the Texas Star Builder Program. Section 303.300 is adopted with changes to the proposed text as published in the June 24, 2005, issue of the Texas Register (30 TexReg 3704). The new section outlines the rule’s purpose, the commission’s eligibility requirements, participation requirements and information regarding denial, renewal and appeal of denial of a membership application.

The new section is adopted to implement Property Code §416.011 which requires the commission to establish rules and procedures for a program through which a builder can be designated as a “Texas Star Builder” and Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16.

The proposed new section was published for comment in the June 24, 2005, issue of the Texas Register (30 TexReg 3704) with corrections published in the July 22, 2005, issue of the Texas Register (30 TexReg 4261). The commission received comments and suggested changes from Jay Dyer on behalf of the Texas Association of Builders (“TAB”).

With regard to the definition of “continuing education,” TAB requested that the words “initial or” be inserted into this subsection so that it reads: “...complete annually for initial or continued membership in the Texas Star Builder Program.” This change would provide a continuing education requirement as a part of a builder’s initial application into this program. Continuing education is a requirement for continued membership after the first year of participation. Therefore, the suggested language does not add anything to the definition and the commission declines to accept the suggestion.

With regard to the definition of “foundation practices,” TAB was unclear as to whether the subparagraphs (A) – (H) were conjunctive or disjunctive. The commission has added the word “and” to the end of each subpart to avoid any confusion.

TAB also suggested a revision to subparagraph (G) to reference the applicable provisions of the applicable version of the International Residential Code. The point is well taken and the language has been revised accordingly.

TAB recommended that subparagraph (H) be revised to delete the phrase “who constructs the major structural components of a single family dwelling or duplex or a material improvement.” TAB submits that the proposed language is superfluous. The commission agrees and reiterates that the definition of “foundation practices” describes the procedures relating to foundation construction that a Star Builder member agrees to adopt to qualify for membership under subsection (l). Therefore, the commission has made the revision as suggested.

TAB asked that the phrase “to be eligible for membership in the Texas Star Builder Program” be inserted at the end of subsection (c) regarding eligibility. However, the purpose of the rule is specifically stated in its “purpose” paragraph explaining that the rule is setting forth the requirements for participation in the Star Builder Program, which is voluntary. Therefore, the commission finds no reason to make the requested change.

In subsection (c)(2), TAB offered that adding the term “or responsible party” to this section would make it more complete. The term “responsible party” is defined in the rule to mean “an
individual who is authorized to act on behalf of a business entity that is a registered builder or remodeler in transactions involving amounts in excess of $100,000, excluding execution of contracts or instruments of conveyance for the sale of a single lot or dwelling unit, or the acquisition of materials for construction thereof. The commission had considered the comment and finds that it would be better to impose the requirements on a "responsible party" rather than an officer in order to ensure that the individuals who meet the education requirements are more likely to be the employees who have a hands-on role in construction rather than corporate officers. Accordingly, the commission has revised the language of the subsection (c)(2) and (3) in accordance with its finding.

TAB believes that subsection (d)(1)(A), (E), (F), and (G) should be deleted in their entirety. TAB takes this position for the following reasons: With respect to subparagraph (A), TAB is concerned that a bank or a financial institution may not be willing or able to provide the statement or the opinion that is required by the subparagraph. Accordingly, if a builder uses a bank or a financial institution that is unable or willing to provide such a statement, then such builder will be ineligible to participate in the Texas Star Builder Program, whereas another builder who uses a more accommodating bank would not be.

TAB believes very strongly that a builder’s eligibility to participate in this important program should turn exclusively on the builder’s qualifications, and not on whether, or if, or to what extent, a bank or a financial institution, or any other third party for that matter, does or does not make a particular statement. TAB asserts that such would result in unfair disparate treatment by a state agency of two builders who are otherwise substantially similar because this disparate treatment is rooted ultimately upon the actions of a third party that the builder does not control. Therefore, TAB urged the commission to delete subparagraph (A).

TAB applied the same line of reasoning to subparagraphs (D), (E) and (F). Each of these subparagraphs essentially requires the builder’s bank or financial institution to execute a document saying that the bank or the applicable officer or individual signing the document has no actual knowledge of the existence or the absence of a particular fact. Again, a builder’s bank may not be willing to execute such a document, and if it is not, then that builder would be ineligible for participation in this program for reasons that are beyond the builder’s control.

The commission notes that TAB made the same comments--that it may be difficult to obtain the information requested from the builder’s financial institution--in previously published versions of this rule. The commission received comments from financial institutions after publication of those other rule versions and addressed those comments and concerns in the current version. The commission did not receive any opposition from financial institutions during this comment period indicating a policy not to provide such information upon the request of a customer. Therefore, the requirements should not cause difficulty for applicants or cause an undue burden on the financial institutions. However, should an applicant face some difficulty, the commission can address the issue on a case-by-case basis. The commission can provide a form for the financial institution to complete and the form could include a space for the institution to refuse to provide the information. Therefore, the commission will retain the requirements and add a section permitting the commission to consider an application that does not include a statement from a financial institution, if it includes either a form signed by the institution refusing to provide the information or an affidavit by the applicant attesting to the fact that the financial institution was asked to provide the information and refused.

TAB expresses concern over the insurance requirement set forth in subsection (e) of this proposed rule. Specifically, TAB points to the potentially prohibitive cost of obtaining general liability insurance while it acknowledges the voluntary nature of the Star Builder Program. TAB offered its support for the portions of this subsection that exempt from the insurance requirements smaller to mid-size builders and remodelers. TAB further suggested that for larger builders an alternative be offered in the form of an escrow account set up to fund a liability otherwise covered by general liability insurance. However, the commission has determined that the voluntary nature of the Star Builder Program permits a builder or remodeler to make a business decision as to whether to acquire or maintain insurance coverage in accordance with the Program requirements in order to be a member of the Program.

TAB made two comments regarding the continuing education provisions of subsection (i) that suggest some misunderstanding about the rule requirements. First, TAB asked that the prohibition against repeating education courses be modified to allow repeat credit every two years. The prohibition is not designed to prohibit the annual attendance of a course with the same name or by the same instructor. The prohibition is intended to prevent repeating a course with identical content more than once. For example, a member of the Star Builder Program may not receive credit for attending a course in Dallas on maintaining construction trust accounts and receive credit for viewing the same course on line, such that no additional educational benefit is gained. However, in order to offer some clarity to subsection (i), the commission has revised the text to better state the commission’s intent.

TAB also suggested that builders who have already taken relevant courses should be offered a grand-fathering provision because these individuals have already demonstrated a commitment to their profession. The full text of TAB’s explanation for this suggestion seems to be a concern regarding eligibility, but the continuing education requirement does not begin until the first year of renewal and is not a requirement to take courses to be an eligible applicant initially. Therefore, the commission is making no revisions as a result of this suggestion.

All comments regarding this section, including any not specifically referenced herein, were fully considered by the commission. The commission has made other minor and non-substantive modifications to the proposed rule text of §303.300 for the purpose of clarifying its intent and improving style and readability.

The new section is adopted under Property Code §408.001, which provides generally authority for the commission to adopt rules necessary for the implementation of Title 16 and Chapter 430, which requires the commission to adopt rules for establishing limited warranties and building and performance standards. The new section is also adopted in accordance with Texas Government Code Chapter 2110, regarding agency advisory committees.

The statutory provisions affected by the proposal are set forth in the Title 16, Property Code §408.001 and §426.011. No other statutes, articles, or codes are affected by the proposal.

§303.300. Texas Star Builder Program.

(a) Purpose. The Texas Star Builder Program is a voluntary program for builders and remodelers that have been registered and are in good standing under Subchapter A of this chapter for a period of
twelve months immediately preceding their application to the program. Participation in this program is not required to be a builder or remodeler in the State of Texas.

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

1. Applicant--The person identified on the Certificate of Registration issued by the commission pursuant to Subchapter A of this chapter that applies for membership in the Texas Star Builder Program under this section.

2. Continuing education--Commission-approved professional education courses or professional development activities such as workshops, seminars, institutes, conferences or short-term courses that a member must complete annually for continued membership in the Texas Star Builder Program.

3. Continuous membership--A period of membership in good standing without voluntary or involuntary interruption or lapse.

4. Foundation Practices--
   A. Foundations are designed by a structural engineer based on a site specific geotechnical report as may be required by the engineer of record; and
   B. The site specific geotechnical report is one that is appropriate for the circumstances with the frequency and spacing of the borings determined by the geotechnical engineer; and
   C. Foundations are built as designed; and
   D. The construction of the foundation system is inspected prior to the placement of the concrete by the engineer or an employee of the engineer who issues an inspection report; and
   E. If the foundation system is designed for post-tension cables, then the builder shall maintain a record of the stressing certification; and
   F. The builder makes a record of the elevations of the foundation prior to substantial completion of the home or an improvement to the home; and
   G. The builder provides to the homeowner a final survey showing that the site drainage is in accordance with the applicable provisions of the International Residential Code; and
   H. The builder of a single-family dwelling or duplex or a material improvement, for a period of ten years following the date of substantial completion, shall maintain:
      i. the plans, specifications and recommendations provided by the engineer and the geotechnical report if required;
      ii. the inspection report;
      iii. the stressing certification; and
      iv. the record of the original elevations.

5. Member--A person registered as a builder or designated agent by the commission who has been approved by the commission for admission into the Texas Star Builder program.

6. Responsible Party--An individual who is authorized to act on behalf of a business entity that is a registered builder or remodeler in transactions involving amounts in excess of $100,000, excluding execution of contracts or instruments of conveyance for the sale of a single lot or dwelling unit, or the acquisition of materials for construction thereof.

7. SIRP--The State-sponsored Inspection and Dispute Resolution Process.

(c) Eligibility.

1. An applicant who is not a business entity must satisfy one of the following:

   A. twelve years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas; or
   B. seven years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas, is an active builder member of and has had continuous membership in a trade association related to the construction industry for at least five years preceding the date of the application; or
   C. five years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas and the applicant or a responsible party of the applicant holds a four-year degree in construction science or its equivalent from an accredited college or university; or
   D. three years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas and the applicant or a responsible party of the applicant has completed educational requirements administered by an association or institution that designates a level of expertise in the residential construction industry, such as the National Association of Home Builders Graduate Builder and Remodeler Programs.

2. An applicant that is a business entity, which registered 40 homes or less in the preceding twelve months, must have at least one responsible party of the applicant who satisfies one of the following:

   A. twelve years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas; or
   B. seven years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas, is an active builder member of and has had continuous membership in a trade association related to the construction industry for at least five years preceding the date of the application; or
   C. five years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas and holds a four-year degree in construction science or its equivalent from an accredited college or university; or
   D. three years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas and has completed educational requirements administered by an association or institution that designates a level of expertise in the residential construction industry, such as the National Association of Home Builders Graduate Builder and Remodeler Programs.

3. An applicant that is a business entity, which registered more than 40 homes in the preceding twelve months, must have at least one responsible party of the applicant and an employee of the applicant who is involved in on-site construction activities for each 40 homes registered in the twelve months who each satisfy one of the following:
(A) twelve years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas; or

(B) seven years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas, is an active builder member of and has had continuous membership in a trade association related to the construction industry for at least five years preceding the date of the application; or

(C) five years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas and each holds a four-year degree in construction science or its equivalent from an accredited college or university; or

(D) three years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas and each has credible documentation of completion of educational requirements administered by an association or institution that designates a level of expertise in the residential construction industry, such as the National Association of Home Builders Graduate Builder and Remodeler Programs.

(d) Financial Responsibility. An applicant must:

(1) provide documentation from a financial institution that includes a statement of the following information that at the time of the application:

(A) Applicant has an excellent relationship with the financial institution (or highest standard of relationship, as defined by the financial institution);

(B) Applicant is eligible for an extension of credit for the purpose of residential construction;

(C) Applicant is not in default of any credit obligations to the financial institution; and

(D) The officer or official of the financial institution that executes the document does not have actual knowledge that the applicant, any affiliate of the applicant, or any corporate officer, general partner or constituent partner of the applicant to the financial institution, has filed for federal bankruptcy in this state or any state in the seven years immediately preceding the date of the application.

(E) The officer or official of the financial institution that executes the document does not have actual knowledge that the applicant has overdrafts or past due notices that have not been brought current in a timely manner within the standards of the lending/banking industry; and

(F) The officer or official of the financial institution that executes the document does not have actual knowledge of any current delinquency in property taxes, unsatisfied judgments or enforceable mechanic’s and materialmen’s liens on any property for which applicant entered into a transaction governed by the Act as a result of failure to pay a subcontractor or supplier unless the builder has either:

(i) secured a properly filed bond to indemnify the lien pursuant to the provisions of Property Code Chapter 53, Subchapter H;

(ii) secured the issuance of title insurance to protect the homeowner against the lien claim; or

(iii) initiated legal action to contest the lien and demonstrated proof of financial responsibility to pay the costs of defense of title to the property and pay the lien claim if the lien is proven to be proper.

(2) provide a sworn or attested statement of the applicant that:

(A) the applicant, any affiliate or corporate officer, general partner or constituent partner of the applicant has not filed for federal bankruptcy in this state or any other state in the seven years immediately preceding the date of the application;

(B) the applicant is current on all state property taxes unless a protest or legal challenge has been properly filed;

(C) the applicant has no unpaid judgments;

(D) the applicant has no enforceable mechanic’s and materialmen’s liens on any property for which the applicant entered into a transaction governed by the Act as a result of failure to pay a subcontractor or supplier unless the builder has either:

(i) secured a properly filed bond to indemnify the lien pursuant to the provisions of Property Code Chapter 53, Subchapter H;

(ii) secured the issuance of title insurance to protect the homeowner against the lien claim; or

(iii) initiated legal action to contest the lien and demonstrated proof of financial responsibility to pay the costs of defense of title to the property and pay the lien claim if the lien is proven to be proper.

(3) The requirements of a statement prepared by a financial institution in accordance with paragraph (1) of this subsection do not require the financial institution to conduct any independent investigation beyond the institution’s own records and the actual knowledge of the officer or official who executes the document.

(4) If an applicant is unable to obtain the required statement in accordance with paragraph (1) of this subsection, an applicant can submit instead a statement signed by an officer of its financial institution on a commission-prescribed form that the institution does not require the financial institution to conduct any independent investigation beyond the institution’s own records and the actual knowledge of the officer or official who executes the document.

(e) Insurance requirements.

(1) A remodeler-applicant must maintain a general liability policy of:

(A) $300,000 per occurrence, if the applicant registered between 25 - 75 homes in the preceding twelve months; or

(B) $500,000 per occurrence, if the applicant registered between 75 - 125 homes in the preceding twelve months; or

(C) $1,000,000 per occurrence, if the applicant registered 126 or more homes in the preceding twelve months.

(2) A remodeler-applicant who has registered fewer than 25 homes in the preceding twelve months does not need to comply with the general liability insurance requirements of this section;

(3) A builder-applicant must maintain a general liability policy of:

(A) $300,000 per occurrence, if the applicant registered between 50 - 150 homes in the preceding twelve months;

(B) $500,000 per occurrence, if the applicant registered between 151 - 350 homes in the preceding twelve months;
Applicants that registered 40 or more homes in the preceding twelve months; or

A builder-applicant who registered fewer than 50 homes in the preceding twelve months does not need to comply with the general liability insurance requirements of this section.

The applicant must provide a sworn or attested statement that the applicant shall comply during the term of membership with the requirements of at least three of the following:

1. the Green Building Program sponsored by the Texas Veterans Land Board or the National Association of Builders, or any successor entities, any local governmental authority or similar programs as approved by the Executive Director;

2. the Energy Star Program or similar programs as approved by the Executive Director;

3. Certified Aging-in-place Specialist Program or EasyLiving Home Certification Program;

4. a private inspection program for at least three (3) phases of construction for all homes built in geographic area that are not inspected by municipal inspectors; or

5. another nationally-recognized program that requires a greater standard of residential construction practice than required by the commission pursuant to the commission-adopted limited warranty and building and performance standards or usual and customary residential construction practices as approved by the Executive Director; or

6. Foundation Practices as defined in this section; or

7. Provide homeowners with whom it enters into a transaction governed by the Act with a third-party warranty program offered by a commission-approved third-party warranty company or provide those homeowners with a two-year warranty for all one-year workmanship and materials items pursuant to the building and performance standards set forth in Chapter 304, Subchapter B of this title.

(g) Participation. Applicants must agree to actively participate in any eligible SIRP request submitted by a homeowner involving a residential construction project for which the applicant was the builder and must agree to respond to the homeowner in good faith based on the final non-appealable SIRP report and recommendation.

(h) Construction Defects. Effective January 1, 2007, the number of homeowner-submitted eligible SIRP requests for alleged construction defects against an applicant that resulted in a finding of a construction defect in the final non-appealable inspection report may not exceed:

1. two homes for applicants that registered fewer than 40 homes in the preceding twelve months; or

2. five percent of the number of homes registered for applicants that registered 40 or more homes in the preceding twelve months.

(i) Application. Applicants must submit a completed commission-prescribed application form and credible documentation supporting the information supplied in the application for each applicant seeking membership or renewal in the Texas Star Builder Program.

1. An applicant may submit an application for membership in the Texas Star Builder Program only once during any calendar year.

2. For each applicant seeking membership under this section, the commission shall publish a notice of application in the Texas Register.

(A) The commission shall accept written public comment on each application submitted to the commission for a period of twenty-one days following the date of publication of the notice.

(B) The commission will consider comments received in response to published notices of application in the approval process.

3. Applicants shall respond to inquiries from the commission for further information regarding an application for membership or renewal of membership. Failure to respond to a request for information shall result in the administrative withdrawal of the application.

4. The commission shall issue a Texas Star Builder certificate of membership to each applicant approved for membership in the Texas Star Builder Program not later than twenty-one days following the expiration of the comment period under this section.

5. Failure to submit all requested documentation within fifteen days of notice of an incomplete application will result in the administrative withdrawal of the application.

6. A Texas Star Builder certificate of membership shall remain effective for one year from the date of issuance unless revoked.

(j) Continuing education. Beginning January 1, 2006, all members shall complete at least 16 hours of continuing education per year. A member may not submit for credit a continuing education course with the same course content as one that has been previously submitted for credit by the same member.

1. For purposes of this requirement:

(A) any individual member must maintain the continuing education requirement;

(B) any member that is a business entity, that registered fewer than 40 homes in the preceding twelve months, shall require at least one officer of the member to maintain the continuing education requirement; or

(C) any member that is a business entity, that registered more than 40 homes in the preceding twelve months, shall require that:

(i) one officer of the member maintains the continuing education requirement; and

(ii) for every 40 homes registered, one employee of the member who is involved in on-site construction activities shall also maintain the continuing education requirement.

(D) Beginning January 1, 2007, evidence of completion of the continuing education requirements of this section must be submitted with each renewal application.

(E) Approved Continuing Education Courses or Programs.

(i) The Executive Director shall annually review all courses or programs submitted and shall approve those sufficient to satisfy the continuing education requirement.

(ii) Any member that registers more than 30 homes per year who wishes to conduct an in-house training program for its employees in order to satisfy the continuing education requirement of this section may submit course materials to the Executive Director for
appeal. The Executive Director shall consider in the approval process of a proposed in-house training program, the objective and purpose of the program, the content and subject matter of each course and the qualifications of the presenters.

(iii) Any person who wishes to sponsor a course or training program for continuing education purposes under this section must submit a written request for consideration, a detailed course agenda, a written course description and resume or biographical information of each speaker or presenter to the Executive Director for approval, not later than thirty days prior to the proposed event.

(2) Substitutions for Continuing Education Coursework.

(A) A member may substitute not more than three credit hours of continuing education per membership year for participation in an active leadership role (such as an officer or committee chairperson) in a trade association for the membership year in which the continuing education hours would have been taken. To receive this leadership credit, the member shall submit the commission written verification from the president, executive officer, or other equivalent of the association, certifying the member’s leadership status.

(B) A member may not substitute more than two credit hours of continuing education for self-study. To receive this self-study credit, the member must submit to the commission a statement that verifies the completion of self-study and the materials studied.

(C) A member may substitute instructor credit for up to five credit hours of continuing education. Each hour of instruction given is equivalent to an hour of continuing education credit. To receive this instructor credit, the member must submit to the commission a copy of the published course agenda.

(k) Renewal. In order to renew membership in the Texas Star Builder Program, a person must submit a completed application for renewal with the required documentation set forth in this section to the commission not later than thirty days prior to the expiration of the effective date shown on the current Texas Star Builder certificate of membership.

(l) Denial.

(1) The commission shall deny an application for membership or the renewal of membership in the Texas Star Builder Program if the commission determines that the applicant is ineligible for admission or such membership in the program.

(2) If the commission denies an application for membership or the renewal of membership, the commission shall provide written notice to the applicant not later than the fifteenth business day following the expiration of the public comment period set forth in this section.

(3) The commission shall state the reason(s) for denial of membership or renewal of membership in the Texas Star Builder Program in its written notice to the applicant and provide notice of the opportunity for appeal.

(m) Appeal of Denial.

(1) An applicant who receives a notice of denial under subsection (l) of this section may appeal the decision to the Executive Director by submitting a written request for reconsideration not later than thirty days from receipt of the notice of denial.

(2) The decision of the Executive Director regarding the appeal is a final agency decision not subject to further administrative appeal.

(n) Revocation of Membership.

(1) The commission shall revoke a certificate of membership in the Texas Star Builder Program if the commission determines that:

(A) the member has been subject to a final disciplinary action from the commission pursuant to §418.001 of the Act;

(B) the member used fraud or deceit in obtaining the certificate of membership;

(C) the member is no longer eligible for a Certificate of Registration as a builder or is no longer eligible to serve as a designated agent for a builder; or

(D) the member’s Certificate of Registration has been suspended, is placed in inactive status or the member has been placed under a commission probation order.

(2) If a membership is revoked, the commission shall provide written notice to the member not later than the fifth day after the revocation becomes effective.

(3) The commission shall state the reason(s) for the revocation in its written notice to the member.

(4) A member whose certificate of membership is subject to revocation for a finding under paragraph (1)(B) of this subsection shall be provided an opportunity for appeal.

(o) Appeal from Revocation.

(1) A member whose membership has been revoked under subsection (n)(1)(B) of this section may appeal the decision by submitting a written request for reconsideration to the Executive Director within ten days of receipt of notice of revocation.

(2) The decision of the Executive Director on the appeal is a final agency decision not subject to further administrative appeal.

(3) Upon expiration or notice of final revocation of membership in the Texas Star Builder Program, the former member shall immediately return the Texas Star Builder certificate of membership and discontinue the use and dissemination of the “Texas Star Builder” designation on all advertisements, promotions or written material.

(p) Recognition of Membership. A member may display the Texas Star Builder logo approved and submitted for trademark so long as that member remains in good standing as a member of the Star Builder Program. Members who have had continuous membership in the Star Builder Program may display the number of years of continuous membership.

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

Filed with the Office of the Secretary of State on August 26, 2005.
TRD-200503696
Susan Durso
General Counsel
Texas Residential Construction Commission
Effective date: September 15, 2005
Proposal publication date: June 24, 2005
For further information, please call: (512) 475-5095

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CHAPTER 313. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS (SIRP)

10 TAC §313.8

The Texas Residential Construction Commission adopts an amendment to Title 10, Part 7, Chapter 313, §313.8, regarding fee waivers and reductions of the third-party inspection fees in the state-sponsored inspection and dispute resolution process. The amended rule is adopted without changes to the proposed text as published in the June 24, 2005, issue of the Texas Register (30 TexReg 3709) and, therefore, the section will not be republished.

Section 313.8, relating to fee waivers and reductions for inspection fees in the state-sponsored inspection and dispute resolution process, is amended to set forth in rule the process used by the commission to consider waiver and reduction requests.

The amended rule is adopted to notify the public of the process that the commission uses to evaluate requests for inspection fee waivers and reductions.

No comments were received regarding this amendment.

The amendment is adopted under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code; Property Code §426.004(a) and (b) and the 2006 - 2007 Appropriations Act passed by the 79th Texas Legislature, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code; Property Code §426.004(a) and (b) and the 2006 - 2007 Appropriations Act passed by the 79th Texas Legislature, which requires the commission to adopt rules permitting the waiver or reduction of the inspection fees for homeowners demonstrating a financial inability to pay the inspection expense and sets the inspection fees at the lowest possible rate necessary to cover the costs associated with the third-party inspections.

The statutory provisions affected by the adoption are set forth in the Title 16, Property Code, §408.001, §426.004(a) and (b) and §430.001.

Cross Reference to Statutes: Title 16, Property Code §408.001 and §430.001.

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

Filed with the Office of the Secretary of State on August 23, 2005.

TRD-200503608
Susan Durso
General Counsel
Texas Residential Construction Commission
Effective date: September 12, 2005
Proposal publication date: June 24, 2005
For further information, please call: (512) 475-0595

TITLE 16. ECONOMIC REGULATION
PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER H. ELECTRICAL PLANNING
DIVISION 2. ENERGY EFFICIENCY AND CUSTOMER-OWNED RESOURCES

16 TAC §25.181, §25.184

The Public Utility Commission of Texas (commission) adopts amendments to §25.181, relating to Energy Efficiency Goal, with changes to the proposed text and §25.184, relating to Energy Efficiency Implementation Project, without changes to the proposed text as published in the June 10, 2005 issue of the Texas Register (30 TexReg 3392). The amendments modify the energy-efficiency program under Public Utility Regulatory Act (PURA) §39.905. The amended rules include the adoption of a solar-water-heater program, updating lighting tables to reflect additional energy-efficient lighting options that are available, and increased emphasis on load management. Under the new solar-water-heater program, the rule will provide incentives to assist solar-water-heater manufacturers to train installers and to promote installation of solar-water-heaters. The lighting tables provide calculations of energy savings for various standard offer programs under the rule, and updating the tables will allow additional energy-efficiency fixtures to be used under these programs. The amendments relating to load management will remove limitations in the current rule and should facilitate load-management projects for residential and small commercial customers and additional demand savings from large commercial and industrial customers. The amended rules have been developed with the expectation that utilities may take advantage of the changes in their programs being developed for the 2006 calendar year.

The commission initiated the rulemaking proceeding on October 19, 2004 under Project Number 30331, Amendments to Energy Efficiency Rules and Templates. The commission hosted informal workshops on February 23, 2005, April 26, 2005, and May 12, 2005, to solicit input from stakeholders on this rulemaking. In the June 10, 2005 notice published in the Texas Register, the commission offered to conduct a public hearing on July 29, 2005, on this rulemaking if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029; however, the commission received no requests for a public hearing by parties.

Written comments were filed on July 11, 2005. Good Company; Texas Renewable Energy Industries Association (TREIA); Office of Public Utility Counsel (OPC); Texas Ratepayers’ Organization to Save Energy (Texas ROSE); Electric Utility Marketing Managers of Texas (EUMMOT), an organization composed of TXU Electric Delivery, CenterPoint Energy, AEP Texas North, AEP Texas Central, AEP Southwestern Electric Power Company, Energy Gulf States, and Xcel/Southwestern Public Service; Nucor Steel-Texas (Nucor) and the Electric Reliability Council of Texas (ERCOT) filed written comments.

Reply comments were filed on July 25, 2005. Texas ROSE, EUMMOT, Nucor, and Chaparral Steel Midlothian (Chaparral) filed written reply comments.

In general, the comments focused on the proposed changes to the load-management provisions of the rule. The comments that were filed in connection with the solar water heating program...
and changes to the lighting table supported the adoption of the amendments.

§25.181(e)(3)

Good Company supported increasing the incentive level for load management to 25% of avoided costs; 35% for large commercial and industrial projects in constrained areas; and 55% for small commercial and residential projects in constrained areas. It stated that the more reasonable incentive amounts would facilitate participation by residential and small commercial customers and would improve the overall success of load-management programs.

Nucor stated that an allowed incentive up to 25% of avoided costs would be too small to encourage full participation or to fairly compensate the participants in load-management programs. Nucor agreed with EUMMOT that the proposed change would be an improvement, but Nucor expressed the view that the incentives would be far too low to encourage substantial participation. Nucor explained that it and other industrial loads in ERCOT have operated under interruptible tariffs using under-frequency relays and have proven that they are capable of automatically responding to system disturbances, and are therefore available to interrupt their consumption during any emergency period of high system load.

OPC urged the commission not to increase the incentives for load-management programs and cited several reasons for its opposition. OPC asserted that: increased incentives do not benefit residential customers; residential customers would subsidize industrial customers because of the incentive method; PURA’s energy-efficiency goal would not be advanced with an incentive increase for load-management programs; load-management incentives already exist; and higher incentives are not necessary.

OPC and Texas ROSE stated that load-management programs do not conserve energy or provide societal benefits like energy efficiency, and that the only benefit is a reduction in demand which is already compensated in the ERCOT market when such reduction is necessary.

Chaparral in its reply comments listed several benefits that load management provides for residential and small commercial customers. Chaparral disagreed with OPC that the proposed load-management amendment would duplicate other ERCOT programs, because the Responsive Reserve Service was a market-based ancillary service to maintain system stability and reliability. Chaparral stated that the purpose of Responsive Reserve Service was not to assist with the energy-efficiency goal. Nucor also disagreed with Texas ROSE’s position that energy conservation had a higher value than load management, because peak-demand control was critical to the electric system and was important prior to restructuring.

OPC stated that the energy-efficiency statute was enacted to compensate for stranded benefits that resulted from deregulation and to provide an opportunity for energy efficiency to reduce fuel consumption and emissions. OPC argued that it is poor public policy to give additional incentives for load management.

OPC further stated, and Texas ROSE in its reply comments concurred, that the insufficient load management occurring in the ERCOT market may be a sign that the market design is failing, not the incentive levels.

Texas ROSE stated generally that the incentive levels as proposed are artificially high for load management and discriminated against energy efficiency and renewable energy applications.

In support of its position, Texas ROSE presented the results of the New York Energy Smart Program Cost-Effectiveness Assessment study that was prepared for the New York State Energy Research and Development Authority (NYSERDA). Texas ROSE concluded from the study that the proposed amendments to the Texas rules are headed in the wrong direction. Texas ROSE explained that the NYSERDA study employed a Total Market Effects Test and a Program Efficiency Test, the results from which provided benefit-cost ratio values that Texas ROSE believes warrant further analysis of the proposed rule changes.

Nucor disagreed with OPC’s argument that market incentives already exist for load management. Nucor stated that the level and type of load management in the market today was a shadow of what existed prior to restructuring, and that incentives today are grossly inadequate. It asserted that previously incentives were generally set close to or at full avoided costs.

EUMMOT disagreed with Texas ROSE’s conclusions from the NYSERDA study, in part because of the significant differences between administration of efficiency programs in Texas and New York. Based on these differences EUMMOT stated that Texas ROSE’s comparison is invalid. EUMMOT also argued that Texas ROSE failed to consider that the caps on incentives in the Texas program ensure cost-effectiveness.

EUMMOT argued that the incentive caps in the Texas rule ensure that load-management options have a high benefit-to-cost ratio. In other words, if the cap on incentives is 15% of avoided cost, a utility may spend only $15 (plus administrative costs) to achieve $100 of value in demand reductions. If the cap is increased to 25% for industrial customers, then the utility may spend only $25 (plus administrative costs) to achieve $100 of value in demand reductions. EUMMOT concluded that Texas ROSE’s claim that the NYSERDA study should have a bearing on the Texas rule-making on load management was unfounded.

Chaparral responded to Texas ROSE’s assertion by noting that under the proposed rule amendments, 70% of energy-efficiency measures are dedicated to non-load management. Chaparral stated that the chart on page 10 of Texas ROSE’s initial comments, which compared current incentive levels to proposed incentive levels, of 50% for residential and small commercial applications versus 35% for large commercial and industrial applications looked like discrimination against large commercial and industrial customers.

Commission response

The commission concludes that increasing the incentive levels for load management is appropriate, in order to facilitate participation in load-management programs. ERCOT has reported that reserve margins (the generation resources available compared to the expected demand for electricity) have narrowed recently, as a number of generating units have been withdrawn from operations, either temporarily or permanently. The primary reason for modifying the rule to increase load management is to help ensure that there will be adequate generating capacity to meet demand in the next few years. Under the existing load-management rules, only TXU Electric Delivery has offered a load-management program, and its program has been limited to industrial customers. Additional load-management programs in the TXU
area and other areas of the state should enhance reliability of electric service for all customers.

The commission disagrees with the arguments of OPC and Texas ROSE that the higher incentives for load management do not provide benefits to residential customers or will result in inequities in the energy-efficiency program. To the extent that load-management programs are successfully employed to avoid curtailing customers’ electric service, residential customers will benefit.

Additionally, the increased incentive levels will facilitate the deployment of load-management programs among residential and small commercial customers. In order for these customers to find such programs advantageous, energy service companies must provide benefits that these customers can realize and will elect to participate in. Residential customers have not participated in load-management programs at the lower incentive levels under the current rule, but participants in the workshops expressed the view that the higher incentive levels would be sufficient to develop load-management programs for residential and small commercial customers. In addition, the energy-efficiency rule and the utilities’ implementation of the rule are based upon equity: programs are to be available to all customer classes and the equitable allocation of resources can be assessed by review of the utilities’ plans and reports. The proposed changes in the incentive levels and the other changes in the rule that are being adopted will not change these program requirements. Finally, the OPC argument is focused on the energy savings of individual customers. If the energy savings are considered the benefits provided by the program, then only a small number of customers receive a benefit. For example, for every new home that is built to higher energy-efficiency standards using utility incentives under this program, there are thousands of residential customers who contribute to the energy-efficiency program through their electricity costs, but who do not participate in an energy-efficiency program. The load-management programs are, in a sense, more equitable, because the benefit they provide is the extra measure of reliability that is afforded to all customers.

OPC and Texas ROSE also argued that load-management programs do not conserve energy or provide societal benefits and are, therefore, not appropriate under the energy-efficiency program. As originally adopted, the statute on which the program is based, PURA §39.905, may have implied that any measures adopted to implement it were required to provide energy savings. Despite this argument, the commission included a limited load-management program in the rule that was initially adopted to implement the statute. In the recently-concluded regular session of the Texas Legislature, §39.905 was amended in a way that removes any legal argument that load-management programs are not permitted under the statute because they do not result in energy savings. Amended §39.905 expresses the legislation’s goal that customers have access to energy-efficiency alternatives that allow customers to "reduce energy consumption, peak demand, or energy costs." (Emphasis added.)

It is true, as OPC argues that the ERCOT market compensates for demand reductions, the Responsive Reserve Service. The load that is eligible to be selected in the ERCOT Responsive Reserve market, under the current rules, is limited to 1,150 MW. In addition, customers contract to provide this service on a day-to-day basis, while the load-management resources that would be acquired under the energy-efficiency rule would be longer-term resources. The commission concludes that the proposed amendments to §25.181(e)(3)(C) and (D) will be beneficial, because utilities will have the opportunity to contract for and achieve long-term demand response, beyond the demand response that ERCOT acquires in the Responsive Reserve market. The demand response that is acquired under the energy-efficiency rule should enhance the reliability of the electrical network in ERCOT.

The commission disagrees with Texas ROSE’s summation and comparison of the New York demand-side management program to the Texas programs, because the Texas program is based on cost-effective measures applied at various incentive levels to all customer classes. The commission finds that Texas ROSE is comparing programs that have not necessarily been developed with similar baseline information or goals; thus, Texas ROSE’s conclusion is in error.

The commission disagrees with Nucor that allowing incentives for up to 25% of avoided costs is too small to encourage full participation or to fairly compensate the participants. Load-management demand reductions from industrial customers have been achieved with the current 15% incentive. Participants in the workshops were optimistic that the proposal to increase incentive levels by the amounts specified in the proposed rule should be adequate to increase participation by industrial customers and promote participation by other types of customers as well. The commission believes that the appropriate measure for whether the incentives fairly compensate customers who participate in a demand reduction program is whether customers decide to participate. They have participated at the prior compensation level, and the commission believes that additional customers will be willing to participate at compensation levels based on the raised caps in the proposed rule.

§25.181(e)(3)(C) and (D)

ERCOT suggested that the annual report regarding transmission system enhancements and congestion management, that is required by proposed §25.181(e)(3)(D), be combined with the report that PURA mandates ERCOT file annually on October 1.

Commission response

The commission agrees with ERCOT’s suggested change to the proposed rule and supports the consolidation of resources in meeting the reporting requirements under PURA §39.155 and the proposed §25.181(e)(3)(D).

§25.181(h)(2)(F)

OPC stated that the increased incentives do not benefit residential customers, and that residential customers would cross subsidize industrial customers because of the method by which energy-efficiency costs are allocated. In reply comments, Texas ROSE expressed support for OPC’s position that increased spending on load management would be at the expense of residential and small commercial customers and only benefit large industrial customers. Good Company also expressed concern that the load-management programs would be used exclusively by commercial and industrial customers.

EUMMOT disagreed with OPC that residential and small commercial customers would pay for programs that benefit industrial consumers, because utilities allocate budgets among customer classes identified in the rule and then among programs. Additionally, EUMMOT explained, the rules provide protection by requiring that each customer class receives an equal amount of funds for incentives as well as requiring utilities to provide at least 5% of their goals through hard-to-reach energy-efficiency projects. EUMMOT explained that the cost to all ratepayers can
be reduced by greater use of load-management programs, since load management produces demand reduction at a lower cost per kW than other programs. EUMMOT went on to describe that the TXU Electric Delivery load-management program was implemented at a cost below $160/kW compared to a utility average of $600/kW to meet their annual energy-efficiency goals. EUMMOT stated that an additional 15 MW demand reduction achieved through the proposed load-management amendment would represent a savings of $6.6 million to ratepayers.

Nucor also disagreed with OPC that residential customers would not benefit from the proposed amendments. Nucor explained that all customers depend on a reliable electric grid, power at peak times, and therefore everyone benefits from maintaining an adequate reserve in ERCOT.

Good Company expressed concern that the current funding for energy efficiency was insufficient as evidenced by oversubscribed programs or programs sold out quickly.

Commission response

The commission does not agree with OPC’s assertion that the proposed amendments related to load management will benefit only the commercial and industrial customer classes and that the residential customer class will pay for programs that will not benefit them. As is noted above, the primary purpose of the changes is to enhance reliability of electric service for all customers. In addition, there are provisions in the rule for ensuring equitable participation of all customer classes in the programs.

The commission does not agree with Good Company’s assertion that the energy-efficiency funding is insufficient. The incentives provide the market with opportunities to select and implement projects that are cost effective. During the workshops, there was some discussion of the fact that funding for some programs is quickly reserved, and that funds for such programs are not available after that point. The utilities recognize that the incentive caps permit them to offer lower incentives, if appropriate, and they are likely to adjust the incentive levels to match the demand for incentives by customers and energy service providers. The rule retains a cap on the amount of demand savings that can be achieved through load-management programs, so there will not be any significant diversion of funds from programs that focus on energy savings to the programs that focus on demand savings.

The amendments to §39.905 passed in the 79th legislative session clearly indicate that options that reduce demand are appropriate for all customer classes. The proposal to adjust incentive levels is an appropriate method to control program costs and offer load management to classes other than the industrial classes.

§25.181(h)(2)(H)

Good Company asserted that increasing the maximum percentage of MW achievable through load-management programs from 15% to 30% could reduce spending on energy-efficiency programs by $12 to $15 million. Nucor stated that the proposed changes to §25.181, increasing the allowable load-management demand reduction to 30%, still leaves many hundreds of megawatts of potential demand reduction unrealized. Texas ROSE stated that the 15% limit on load management is prudent and in the best interests of residential and low-income consumers and is also in compliance with PURA §39.905. Texas ROSE therefore stated that it cannot support any increase in load-management savings above 15%.

Commission response

The adoption of these amendments represents a development of the energy-efficiency program to increase the level of load management that is permissible. This progression is appropriate, in light of the lower reserve margins in ERCOT. Load management has proven to be a cost-effective measure, and, as is noted above, the amendments to §39.905 adopted in the recent legislative session support the commission’s conclusion that load management is an appropriate measure.

Prior to the introduction of retail competition, a number of utilities in Texas offered interruptible service at rates that were lower than the firm rates for industrial customers, where the discount to the firm rate was ostensibly based on the value of the ability to interrupt service provided to the utility. With limited regulatory resources, it was difficult to ensure that the rates for these services were reasonable. In the retail competition environment, industrial customers who have the ability to adjust the level of their consumption should have the ability to decrease consumption when prices are high and increase consumption when they are low. The ERCOT Replacement Reserve market also affords large customers an opportunity to be compensated for being available as a demand response resource.

The commission’s energy-efficiency programs are not intended to be an industrial interruptible-load program, and §39.905 does not call for such a program. Rather, the statute contemplates that the utilities will acquire cost-effective energy-efficiency resources under standard offer programs. The emphasis of the program is not replicating the industrial interruption programs that were available before competition but acquiring energy efficiency in an equitable and cost-effective manner.

§25.184(c) Solar Water Heating Market Transformation Program

TREIA, Texas ROSE, EUMMOT, and Good Company supported the adoption of the proposed Solar-water-heater Program under §25.184.

§25.184(d)(2) and (3) Stipulated Values and Measurement and Verification Procedures and Update Lighting Tables

Good Company supported the changes to the deemed savings and measurement and verification guidelines.

Texas ROSE recommended the measurement and verification guidelines and the deemed savings be reviewed by an independent contractor or by a qualified member of the PUC staff.

EUMMOT stated that the proposed updates to the deemed savings are intended to reflect the recent introduction of new lighting technologies. EUMMOT also stated that prior to July 2003 the commission approved program guidelines and procedures for measuring and verifying savings from energy-efficiency programs based on petitions filed by various parties. EUMMOT also stated that after July 2003 the commission determined that the procedures and guidelines were to be codified and at the time the Measurement and Verification Guidelines were inadvertently omitted from the documents submitted for inclusion in §25.184.

Commission response

The deemed savings values were developed through a lengthy process involving ESCOs, utilities, and consumer advocacy groups. This rulemaking proceeding was initiated with the objective of ensuring that the deemed savings reflect market realities and correspond with changes in available technology.

The commission agrees with Texas ROSE’s recommendation that an independent review of the deemed savings be accomplished. On July 27, 2005 the commission issued a request for
proposal, under Project Number 30170, for an independent measurement and verification of the energy-efficiency programs with a preliminary report expected April 21, 2006.

Comments of General Support

TREIA stated that it has no opposition to the proposed amendments to §25.181. EUMMOT stated its support of the proposed load-management amendments, and expressed its view that load management is cost-effective. EUMMOT stated that the TXU Electric Delivery load-management program was implemented at a cost below $160/kW compared to a utility average of $600/kW to meet their annual energy-efficiency goals. EUMMOT stated that an additional 15 MW of demand reductions from the proposed load-management amendment would represent a savings of $6.6 million to ratepayers.

Amendments as a Short-Term Solution

Good Company urged the commission to establish a separate load-management goal and programs. Good Company recognized the benefits of effective load management to include reduction in peak demand, improved grid reliability, decreased congestion, and reduced costs for the Texas market. However, Good Company viewed the current project as a short-term solution, and urged the commission to adopt a long-term solution to achieve robust energy-efficiency savings to benefit grid reliability, transmission congestion, air and environment, investor-owned utilities (IOUs), and all ratepayers.

Nucor stated that load management deserves a program dedicated to the specific issue of capturing the value of load management in the restructured environment, and Nucor believes that the commission should implement a new load management and emergency curtailment program within the next year. Nucor stated that the proposed expansion would be an improvement, and emergency curtailment program within the next year. Nucor stated that the proposed expansion would be an improvement, and urged the commission to adopt the proposed load-management amendment as a short-term solution.

Texas ROSE in its reply comments agreed with Nucor’s position that a separate load-management rule be developed.

Commission response

The Good Company recommendations are beyond the scope of the proposed rule, and it would not be appropriate to adopt them without issuing a separate proposal on which all interested persons had an opportunity to provide comments. Moreover, funding for the energy-efficiency programs is provided for in the utilities’ rates, based on achieving the statutory goal of a 10% reduction in annual growth in demand.

General Comments

Texas ROSE expressed its discontent of the characterization of the impacts of the proposed amendments as they are stated in the preamble. Texas ROSE also explained its opinion that energy-efficiency programs have a higher value than load-management programs. Texas ROSE stated that studies of customer energy efficiency and load-management programs have shown that energy efficiency as currently defined by the PUC’s energy-efficiency rule has a higher value than load management. Texas ROSE went on to state that, despite findings that energy efficiency is a better investment than load management, the commission looks to forge ahead without any convincing evidence that load management is indeed the better option to pursue. Chaparral replied that the legislature believes that reducing peak demand is just as important as reducing energy consumption.

Texas ROSE, in its reply comments, also asserted that the rule as proposed would displace energy-efficiency resources in favor of load management when the commission should be adding the load-management option to existing energy-efficiency options.

In its reply comments, Texas ROSE also stated that EUMMOT provided no evidence that expanding the load-management program at the expense of long-term energy efficiency is in the best interest of consumers or in establishing long-term capacity reserves.

Commission response

The relative value of energy savings and demand savings are addressed above. The commission concludes that in a period of low reserve margins, demand savings have significant value. In addition, the changes in PURA §39.905 support the decision to increase the emphasis on demand savings. Even with the changes adopted in this rule, load-management programs will not account for more than 30% of a utility’s savings.

All comments, including any not specifically referenced herein, were fully considered by the commission.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURa) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and specifically, PURA §39.905, which require(s) the commission to provide oversight and adopt rules and procedures, as necessary, to ensure that the goal for energy efficiency is achieved.


(a) Purpose. The purposes of this section are to ensure that:
(1) Affiliate --
   (A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of an energy efficiency service provider;
   (B) a person in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider;
   (C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by an energy efficiency service provider;
   (D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:
      (i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of an energy efficiency service provider; or
      (ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider; or
   (E) a person who is an officer or director of an energy efficiency service provider or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider;
   (F) a person who actually exercises substantial influence or control over the policies and actions of an energy efficiency service provider;
   (G) a person over which the energy efficiency service provider exercises the control described in subparagraph (F) of this paragraph;
   (H) a person who exercises common control over an energy efficiency service provider, where "exercising common control over an energy efficiency service provider" means having the power, either directly or indirectly, to direct or cause the direction of the management or policies of an energy efficiency service provider, without regard to whether that power is established through ownership or voting of securities or any other direct or indirect means; or
   (I) a person who, together with one or more persons with whom the person is related by ownership, marriage or blood relationship, or by action in concert, actually exercises substantial influence over the policies and actions of an energy efficiency service provider even though neither person may qualify as an affiliate individually.

(2) Calendar year -- January 1 through December 31.

(3) Competitive energy efficiency services -- Energy efficiency services that are defined as competitive under §25.341 of this title (relating to Definitions).

(4) Deemed savings -- A pre-determined, validated estimate of energy and peak demand savings attributable to an energy efficiency measure in a particular type of application that a utility may use instead of energy and peak demand savings determined through measurement and verification activities.

(5) Demand -- The rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).

(6) Demand savings -- A quantifiable reduction in the rate at which energy is delivered to or by a system at a given instance, or average over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).

(7) Demand side management (DSM) -- Activities that affect the magnitude or timing of customer electrical usage, or both.

(8) Energy efficiency -- Programs that are aimed at reducing the rate at which electric energy is used by equipment and/or processes. Reduction in the rate of energy used may be obtained by substituting technically more advanced equipment to produce the same level of end-use services with less electricity; adoption of technologies and processes that reduce heat or other energy losses; or reorganization of processes to make use of waste heat. Efficient use of energy by customer-owned end-use devices implies that existing comfort levels, convenience, and productivity are maintained or improved at a lower customer cost.

(9) Energy efficiency measures -- Equipment, materials, and practices that when installed and used at a customer site result in a measurable and verifiable reduction in either purchased electric energy consumption, measured in kilowatt-hours (kWh), or peak demand, measured in kWs, or both.

(10) Energy efficiency project -- An energy efficiency measure or combination of measures installed under a standard offer contract or a market transformation contract that results in both a reduction in customers' electric energy consumption and peak demand, and energy costs.

(11) Energy efficiency service provider (EESP) -- A person who installs energy efficiency measures or performs other energy efficiency services. An energy efficiency service provider may be a retail electric provider or large commercial customer, if the person has executed a standard offer contract.

(12) Energy savings -- A quantifiable reduction in a customer’s consumption of energy.

(13) Existing contracts -- Energy efficiency contracts in effect prior to September 1, 1999, that expire on or after September 1, 1999.

(14) Growth in demand -- The annual increase in load, measured on the transmission system, in the Texas portion of an electric utility’s service area at time of peak demand, as measured according to subsection (f) of this section.
(15) Hard-to-reach customers -- Customers with an annual household income at or below 200% of the federal poverty guidelines.

(16) Incentive payment -- Funding that reduces the cost of installing energy efficiency measures, or provides a service or benefit that would otherwise not be available to the end-use customer for installing energy efficiency measures.

(17) Inspection -- Onsite examination of a project to verify that a measure has been installed and is capable of performing its intended function.

(18) Large commercial customers -- Retail commercial or industrial customers with a demand that exceeds 100 kW. For the purpose of this subsection, a customer’s load within a service territory that is under common ownership shall be combined.

(19) Load control -- Activities that place the operation of electricity-consuming equipment located at an electric user’s site under the control or dispatch of an energy efficiency service provider, an independent system operator, or other transmission organization.

(20) Load factor -- The ratio of average load to peak load during a specific period of time, expressed as a percent. The load factor indicates to what degree energy has been consumed compared to maximum demand or utilization of units relative to total system capability.

(21) Load management -- Load control activities that result in a reduction in peak demand on an electric utility system or a shifting of energy usage from a peak to an off-peak period.

(22) Market transformation program -- Strategic efforts to induce lasting structural or behavioral changes in the market that result in increased adoption of energy efficient technologies, services, and practices, as more fully described in subsection (k) of this section.

(23) Measurement and verification (M&V) -- Activities intended to determine the actual kWh and kW savings resulting from energy efficiency projects as more fully described in subsections (l) and (m) of this section.

(24) Off-peak period -- Period during which the load on an electric utility system is not at or near its maximum volume. For the purpose of this section, the off-peak period will be all hours from October 1 through April 30.

(25) Peak demand -- Electrical demand at the time of highest annual demand on the utility’s system, measured in 15 minute intervals.

(26) Peak demand reduction -- Peak demand reduction on the utility system during the utility system’s peak period, calculated as the maximum average demand reduction over a period of one hour during the peak period.

(27) Peak period -- Period during which a utility’s system experiences its maximum demand. For the purposes of this section, the peak period is from May 1 through September 30, during the hours between 1:00 p.m. and 7:00 p.m., excluding federal holidays and weekends.

(28) Renewable demand side management (DSM) technologies -- Equipment that uses a renewable energy resource (renewable resource), as defined in §25.173(c) of this title (relating to Goal for Renewable Energy) that, when installed at a customer site, reduces the customer’s net purchases of energy (kWh), electrical demand (kW), or both.

(29) Small commercial customers -- Retail commercial customers with a maximum demand that does not exceed 100 kW.

(30) Standard offer contract -- A contract between an energy efficiency service provider and a participating utility specifying the standard payment based upon the amount of energy and peak demand savings achieved through the installation of energy efficiency measures at electric customer sites, the measurement and verification protocols, and other terms and conditions, according to the program requirements.

(31) Standard offer program -- A program under which a utility administers standard offer contracts between the utility and energy efficiency service providers. For the purposes of this section, the targeted weatherization programs under PURA §39.903 (relating to the System Benefit Fund) to be administered by the Texas Department of Housing and Community Affairs shall be considered a standard offer program.

(d) Procedure for determining affiliate status.

(1) The utility shall have the burden to investigate each energy efficiency service provider that participates in a standard offer or market transformation program to determine whether such energy efficiency service provider is an affiliate of any other energy efficiency service provider that has submitted a project.

(2) In any proceeding to determine affiliate status, the Energy Efficiency Service Provider (EESP) shall have the burden of proof.

(3) Upon discovering evidence that an energy efficiency service provider is affiliated with another energy efficiency service provider, the utility shall notify such energy efficiency service providers in writing and shall include evidence supporting the allegation with the notification; the utility shall file this notification together with supporting evidence with the commission. If the utility relies upon an affidavit to demonstrate the existence of an affiliate relationship, the affidavit shall conform to Texas Rules of Civil Procedure §166a(f) and Texas cases construing this rule.

(4) Upon discovering evidence that an energy efficiency service provider is affiliated with another energy efficiency service provider, any party (complainant) may file such claim, together with supporting evidence, with the commission. If the complainant relies upon an affidavit to demonstrate the existence of an affiliate relationship, the affidavit shall conform to Texas Rules of Civil Procedure §166a(f) and Texas cases construing this rule. A complainant shall notify the energy efficiency service provider and utility in writing and include all supporting evidence with the notification.

(5) Upon receipt of a utility’s or complainant’s notification, the energy efficiency service provider will timely respond to the utility’s or complainant’s allegations and file such response, together with documentation supporting the response, with the commission. If the energy efficiency service providers rely upon an affidavit to contradict any of the utility’s evidence, the affidavit shall conform to Texas Rules of Civil Procedure §166a(f) and all Texas cases construing the rule.

(6) All filings submitted pursuant to paragraphs (3), (4), and (5) of this subsection will be used as evidence by the commission to render a decision on affiliate status.

(c) Cost-effectiveness standard.

(1) Cost-effectiveness. An energy efficiency project is deemed to be cost-effective if the cost of the project to the utility is less than or equal to the benefits of the project. The cost of a project includes the cost of incentives, the measurement and verification costs, and program administrative costs. The benefits of the project include the value of the purchased electrical energy saved, the value of the corresponding generating capacity requirements, and associated
reserves displaced or deferred by the project. The present value of the project benefits shall be calculated over the projected life of the measure, not to exceed ten years.

(2) Avoided cost. Incentives shall be set as a percentage of the avoided cost. The avoided cost shall be the estimated cost of a new gas turbine.

(A) Initially, the avoided cost of capacity savings shall be set at $78.5/kW saved annually at the customer’s meter.

(B) Initially, the avoided cost energy savings shall be set at 2.68 cents/kWh saved annually at the customer’s meter.

(3) Incentive Levels

(A) The incentive levels for each customer class shall be a percentage of the avoided cost set forth in subsection (e) of this section. The incentive levels for individual programs shall be set by each utility subject to the incentive ceilings outlined below and other provisions of this section. Utilities may adjust incentive levels for individual programs during the program year, but such adjustments must be clearly publicized in the program application guidelines. Except as provided in subparagraphs (B) through (D) of this paragraph, incentive levels for standard offer programs may not exceed:

(i) 100% for hard-to-reach customers.

(ii) 50% for other residential and small commercial customers.

(iii) 35% for large commercial and industrial customers, except for load management programs which may not exceed 25%.

(B) The utility may apply an environmental adder of up to 20% above the cost effectiveness standard prescribed in subparagraph (A) of this paragraph for targeted projects conducted in an area that is not in attainment for air emission that is subject to the regulations of the Texas Commission on Environmental Quality (TCEQ). The environmental adder is available only for targeted energy efficiency projects that would not be implemented without the adder. Projects receiving incentives under subparagraphs (C) or (D) of this paragraph are not eligible to receive the environmental adder.

(C) For load management projects implemented in areas of transmission or distribution system constraints outside of the ERCOT power region, the utility may identify areas where transmission or distribution system enhancements could potentially be avoided or deferred or where congestion management costs could be reduced as a result of load management. The utility may increase the incentive for targeted load management projects in such areas. The increased incentive is available only for targeted load management projects that would not be implemented without the higher incentive. The incentive for load management programs targeted to transmission or distribution constrained areas shall not exceed:

(i) Large Commercial and Industrial projects: 35%.

(ii) Residential and Small Commercial projects: 55%.

(D) The ERCOT independent system operator on an annual basis shall identify areas where transmission system enhancements could potentially be avoided or deferred or where congestion management costs could be reduced as a result of load management. Such information shall be provided by ERCOT to the utility and to the commission by October 1 of each year for the following year. In addition, the utility may identify areas where distribution system enhancements could potentially be avoided or deferred as a result of load management. The utility may increase the incentive for targeted load management projects in such areas. The increased incentive is available only for targeted load management projects that would not be implemented without the higher incentive. The incentive for load management programs targeted to transmission or distribution constrained areas shall not exceed:

(1) Each year’s historical demand growth data shall be adjusted for weather fluctuations, using weather data for the most recent ten years. The utility’s growth in demand is based on the average growth in retail load in the Texas portion of the utility’s service area, measured at the utility’s annual system peak for the immediately preceding five years.

(2) The goal for energy-efficiency savings for a year is calculated by applying the percentage goal, prescribed in this subsection, to the average rate of growth in demand, based on the average of the five preceding annual growth rates. The baseline for calculating demand growth shall be reset each year.

(3) A utility may submit for commission approval an alternative method to calculate its growth in demand, for good cause.

(4) The utility, subject to commission approval, may increase its energy efficiency goal for targeted projects conducted in an area that is an affected county or a nonattainment area, as defined in §25.182 of this title (relating to the Energy Efficiency Grant Program).

(g) Basic program elements. Electric utilities shall administer energy efficiency programs designed to achieve reductions in the customer’s purchased energy consumption or demand, or both, and lower energy costs through the implementation of standard offer programs or limited, targeted market transformation programs.

(1) Each electric utility shall submit energy efficiency plans and reports to the commission in accordance with subsection (h) of this section.

(2) Incentive payments shall be made under either standard offer contracts or market transformation contracts, or both, for kWs and kWs saved. The amount of the incentive payment may vary by customer class in order to effectively reach all customer classes, including hard-to-reach customers. Market transformation programs may offer other incentives or benefits as approved by the commission.

(3) Customer protection provisions shall be included in all electric utilities’ energy efficiency programs in accordance with subsection (o) of this section.

(4) All projects performed under a standard offer program shall be subject to inspections, measurement, and verification in accordance with subsection (l) of this section. Energy and peak demand savings under market transformation projects shall be verified in accordance with subsection (k) of this section.

(5) The commission shall establish an implementation project, as described in subsection (n) of this section, to address
program design, implementation and administration, and make recommendations to the commission.

(h) Energy efficiency plans.

(1) Schedule. Each electric utility shall by April 1, 2001, and annually thereafter, file its updated energy efficiency plan and an annual energy efficiency report as described in paragraph (4) of this subsection.

(2) Energy efficiency plan. Each electric utility’s energy efficiency plan shall describe how the utility intends to achieve the legislative mandate and the requirements of this section. Beginning January 1, 2002, the plan shall be on a calendar year cycle and shall project at least a four-year period. The plan shall propose an annual budget sufficient to reach the 10% legislative goal by January 1, 2004, and annually thereafter. Each electric utility’s energy efficiency plan shall include:

(A) A projection of the utility’s annual growth in demand based on actual historical data calculated using the methodology and corresponding energy and peak demand savings goal to be achieved under the plan, as defined in subsection (f)(2) of this section.

(B) A description of existing contract obligations and an explanation of the extent to which these contracts will be used to meet the utility’s annual energy efficiency requirements. Only additional energy and peak demand savings achieved as a result of projects installed after the effective date of this section may count towards the amount of energy and peak demand savings actually achieved on an annual basis.

(C) An estimate of the energy and peak demand savings to be obtained through each separate standard offer program, market transformation program, or both.

(D) The proposed design and plan for each of the utility’s standard offer programs and market transformation programs, including measurement and verification plans when appropriate. For statewide standard offer programs or market transformation programs previously approved by the commission, the plan may simply be identified with a description of how it will be implemented in the service territory of the utility. Programs not previously approved by the commission should be presented in detail, including baseline studies, for review and approval.

(E) A description of the customer classes targeted by the utility’s energy efficiency programs, specifying the size of the hard-to-reach, residential, small commercial, and large commercial and industrial customer classes, and the methodology used for estimating the size of each customer class.

(F) The proposed annual budget required to implement the utility’s standard offer program, market transformation program, or both, broken out by program for each customer class, including hard-to-reach customers, and the amount for the small contractor set-aside pursuant to subsection (i)(4) of this section. The proposed budget should detail incentive payments, utility administrative costs, including the independent M&V expert, and the other administrative functions pursuant to subsection (i)(1) of this section, and the rationale and methodology used to estimate the proposed expenditures.

(G) Savings achieved through programs for hard-to-reach customers shall be no less than 5.0% of the utility’s total demand reduction goal.

(H) Savings achieved through load management programs, including interruptible rates, may not exceed 30% of the utility’s total demand reduction goal.

(I) A discussion of the types of informational activities the utility plans to use to encourage participation in standard offer programs or market transformation programs, including the manner in which utilities will use to post notice of standard offer programs, market transformation programs, and any other facts that may be considered when evaluating a project.

(3) Prior to the implementation of the energy efficiency program, the commission shall:

(A) Approve market transformation programs and standard offer programs.

(B) Review and approve measurement and verification plans, including deemed savings in accordance with the standard offer or market transformation program guidelines. Projects that require installation-specific measurement and verification may have a measurement and verification process approved by the utility. At the utility’s option, the measurement and verification process or deemed savings may be submitted for pre-approval by the commission.

(4) Annual energy efficiency report. The annual energy efficiency report shall provide information listed below:

(A) The utility’s projected annual growth in demand calculated using the methodology prescribed in subsection (f) of this section.

(B) The corresponding energy and peak demand savings goal for the utility, as defined in subsection (f)(2) of this section, expressed in kWs and kWhs, for the current calendar year.

(C) The utility’s actual annual growth in demand for the preceding calendar year.

(D) The most current information available comparing projected savings to reported savings for each of the utility’s standard offer programs and market transformation programs.

(E) The most current information available comparing reported savings and verified achieved savings as verified by the independent M&V expert for all programs.

(F) The most current information available comparing the baseline and milestones to be achieved under market transformation programs.

(G) A statement of funds expended by the utility for incentive payments, program administration pursuant to subsection (i)(1) of this section, including inspections, and the independent M&V expert.

(H) A statement of any funds that were committed but not spent during the year, by project.

(I) Any decreases by more than 10% in total program cost, with an explanation for the decrease in cost.

(J) Any remaining program funds that were not committed during the year.

(K) The most current information available of ongoing and completed energy efficiency projects by customer class that includes:

(i) Number of customers served by each project.

(ii) Project expenditures.

(iii) Verified energy and peak demand savings achieved by the project, when available.

(L) A description of proposed changes in the energy efficiency plans.
(M) Any other information prescribed by the commission.

(i) Utility administration. Utilities shall administer standard offer programs, market transformation programs, or both, to meet the requirements of the energy efficiency goal in PURA §39.905. The cost of administration may not exceed 10% of the total program costs.

(1) Administrative costs include costs necessary for utility conducted inspection and the independent M&V expert as required under subsections (l) and (m) of this section, and the costs necessary to meet the following requirements:

(A) Conduct informational activities designed to explain the standard offer programs and market transformation programs to energy efficiency service providers and vendors.

(B) Review and select proposals for energy efficiency projects in accordance with the guidelines of the standard offer programs under subsection (j) of this section, and market transformation programs under subsection (k) of this section.

(C) Inspect projects to verify that measures under a standard offer contract were installed and capable of performing their intended function, as required in subsection (l) of this section, before final payment is made. Such inspections shall comply with PURA §39.157 and §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates).

(D) Review and approve energy efficiency service providers’ savings monitoring reports for both standard offer contracts and market transformation contracts.

(E) Any other costs as necessary and justifiable for successful program implementation.

(2) A utility administering a standard offer program or a market transformation program shall not be involved in directly providing customers any energy efficiency services, including any technical assistance for the selection of energy efficiency services or technologies, unless the customer is a large commercial customer and the activities are limited to the outreach activities outlined in paragraph (1)(A) of this subsection, or unless a petition for waiver has been granted by the commission pursuant to §25.343 of this title. A utility may provide interested parties a list of EESPs who have participated or are currently participating in the utility’s energy efficiency programs. In providing the list, the utility may not endorse or favor any EESP.

(3) The utility shall compensate energy efficiency service providers for energy efficiency projects in accordance with the contract and the requirements of this section. An individual energy efficiency service provider and its affiliates may not receive more than 20% of the total incentive payments available for a particular standard offer program, unless the program is not fully subscribed after 180 days, and the utility has demonstrated that it has performed adequate outreach. This requirement is not applicable to a load management program.

(4) The utility, in its energy efficiency plan pursuant to subsection (h)(2) of this section, shall have a funding set-aside in an amount appropriate to the utility’s program budgets for hard-to-reach or residential and small commercial customers for small projects. The commission may adjust the allocation of the set-aside for individual utilities at any time. Under this funding set-aside:

(A) Each incentive request for the hard-to-reach, residential and small commercial customer projects may not exceed $5,000.

(B) A utility may petition the commission for waiver of this limitation if the utility can demonstrate that the utility would not be able to meet its annual energy savings goal under this limitation.

(5) Incentive reserve requests for projects for individual sites or customers exceeding $10,000 shall require a signed affidavit of participation by the project host.

(6) Projects or measures under either the standard offer or market transformation programs are not eligible for incentive payments or compensation if:

(A) A project would achieve demand reduction by eliminating an existing function, shutting down a facility, or operation, or would result in building vacancies, or the re-location of existing operations to locations outside of the facility or area served by the participating utility.

(B) A measure would be installed even in the absence of the energy efficiency service provider’s proposed energy efficiency project. For example, a project to install measures that have wide market penetration would not be eligible.

(C) A project results in negative environmental or health effects, including effects that result from improper disposal of equipment and materials.

(D) The project involves the installation of self-generation or cogeneration equipment, except for renewable DSM technologies.

(7) Cost recovery and unspent funds. Funds for achieving the energy efficiency goal will be included in each utility’s transmission and distribution rates. Each utility shall track its energy efficiency expenditures separately from other expenditures and report these in their annual energy efficiency report. Funds not spent within a given year shall be considered as a source of funding for the following year, and the commission shall consider utilities’ requests to roll over unspent funds on a case-by-case basis in connection with the utilities’ annual energy efficiency report filing under subsection (h)(4) of this section.

(8) Each utility shall meet its energy efficiency goal annually through the acquisition of cost-effective energy and demand savings, in accordance with this section. A utility shall be deemed to have met its energy efficiency goal when the utility achieves a 10% reduction in growth in demand calculated as prescribed in subsection (f) of this section.

(A) Funds approved in the utility’s rates for the purpose of the energy efficiency goal under PURA §39.905 shall be used exclusively to acquire cost-effective energy efficiency savings, even if such savings exceed the utility’s energy efficiency goal.

(B) Notwithstanding the costs approved in the utility’s cost of service rates, the utility must acquire cost-effective energy efficiency savings equivalent to at least 10% of the utility’s annual growth in demand by January 1, 2004, and each year thereafter, by administering programs consistent with this section.

(j) Standard offer programs. A utility’s standard offer program shall be implemented through standard offer contracts. The standard offer contract shall describe the terms and conditions according to the requirements of this section for energy efficiency service providers for the delivery of energy efficiency services. Standard offer contracts will be available to any energy efficiency service provider that satisfies the contract requirements within the commission approved program parameters.

(1) Statewide standard offer programs shall be developed and submitted to the commission for approval. Utilities may use the
commission approved statewide standard offer programs without further commission review. Other standard offer programs will require commission approval for approval.

(2) A utility's standard offer program shall meet the following requirements:

(A) A standard offer program shall be developed to address each customer class. Specific different programs may be developed to address hard-to-reach customers. All customer classes must have access to an equitable share of the incentive funds.

(B) Each standard offer program will offer a standard incentive payment and specify a schedule of payments. The incentive shall be set at a level sufficient to meet the goals of the program and shall be consistent with the ceiling under subsection (h)(2)(F) of this section, or any revised ceiling adopted by the commission. The standard offer incentive payments may include both payments for kW and kWh savings, as appropriate. Except for load management projects, the incentive payment may vary by customer class, but not within a customer class.

(C) Peak demand and energy savings for each project shall be identified in the proposals the energy efficiency service providers submit to the utility.

(D) Standard offer programs shall not limit eligibility to specific technologies, equipment, or fuels, but shall be neutral with respect to such factors. Energy efficiency projects may lead to switching from electricity to another energy source, provided the energy efficiency project results in overall lower energy costs, lower energy consumption, and the installation of high efficiency equipment. Switching from gas to electricity is not allowable under the program.

(E) Standard offer programs may require maximum load factor criteria for project eligibility.

(i) Increasing load factors may be subject to a decreasing incentive scale.

(ii) Load factor caps and corresponding incentive scales must be clearly publicized in the program application guidelines.

(F) All projects must result in a reduction in purchased energy consumption, or peak demand, or both, and a reduction in energy costs for the end-use customer.

(G) Comprehensive projects incorporating more than one energy efficiency measure shall be encouraged. Lighting measures shall be limited to 65% of the savings of each project. When a project consists of lighting measures only, compensation shall not exceed 65% of the ceiling for that class under subsection (h)(2)(F) of this section.

(H) Projects shall result in consistent and predictable energy and peak demand savings over a ten-year period.

(I) A utility shall not condition the provision of any product, service, pricing benefit, or alternative terms or conditions upon the purchase of any other good or service from the utility or its competitive affiliate, except that only customers taking transmission and distribution services from a utility can participate in its energy efficiency programs.

(J) Projects shall disclose potential adverse environmental or health effects associated with the energy efficiency measures to be installed.

(K) Projects shall include the procedures for measuring and reporting the energy and peak demand savings from installed energy efficiency measures, consistent with the requirements under subsection (l) of this section.

(L) Standard offer programs shall provide a complaint process that allows:

(i) The energy efficiency service provider to file a complaint against a utility.

(ii) A customer to file a complaint against an energy efficiency service provider. The utility may use customer complaints as a criterion for disqualifying energy efficiency service providers from participating in the program.

(M) Renewable DSM technologies are allowed.

(N) A standard offer program shall require contractors to provide the following:

(i) Evidence of good credit rating.

(ii) List of references.

(iii) All applicable licenses required under state law and local building codes.

(iv) Evidence of all building permits required by governing jurisdictions.

(v) Evidence of all necessary insurance.

(O) A utility may use poor performance as a criterion to limit or disqualify an energy efficiency service provider or its affiliate from participating in the programs.

(k) Market transformation programs. Market transformation programs are strategic efforts, including, but not limited to, incentives and education designed to reduce market barriers for energy efficient technologies and practices. Market transformation programs must be designed to obtain energy savings and peak demand reductions beyond savings that would be achieved through compliance with building codes and equipment efficiency standards. Utilities should cooperate in the creation of regional or statewide programs, consider statewide administration where appropriate, and where possible, leverage with existing effective national programs that have the potential to save energy in Texas. Statewide market transformation programs shall be developed under the implementation project to address targeted customer classes, as described in subsection (n) of this section. The programs shall be filed for commission review and approval. Utilities may use the statewide commission approved market transformation programs without further commission review. All other market transformation programs will require commission review for approval. Market transformation programs shall be conducted through projects that describe the terms and conditions as required under this section for the delivery of energy efficiency services. Market transformation programs must meet the following criteria:

(1) Competitive solicitation shall be the preferred method for contract selection. Pilot projects may be developed by an individual utility, a group of utilities, or an energy efficiency service provider. A utility may request a waiver from the requirements of a competitive solicitation for good cause.

(2) A market transformation project shall identify:

(A) Project goals.

(B) Market barriers the project is designed to overcome.

(C) Key intervention strategies for overcoming those barriers.

(D) Estimated costs and projected energy and capacity savings.
(E) A baseline study that is appropriate in time and geographic region. In establishing a baseline, the study shall consider the level of regional implementation and enforcement of the International Energy Conservation Code (IECC), when applicable. However, this consideration shall not preclude establishment of a baseline below the IECC "prescriptive" component performance compliance levels where such compliance is permitted by the IECC through alternative building designs or alternative measures. The baseline for new construction programs shall be developed by the Energy Efficiency Implementation Project (EEIP) and submitted to the commission for approval.

(F) Project implementation timeline and milestones.

(G) Method for measuring and verifying savings.

(H) Period over which savings shall be considered to accrue, including a date for final market transformation.

(I) Each proposed project shall include a description of how it will achieve the transition from extensive market intervention activities toward a largely self-sustaining market.

(3) The project must be cost-effective, under the standard in subsection (e) of this section.

(4) The project must be designed to achieve energy or peak demand savings, or both, and lasting changes in the way energy efficient goods or services are distributed, purchased, installed, or used.

(l) Inspection, measurement and verification. Each standard offer program shall include an industry accepted measurement and verification protocol approved by the commission as part of the detailed energy efficiency plan that will be used to measure and verify energy and peak demand savings to ensure that the goals of this section are achieved.

(1) The energy efficiency service provider is responsible for the measurement of energy and peak demand savings using the approved measurement and verification protocol, and may utilize the services of an independent third party for such purposes.

(2) Commission approved deemed energy and peak demand savings may substitute for the energy efficiency service provider’s measurement and verification where applicable.

(3) Each customer shall sign a certification indicating that the measures contracted for were installed before final payment is made to the energy efficiency service provider.

(4) An energy efficiency service provider may request a utility inspection at its own expense in the event a customer refuses to sign the measure installation certification.

(5) For residential and small commercial customer projects involving over 30 installations, a statistically significant sample of installations will be subject to on-site inspection in accordance with the protocol set out for the project. Inspection shall occur within 30 days of notification of measure installation to ensure that measures are installed and capable of performing their intended function. The energy efficiency service provider shall not receive final compensation until the customer documents work completion and the utility has conducted its inspection on the sample of installations.

(A) An energy efficiency service provider shall not be penalized for the inspection failure rate of another energy efficiency service provider.

(B) An energy efficiency service provider with unsatisfactory inspection results shall be subject to further inspections.

(7) The sample size for on-site inspections may decrease over time for a contractor under a particular contract that has consistently yielded satisfactory inspection results.

(m) Independent measurement and verification (M&V) expert. An independent M&V expert shall be selected to verify energy and peak demand savings, including deemed savings, reported by energy efficiency service providers statewide for the calendar year 2002, and periodically thereafter as determined by the commission.

(1) The independent M&V expert shall be selected by the commission by competitive solicitation.

(2) The independent M&V expert shall be funded from the utilities’ program administration budgets.

(3) The independent M&V expert shall perform:

(A) A verification of energy efficiency service providers’ reported energy and peak demand savings, based on a statistically representative sample of completed projects;

(B) A limited process evaluation; and

(C) Any other task the commission deems necessary.

(4) By March 1, 2003, the independent M&V expert shall report its preliminary conclusions to the commission and make a recommendation whether the utilities’ energy and peak demand savings should be adjusted. By March 2004, the independent M&V expert shall provide its full report.

(n) Energy efficiency implementation project. The commission shall initiate an implementation project to make recommendations to the commission for its consideration with regard to best practices in standard offer programs and market transformation programs. All orders approved by the commission under Project Number 22241, Energy Efficiency Program Implementation Docket, and that are consistent with this section shall be transferred to the energy efficiency implementation project. Material submitted to the commission in this project believed to contain proprietary or confidential information shall be identified as such, and the commission may enter an appropriate protective order. The following functions may be undertaken in the energy efficiency implementation project:

(1) Development and review of statewide standard offer programs.

(2) Identification, design, and review of market transformation programs.

(3) Development of the appropriate baseline for programs addressing new construction.

(4) Determination of measures for which deemed savings are appropriate and participation in the development of deemed savings estimates for those measures.

(5) Recommendation to the commission of one or more independent M&V expert to conduct the audit in accordance with subsection (m) of this section.
(6) Review of and recommendations on the independent M&V expert’s report with respect to whether utilities will meet the minimum legislative goal by January 1, 2004, and annually thereafter.

(7) Review of and recommendations on incentive payment levels and the adequacy to induce the desired level of participation by the energy efficiency service providers and customer classes.

(8) Review of and recommendations on the utility annual energy efficiency reports with respect to whether all customer classes have access to energy efficiency programs.

(9) Periodic reviews of the cost effectiveness methodology.

(10) Development of information packets for potential residential and commercial customers.

(11) Other activities as requested by the commission.

(o) Customer protection. The customer protection provisions under this section shall apply to residential and small commercial customers only. Each energy efficiency service provider who provides energy efficiency services to the end-use utility customer shall provide:

(1) Clear disclosure to the customer of the following:
   (A) The customer’s right to a cooling-off period of three business days, in which the contract may be canceled, if applicable under law.
   (B) The name, telephone number, and street address of the energy services provider, the contractor, and written disclosure of all warranties.
   (C) The fact that incentives are made available to the energy efficiency services provider through a ratepayer funded program, manufacturers or other entities.
   (D) Notice of provisions that will be included in the customer’s contract as described in paragraph (3) of this subsection.
   (2) A form developed and approved by the commission may be used to satisfy the requirements of paragraph (1) of this subsection
   (3) Contractual provisions to be included:
      (A) Information on work activities, completion dates, and the terms and conditions that protect residential customers in the event of non-performance by the energy efficiency service provider.
      (B) Written and oral disclosure of the financial arrangement between the energy efficiency service provider and customer. This includes an explanation of the: total customer payments, the total expected interest charged, all possible penalties for non-payment, and whether the customer’s installment sales agreement may be sold.
      (C) Disclosure of contractor liability insurance to cover property damage.
      (D) An "All Bills Paid" affidavit be given to the customer to protect against claims of subcontractors.
      (E) Provisions prohibiting the waiver of consumer protection statutes, performance warranties, false claims of energy savings and reductions in energy costs.
      (F) Information on complaint procedures offered by the contractor, or the utility, as required under subsection (j)(2)(L) of this section, and toll free numbers for the Office of Customer Protection of the Public Utility Commission of Texas, and the Office of Attorney General’s Consumer Protection Hotline.

(G) Disclosure that the energy efficiency service provider is not part of, or endorsed by the commission or the utility.

(p) Effective date. This section shall be in effect for any energy efficiency programs pursuant to this section with a start date of January 1, 2003 and thereafter.

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

Filed with the Office of the Secretary of State on August 24, 2005.

TRD-200503653
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: September 13, 2005
Proposal publication date: June 10, 2005
For further information, please call: (512) 936-7223

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

SUBCHAPTER A. APPLICATION PROCEDURES

16 TAC §33.9

The Alcoholic Beverage Commission adopts new §33.9, relating to service fees for on-line transactions with the agency and credit card fees. The rule is adopted without changes to the proposed text as published in the July 15, 2005, issue of the Texas Register (30 TexReg 4090).

This rule is adopted to defray costs associated with providing services to members of the alcoholic beverage industry by means of the Internet. The costs established by this rule are consistent with the terms of §5.55 of the Alcoholic Beverage Code.

No comments concerning this rule were received.

The new rule is adopted under the authority of §5.31 of the Texas Alcoholic Beverage Code, which authorizes the commission to prescribe and publish such rules as are necessary to carry out the provisions of the Code.

Cross Reference: Section 5.55 of the Alcoholic Beverage Code 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.

Filed with the Office of the Secretary of State on August 23, 2005.

TRD-200503630
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Effective date: September 12, 2005
Proposal publication date: July 15, 2005
For further information, please call: (512) 206-3204
SUBCHAPTER B. LICENSE AND PERMIT SURCHARGES

16 TAC §33.23

The Alcoholic Beverage Commission adopts amendments to §33.23, relating to surcharges to be paid by alcoholic beverage permittees and licensees. The amendments are adopted with changes to the proposed text as originally published in the July 22, 2005, issue of the Texas Register (30 TexReg 4169).

Assessment of surcharges are mandated by §5.50 of the Alcoholic Beverage Code and serve to insulate that the alcoholic beverage industry bears the cost of regulation by the commission. Changes to the surcharge amounts contained in the rule from the amounts originally proposed were due to more accurate calculation of surcharges in light of the final appropriations to the commission made by the 79th Texas Legislature.

No comments were received regarding the amendments.

The amendments are adopted under the authority of §5.31 of the Alcoholic Beverage Code.

Cross Reference: Sections 11.32, 11.35, and 61.65 of the Alcoholic Beverage Code are affected by the amendments.

§33.23. Alcoholic Beverage License and Permit Surcharges.

(a) A surcharge of all original or renewal permit or license fees set by the Texas Alcoholic Beverage Code shall be levied against license and permit holders as follows:

Figure: 16 TAC §33.23(a)

(1) The surcharge shall apply to each brewpub licensed under Texas Alcoholic Beverage Code, Chapter 74, even though one or more are licensed under the same general management or ownership.

(2) An organization which meets the requirements for exemption from a private club registration permit under the Texas Alcoholic Beverage Code §32.11, is also exempt from the surcharge.

(b) The surcharges shall be due and payable at the same time and in the same place and manner as the original or renewal permit, certificate, or license fee to which the surcharges apply.

(c) Failure or refusal to timely pay the license, certificate or permit surcharge shall be considered the same as failure to timely pay the original or renewal certificate, permit or license fee and the same penalties will apply.

(d) The amount of surcharge due shall be determined by the issue date of the permit or license and the surcharge in effect under this rule on the issue date of that license or permit.

(e) This section shall take effect October 1, 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.

Filed with the Office of the Secretary of State on August 23, 2005.
TRD-200503676
Chris Kloeris
Executive Director
Texas Optometry Board

CHAPTER 273. GENERAL RULES

22 TAC §273.8

The Texas Optometry Board adopts amendments to §273.8 without change to the proposed text published in the June 17, 2005, issue of the Texas Register (30 TexReg 3510).

The amendments change the late renewal fee to 150 percent of the renewal fee for renewals one to ninety days late, and 200 percent of the renewal amount for renewals 91 to 364 days late in order to comply with statutory amendments made by House Bill 1025, 79th Legislature, Regular Session.

No comments were received.

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151, and House Bill 1025, 79th Legislature, Regular Session. No other sections are affected by the amendments.
The Texas Optometry Board interprets §351.151 as authorizing
the adoption of procedural and substantive rules for the regu-
lation of the optometric profession, and House Bill 1025 as chang-
ing the computation of the late renewal fee.

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

Filed with the Office of the Secretary of State on August 24, 2005.

TRD-200503677
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: September 13, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 305-8502

CHAPTER 277. PRACTICE AND PROCEDURE

22 TAC §277.8

The Texas Optometry Board adopts new §277.8 without changes
to the proposed text as published in the June 17, 2005, issue of
the Tex Register (30 TexReg 3512).

The new rule establishes the procedure for the temporary sus-
pension or restriction of a license, including appointment and
meeting of the committee, the requirement for an informal con-
ference, and referral to the State Office of Administrative Hear-
ings as authorized by House Bill 1025, 79th Legislature, Regular
Session.

No comments were received.

The new section is adopted under the Texas Optometry Act,
Texas Occupations Code, §351.151, and House Bill 1025, 79th
Legislature, Regular Session.

The Texas Optometry Board interprets §351.151 as authorizing
the adoption of procedural and substantive rules for the regu-
lation of the optometric profession, and House Bill 1025 as autho-
rizing the agency to temporarily suspend or restrict a license.

No other sections are affected by the new section.

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

Filed with the Office of the Secretary of State on August 24, 2005.

TRD-200503678
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: September 13, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 305-8502

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 341. LICENSE RENEWAL

22 TAC §341.1

The Texas Board of Physical Therapy Examiners adopts amend-
ments to §341.1, concerning Requirements for Renewal without changes to the proposed text as published in the June 24, 2005, issue of the Texas Register (30 TexReg 3718) and will not be re-
published.

The changes delete outdated references to renewal notification
procedures. The changes update the rule to reflect the addition
of the online renewal application and related changes to board
procedures.

No comments were received regarding adoption of the amend-
ments.

The amendments are adopted under the Physical Therapy Prac-
tice Act, Title 3, Subtitle H, Chapter 453, Occupations Code,
which provides the Texas Board of Physical Therapy Examiners
with the authority to adopt rules consistent with this Act to carry
out its duties in administering this Act.

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

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

TRD-200503769
John P. Maline
Executive Director, Executive Council of Physical Therapy and
Occupational Therapy Examiners
Texas Board of Physical Therapy Examiners
Effective date: September 18, 2005
Proposal publication date: June 24, 2005
For further information, please call: (512) 305-6900

22 TAC §341.20

The Texas Board of Physical Therapy Examiners adopts amend-
ments to §341.20, concerning Licensees Called to Active Military
Service without changes to the proposed text as published in the
June 24, 2005, issue of the Texas Register (30 TexReg 3719) and
will not be republished.

The changes ensure that licensees in the reserves who are
called to active military service will not be penalized for that
service.

The amendments extend the waiver of continuing education to
all licensees who are called to active duty while serving in the
military reserves, and clarifies how the waiver will be applied.

No comments were received regarding adoption of the amend-
ments.

The amendments are adopted under the Physical Therapy Prac-
tice Act, Title 3, Subtitle H, Chapter 453, Occupations Code,
which provides the Texas Board of Physical Therapy Examiners
with the authority to adopt rules consistent with this Act to carry
out its duties in administering this Act.

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

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

TRD-200503768

ADOPTED RULES  September 9, 2005  30 TexReg 5801
The amendment to §39.11 authorize the program, upon availability of funds, to reimburse the costs associated with co-payments for Medicare Part D drug benefits.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were organizations and groups, including Med Solutions as well as various agencies that contract with the department to provide primary health care services. The commenters were not against the rules in their entirety; however, the commenters provided recommendations as discussed in the summary of comments.

Comment: Concerning the rules as a whole, one commenter described an alternate resource available for individuals seeking assistance in accessing and paying for prescription drugs.

Response: The commission thanks the commenter for providing information on this source of assistance. No change was made as a result of this comment.

Comment: Concerning the rules as a whole, several commenters stated that program clients should be able to maintain access to necessary prescription medications, and that implementation of Medicare Part D benefits should not harm clients.

Response: The commission under current rule allows for program benefits to continue while a client’s application is pending with another agency for similar benefits, and the client is in need of services. Therefore, no change was made as a result of this comment.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the adoption has been reviewed by legal counsel and found to be within the state agencies’ authority to adopt.

STATUTORY AUTHORITY

The amendments are adopted under Health and Safety Code, §31.004(a), which authorizes the executive commissioner of the Health and Human Services Commission to adopt rules necessary to provide primary health care services to the citizens of this state. Government Code, §531.0055(e), and Health and Safety Code, §1001.075, also authorize the executive commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

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

Filed with the Office of the Secretary of State on August 26, 2005.

TRD-200503702
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: September 15, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 458-7236
CHAPTER 61. CHRONIC DISEASES
SUBCHAPTER A. KIDNEY HEALTH CARE PROGRAM

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts amendments to §§61.1, 61.2, 61.4, 61.6, 61.7, 61.9, 61.13, and 61.14, and the repeal of §61.15, concerning the Kidney Health Care Program. The amendments to §61.1 and §61.9 are adopted with changes to the proposed text as published in the June 17, 2005, issue of the Texas Register (30 TexReg 3537). Sections 61.2, 61.4, 61.6, 61.7, 61.13, 61.14, and the repeal of §61.15 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

These amendments are necessary to restructure access to program pharmacy benefits and to incorporate the provisions of the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA). The department proposes cost sharing of expenses for program recipients who are eligible for enrollment in Medicare Part B and payment of co-insurance amounts for eligible program recipients with Medicare Part B immunosuppressant drug coverage. In addition, the department is amending the rules to include new terminology required by the department’s restructuring and reorganization, and to improve clarity and consistency in existing language.

SECTION-BY-SECTION SUMMARY

Amendments to §61.1 delete references to the Texas Board of Health, and add references to the Department of State Health Services, rather than the Texas Department of Health. Definitions of "co-pay/co-payment", "CRNA", and "Medicare Part D Prescription Drug Plan (PDP)" and "Medicare Advantage Plan (MA-PD)" have been added to implement Medicare Part D drug coverage. Amendments to §61.2 add eligibility requirements for Medicare Part D cost sharing. Amendments to §61.4 improve the consistency and clarity of existing provisions concerning applications for program benefits. Amendments to §61.6 provide the structure for new drug benefits, and restate current provisions concerning benefits for covered travel with greater specificity and clarity. Amendments to §§61.7, 61.9, 61.13, and 61.14 revise the sections to conform to guidelines for rules format. New language added to §61.9 as proposed includes KHC requirements for PDP and MA-PD providers. Section 61.15 is being repealed as redundant, because federal and state law, as well as department policy, already specifically prohibits discrimination in each of the areas addressed in §61.15.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were individuals, and were in favor of the rules in their entirety.

Comment: Concerning §61.6(7) and §61.6(8), one commenter commended KHC’s decision to coordinate drug coverage with Medicare Part D and indicated support for coverage by KHC of Medicare Part B co-insurance costs for immunosuppressive drugs.

Response: The commission agrees, and thanks the commenter for his support.

Comment: Concerning §61.8, one commenter stated that provision of supplemental program benefits for Part D premiums and “true out-of-pocket” expenses would benefit KHC recipients. The commenter urged KHC to consider covering the 5% co-pay for transplant recipients who have incurred $5,100 in “total drug costs”, and suggested maintaining the $6.00 co-pay for non-Medicare recipients as a source of funding for this benefit.

Response: The commission thanks the commenter for his views and notes his concerns. The commission adds that adoption of the proposed rules will not preclude provision of additional benefits if funding is available.

Comment: One commenter stated that dialysis access surgery should be available to a recipient as a KHC benefit prior to declaration of end-stage renal disease by the recipient’s physician.

Response: The commission acknowledges the comment, but notes that the subject is beyond the scope of the proposed rules, which focus on implementing and coordinating Medicare Part D coverage.

The department, on behalf of the commission, has made the following changes based on comments of KHC staff.

Change: Concerning §61.1(b)(18)(I) and §61.9(a), KHC staff have suggested that the term “Medicare Part D Prescription Drug Plan (PDP)” and “Medicare Advantage Plan (MA-PD)” should be defined, and that PDP and MA-PD providers should be included as KHC providers to coordinate benefits with Medicare Part D plans. The commission agrees, and the sections have been amended.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies the adoption has been reviewed by legal counsel and found to be within the state agencies’ authority to adopt.

25 TAC §§61.1, 61.2, 61.4, 61.6, 61.7, 61.9, 61.13, 61.14

The amendments are adopted under Health and Safety Code, §42.003(c), which authorizes the executive commissioner of the Health and Human Services Commission to adopt rules necessary to provide adequate kidney care and treatment for the citizens of this state. Government Code, §531.005(e), and Health and Safety Code, §1001.075, also authorize the executive commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

§61.1. General.

(a) Purpose. The purpose of this Chapter is to establish rules for Kidney Health Care (KHC). The authority for these rules is granted in the Texas Health and Safety Code, Chapter 42.

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

(1) Access surgery—The surgical procedure which creates or maintains the access site necessary to perform dialysis.

(2) Action—A denial, termination, suspension or reduction of KHC-covered services or eligibility.

(3) Allowable amount—The maximum amount that KHC will pay or reimburse for a covered benefit or service.
§ 61.8. Participating Providers. 

(1) Outpatient dialysis facilities shall execute an agreement with KHC, and shall meet the following criteria: 

(A) have Medicare certification and a Medicare end-stage renal disease (ESRD) provider number; 

(B) be a current Texas Medicaid provider; 

(C) be licensed by the department as an ESRD facility; 

(D) reimburse KHC for any overpayments made to the facility by KHC upon request. KHC may withhold payment on claims submitted by the facility to recoup any overpayments; and 

(E) not currently be on suspension as a KHC participating provider, as a Texas Medicaid provider, as a Medicare certified ESRD facility, or as a licensed Texas ESRD facility. 

(2) KHC may enter into an agreement with an outpatient dialysis facility located in another state if the out-of-state facility meets all the requirements of paragraph (1)(A), (B), and (D) of this subsection, and is licensed by their respective state, if applicable. Outpatient dialysis facilities located in another state may not currently be on suspension as a KHC participating facility, as a Medicaid provider in Texas or their respective state, as a Medicare certified ESRD facility, or by the ESRD licensing authority of their applicable state. 

(3) Outpatient dialysis facilities requesting enrollment as participating providers may be given interim approval by KHC. Recipient applications for KHC benefits may be submitted by the facility during the period of interim approval. Interim approval will last no longer than six months from the date KHC mails the agreement to the facility. If interim approval lapses, the unexecuted agreement will be nullified and a new agreement with new term dates and period of interim approval may be initiated by KHC. Claims for outpatient dialysis services will not be considered for payment by KHC until KHC has a fully executed agreement with the facility. Claim filing deadlines will apply, as contained in § 61.8 of this title (relating to Claim Filing Deadlines). 

(4) Pharmacies, including mail order pharmacies, shall enter into an agreement to participate in KHC through the Health and Human Services Commission Pharmacy Contracts and Rebates unit or designated contractor. 

(5) Physicians and Certified Registered Nurse Anesthetists (CRNAs) providing allowable KHC services in the State of Texas shall meet the following criteria to participate in, or enter into an agreement to participate in, KHC: 

(A) if a physician, be licensed to practice medicine in the State of Texas, or if a CRNA, be certified to practice within the scope of their certification in the State of Texas; 

(B) be a current Texas Medicaid provider; 

(C) not currently be on suspension as a KHC participating provider, as a physician licensed to practice medicine in the State of Texas; 

(D) pharmacies approved as Texas Medicaid providers and licensed to operate within the United States and its territories, including mail order pharmacies; 

(G) physicians and Certified Registered Nurse Anesthetists (CRNAs); 

(H) out-of-state physicians and CRNAs; or 

(I) Medicare Prescription Drug Plan (PDP) and Medicare Advantage Plan (MA-PD) providers. 

(19) Recipient--An individual who is eligible to receive KHC benefits. 

(20) Suspended benefits--Eligibility for benefits or claims which are denied and/or held pending satisfaction of a KHC request or requirement.
of Texas, as a CRNA certified to practice within the scope of their certification in the State of Texas, or as a Texas Medicaid provider; and

(D) reimburse KHC for any overpayments made to the physician or CRNA by KHC upon request, and allow KHC to apply payment on claims submitted by the physician or CRNA to recoup any overpayments.

(6) Physicians and CRNAs providing allowable KHC services outside the State of Texas shall meet the following criteria to participate in, or enter into an agreement to participate in, KHC:

(A) if a physician, be licensed to practice medicine in the state in which services are provided, or if a CRNA, be certified to practice within the scope of their certification in the state in which services are provided;

(B) be a current Texas Medicaid provider;

(C) have Medicare approval;

(D) not currently be on suspension as a KHC participating provider, as a physician licensed to practice medicine in the state in which services are provided, or as a Medicare provider in Texas or their respective state; and

(D) reimburse KHC for any overpayments made to the physician or CRNA by KHC upon request, and allow KHC to apply payment on claims submitted by the physician or CRNA to recoup any overpayments.

(7) Hospitals and ambulatory surgical centers (ASCs) shall meet the following criteria to participate in, or enter into an agreement to participate in, KHC:

(A) be in compliance with all applicable laws to provide hospital or ASC services in the State of Texas;

(B) be a current Texas Medicaid provider;

(C) have Medicare approval;

(D) not currently be on suspension as a KHC participating provider, as a hospital authorized under applicable law to provide hospital services in the State of Texas, as an ASC licensed to practice within the scope of their certification in the state in which services are provided, or as a Medicare provider in Texas or their respective state; and

(E) reimburse KHC for any overpayments made to the hospital or ASC by KHC upon request, and allow KHC to apply payment on claims submitted by the hospital or ASC to recoup any overpayments.

(8) Out-of-state hospitals and out-of-state ASCs shall meet the following criteria to participate in, or enter into an agreement to participate in, KHC:

(A) be licensed to provide hospital or ASC services in the state in which services are to be provided;

(B) be a current Texas Medicaid provider;

(C) have Medicare certification;

(D) not currently be on suspension as a KHC participating provider, as a hospital licensed to provide hospital services in the state in which services are provided, as an ASC licensed to provide ASC services in the state in which services are to be provided, as a Medicaid provider in Texas or their respective state, or as a Medicare certified hospital or ASC; and

(E) reimburse KHC for any overpayments made to the hospital or ASC by KHC upon request, and allow KHC to apply payment on claims submitted by the hospital or ASC to recoup any overpayments.

(9) Medicare Prescription Drug Plan (PDP) and Medicare Advantage Plan (MA-PD) providers may be KHC participating providers and must meet the following criteria to participate in, or enter into an agreement to participate in KHC:

(A) must be Medicare approved as a PDP or MAPD and maintain approval;

(B) sign a KHC Provider Agreement for Participation and enroll as a KHC provider;

(C) share and exchange data in an acceptable format with KHC for the coordination of drug benefits under the Medicare Prescription Drug Plan (Part D);

(D) able to accept KHC payment for premiums;

(E) refund KHC any overpayment made in error and due to KHC recipient eligibility.

(b) Effective dates for participation in KHC are as follows:

(1) The effective date of all outpatient dialysis facility agreements shall be on or after the Medicare ESRD certification date.

(2) The effective date of all pharmacy agreements shall be determined by the Health and Human Services Commission Pharmacy Contracts and Rebates unit or designated contractor.

(3) The effective date of all other provider agreements, listed in subsection (a)(5), (6), (7), and (8) of this section, shall be the first day of the sixth month prior to the KHC receipt of the completed and signed provider agreement.

(c) Reasons for suspension or termination from participation in KHC are as follows:

(1) Any participating provider may be terminated or suspended for:

(A) loss of approval or exclusion from participation in the Medicare program;

(B) exclusion from participation in the Medicaid program;

(C) providing false or misleading information regarding any participation criteria;

(D) a material breach of any contract or agreement with KHC;

(E) filing false or fraudulent information or claims for KHC benefits;

(F) failure to submit a payable claim to KHC during a minimum period of 12 consecutive months; or

(G) failure to maintain the participation criteria contained in subsection (a) of this section.

(2) A participating provider may appeal a termination or suspension through the department’s fair hearings process, as contained in §1.51 - 1.55 of this title (relating to Fair Hearing Procedures).

(A) KHC may not terminate KHC participation until a final decision is rendered under the department’s fair hearings process.
25 TAC §§412.101 - 412.115

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§412.101 - 412.115, concerning charges for community services. The amendments to §412.103 and §412.105 are adopted with changes to the proposed text as published in the June 17, 2005, issue of the Texas Register (30 TexReg 3555). Sections 412.101, 412.102, 412.104, and 412.106 - 412.115 are adopted without changes, and, therefore, will not be republished.

**BACKGROUND AND PURPOSE**

The amendments are necessary to implement the Medicare prescription drug benefit program authorized by Title XVIII of the Social Security Act (the "Act"), Part D. Sections 412.101 - 412.115 are also amended to revise language as necessary to reflect the elimination of the Texas Department of Mental Health and Mental Retardation and the creation of the Department of State Health Services pursuant to House Bill 2292 (78th Legislature, Regular Session, 2003).

The amendments to implement the prescription drug benefit program are necessary to maximize third party coverage for persons receiving community mental health services and to ensure the state is the payer of last resort for prescription drug coverage. The new §412.105(h) requires all full low-income subsidy eligible persons who are eligible for prescription drug benefits under Part D of the Act to enroll in the prescription drug plan of the person’s choice. Eligible persons who do not enroll in a prescription drug plan may be asked to pay full cost for any medications provided by a Local Mental Health Authority. Provisions include responsibilities of Local Mental Health Authorities for assisting persons with all Part D enrollment procedures. These amendments will ensure that all available federal resources for community mental health services are directed to addressing the prescription drug needs of eligible Texans, and state resources are directed to those persons or medications not eligible for those federal resources.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 412.101 - 412.115 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

**SECTION-BY-SECTION SUMMARY**

The following references were corrected throughout the rules: the words "mental health" were added to "local authorities" to read "local mental health authorities"; "TDMHMR" was replaced with "the department"; "mental health" replaced "MH"; "mental retardation" was removed from the text; and the references to "local authority" are replaced by the acronym "LMHA". In §412.103, the words "service coordination" were deleted and replaced with "case management services", and new definitions for: the Department of State Health Services; and Full Subsidy Eligible Individual were added. In §412.105, subsection (f)(1) was revised to add failure to comply with subsection (h) as a condition under which the LMHA may charge the person the standard charge for services. Subsection (h) was added to require all Full Subsidy Eligible persons to enroll in the prescription drug plan of the person’s choice. This subsection also includes responsibilities of the LMHA for assisting persons with all Part D enrollment procedures. In §412.109, "local authority" was replaced by...
"LMHA", and the reference to "mental retardation" is removed. Also, the "Office of Consumer Services and Rights Protection - Ombudsman" was replaced by the "department's Mental Health and Substance Abuse Client's Rights Office" and "Mail Code 2019" was added to address. In §412.113, the existing reference to "TDMHMR, Policy Development" was deleted, and replaced with the new name and new address for the department. The amendment to §412.114, includes a reference "of this title" to be correctly cited. The amendments to §412.115 replace the "Texas Board of Mental Health and Mental Retardation" with the "department’s Advisory Council", "the department" replaces the existing "TDMHMR Central Office"; and inserts new text "mental health" to read "local mental health authorities".

COMMENTS

The department, on behalf of the commission, did not receive any public comments regarding the proposed rules during the comment period.

The department, on behalf of the commission, has made the following changes in consultation with the commission staff.

Change: Section 412.103(6) adds a definition of full-subsidy eligible individual, and also, the rest of the definitions were renumbered.

Change: Section 412.105(h) was amended to include text that restricts requirements to enroll to those who are eligible for a full-subsidy, enabling participation without additional expense on behalf of the individual. This change was made in consultation with HHSC staff.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the adoption has been reviewed by legal counsel and found to be within the state agency’s authority to adopt.

STATUTORY AUTHORITY

The adopted amendments are authorized by Government Code, §531.005, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

§412.103. Definitions.

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

(1) Ability to pay--The person has third-party coverage that will pay for needed services, the person’s maximum monthly fee is greater than zero, or the person has identified payment for a needed service or services in an approved plan utilizing Social Security work incentive provisions (i.e., Plan to Achieve Self-Sufficiency; Impairment Related Work Expense).

(2) Community services or services--Except for inpatient services in a state mental health facility and non-crisis residential services, the required and optional mental health services described in the performance contract, including:

(A) 24-hour emergency screening and rapid crisis stabilization services;

(B) community-based crisis residential services or inpatient services in a mental health facility that is not a state mental health facility;

(C) community-based assessments, including the development of interdisciplinary treatment plans, and diagnosis and evaluation services;

(D) family support services, including respite care;

(E) case management services;

(F) medication-related services, including medication clinics, laboratory monitoring, medication education, mental health maintenance education, and the provision of medication; and

(G) psychosocial rehabilitation programs, including social support activities, independent living skills, and vocational training.

(3) Department--The Department of State Health Services.

(4) Extraordinary expenses--Major medical or health related expenses, major casualty losses, and child care expenses for the previous year or projections for the next year.

(5) Family members--

(A) For an unmarried person under the age of 18 years--The person, the person’s parents, and the dependents of the parents, if residing in the same household;

(B) For an unmarried person age 18 years or older--The person and his/her dependents;

(C) For a married person of any age--The person, his/her spouse, and their dependents.

(6) Full subsidy eligible individual--An individual who has income below 135 percent of the federal poverty level applicable to the individual’s family size and has resources that do not exceed the limits specified in 42 CFR §423.773(b). A full subsidy individual is eligible to receive premium and cost-sharing subsidies for Medicare Part D prescription drug plans. All individuals who are dually eligible for Medicaid and Medicare are full subsidy eligible individuals.

(7) Gross income--Revenue from all sources before taxes and other payroll deductions. The term does not include child support received.

(8) Inability to pay--The person’s maximum monthly fee is zero and the person:

(A) does not have third-party coverage;

(B) has third-party coverage, but has exceeded the maximum benefit of the covered service(s) or the third-party coverage will not pay because the services needed by the person are not covered services; or

(C) has not identified payment for a needed service or services in an approved plan utilizing Social Security work incentive provisions (i.e., Plan to Achieve Self-Sufficiency; Impairment Related Work Expense).

(9) Income-based public insurance--Government funded third-party coverage that bases eligibility on income e.g., CHIP and Medicaid.

(10) LMHA or local mental health authority--An entity designated as the local mental health authority by the department in accordance with the Texas Health and Safety Code, §533.035(a).
(11) Performance contract—A written agreement between the department and a LMHA for the provision of one or more functions as described in the Texas Health and Safety Code, §533.035(a).

(12) Person—A person in the priority population who is seeking or receiving services through a LMHA.

(13) Priority population—Those groups of persons with mental illness identified in the department’s current strategic plan as being most in need of mental health services.

(14) Significant financial change—Any change in the person’s (or parent’s) financial documentation, as described in §412.105(d) of this title (relating to Accountability), that affects the person’s (or parent’s) ability to pay. Examples of a significant financial change are:

(A) a reduction in income due to the loss of a job or due to a reduction in hours worked on a job;

(B) an increase in income because of an inheritance or a salary increase;

(C) an increase or decrease in the number of family members;

(D) the gain or loss of third-party coverage; and

(E) an increase or decrease in extraordinary expenses.

(15) Standard charge—A fixed price for a community service or unit of service.

(16) State mental health facility—A state hospital or a state center with an inpatient component.

(17) Team—The interdisciplinary team, multidisciplinary team, or treatment team.

(18) Third-party coverage—A public or private payer of community services for a specific person that is not the person (e.g., Medicaid, Medicare, private insurance, CHIP, TRICARE).

§412.105. Accountability.

(a) Prohibition from denying services. Local mental health authorities are prohibited from denying services to a person:

(1) because of the person’s inability to pay for the services;

(2) in crisis because:

(A) a financial assessment has not been completed;

(B) financial responsibility has not been determined;

(C) the person has a past-due account; or

(D) the person had his/her services involuntarily reduced or terminated for non-payment under §412.109(d) of this title (relating to Payments, Collections, and Non-payment); or

(3) pending resolution of an issue relating solely to payment for services, including failure of the person (or parent) to comply with any requirement in subsections (c), (d), (e), and (g) of this section.

(b) Identifying funding sources. Local authorities are responsible for identifying and accessing available funding sources other than the department, and for assisting persons (and parents) in identifying and accessing available funding sources other than the department, to pay for services. Available funding sources may include third-party coverage, state and/or local governmental agency funds (e.g., crime victims fund), Qualified Medicare Beneficiary (QMB) Program, indigent pharmaceutical programs, or a trust that provides for the person’s healthcare and rehabilitative needs.

(c) Requirement for parents to enroll their children in income-based public insurance. Parents of children who may be eligible for Medicaid or the Children’s Health Insurance Program (CHIP) must enroll their children in Medicaid or CHIP or provide documentation that they have been denied Medicaid or CHIP benefits or that their Medicaid or CHIP enrollment is pending. The LMHA shall provide assistance as needed to facilitate the enrollment process.

(d) Financial documentation. If requested by the LMHA, persons (or parents) must provide the following financial documentation:

(1) annual or monthly gross income/earnings, if any;

(2) extraordinary expenses (as defined) paid during the past 12 months or projected for the next 12 months;

(3) number of family members (as defined); and

(4) proof of any third-party coverage.

(e) Authorizing third-party coverage payment to the LMHA. Persons (and parents) with third-party coverage must execute an assignment of benefits authorizing third-party coverage payment to the LMHA.

(f) Failure to comply.

(1) Except as provided by paragraph (2) of this subsection, if the person (or parent) fails to comply with any requirement in subsections (c) - (e) or (h) of this section, then the LMHA will charge the person (or parent) the standard charge(s) for services. If, within 30 days after the person (or parent) initially failed to comply, the person (or parent) complies with the requirements, then the LMHA will adjust the person’s account to retroactively reflect compliance.

(2) The LMHA will not charge the person the standard charge(s) for services if the LMHA makes a decision, based on a clinical determination that is documented and includes input from the person’s team, that the person’s failure to comply is related to the person’s mental illness. The clinical determination must be reassessed at least every three months. If the LMHA decides that a person’s failure to comply is related to the person’s mental illness, then the LMHA must develop and implement a plan to reduce or eliminate the barriers related to the person’s failure to comply.

(g) Requirement for adult persons to apply for SSI to become eligible for Medicaid. Adult persons who may be eligible for Medicaid must apply for Supplemental Security Income (SSI) or provide documentation that they have been denied SSI or that their SSI application is pending. The LMHA shall provide assistance as needed to facilitate all aspects of the application process. If the adult person is unable to act in accordance with the requirement because of the person’s mental illness, then the LMHA must develop and implement a plan to reduce or eliminate the barriers related to the person’s inability to act in accordance with the requirement.

(h) Requirement for persons to enroll in Medicare Part D prescription drug plan.

(1) A person who is a full subsidy eligible individual under Medicare Part D must choose and enroll in a Medicare Part D prescription drug plan.

(2) The LMHA shall educate persons who are not full subsidy eligible individuals about the benefits of enrollment in a Medicare Part D prescription drug plan. The LMHA shall assess whether enrollment in a Medicare Part D prescription drug plan will be cost effective to the person and to the LMHA and shall provide the results of this assessment to the person to assist him or her determine whether to enroll in a Medicare Part D prescription drug plan. If the person decides to enroll in a Medicare Part D prescription drug plan, the LMHA may
pay the person’s incurred costs under the Medicare Part D prescription drug plan.

(3) The LMHA shall provide assistance as needed to facilitate all aspects of the Medicare Part D enrollment process. If the person is unable to act in accordance with the requirements set forth in paragraph (1) or (2) of this subsection because of the person’s mental illness, lack of adequate notification, or other circumstances beyond the individual’s control, the LMHA shall continue to provide medications and must develop and implement a plan to reduce or eliminate the barriers related to the person’s inability to act in accordance with the requirement.

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

Filed with the Office of the Secretary of State on August 26, 2005.

TRD-200503703
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: September 15, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 458-7236


TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 73. BENEFITS

34 TAC §73.21, §73.27

The Employees Retirement System of Texas (“ERS”) adopts amended 34 Texas Administrative Code §73.21, concerning reduction factors for age and retirement option, which incorporates the reduction table, and new §73.27, concerning payment of the retiree lump-sum death benefit, without changes to the proposed text as published in the July 15, 2005, issue of the Texas Register (30 TexReg 4121). The text of the rules and the table will not be republished.

Section 73.21 and the incorporated table are adopted to provide reduction factors for a standard nonoccupational disability retirement annuity for a member who retires before reaching a normal retirement age as specified in Texas Government Code §814.102 or §814.104. This amended section is adopted to further comply with and conform to Texas Government Code §814.206(f), as added by Senate Bill 1176, 79th Legislature, Regular Session.

No official comments were received on the proposed rule as delineated in ERS’ publication of the proposed rule in accordance with state law. One audience member made public comments at the ERS Board meeting when this item was considered. The speaker suggested that reduction factors should be based on mortality assumptions for disabled members. He also requested that the implementation of the new reduction factors be delayed until March 2006. ERS and pension consulting actuary Towers Perrin responds that actuarial standards require that the reduction factors be based on the set of actuarial standards as needed to provide for actuarial equivalence. The law is effective September 1, 2005, and a delay in adopting reduction factors would cause disability applications to be put on hold until a reduction factor table could be developed for retroactive processing.

New §73.27 is adopted to provide for the payment of the retiree lump-sum death benefit not later than the seventh day after ERS’ receipt of a properly submitted claim form, death certificate, and other information that may be required to establish beneficiary status or heirship for the uncontested payment of a retiree lump-sum death benefit. This new section is adopted to further comply and conform to Texas Government Code §814.501.

No official comments were received on the proposed new rule as delineated in ERS’ publication of the proposed rule in accordance with state law. A letter was received from the Comptroller of Public Accounts (“CPA”) asking that the rule be changed to say that ERS will notify the CPA not later than the fifth day instead of the seventh day. ERS responds that the rule meets the requirement in Texas Government Code §814.501 to provide for the payment of the lump-sum death benefit not later than the seventh day, and that the legislation relates to ERS’ processing timeframes. ERS will attempt to complete its process prior to seven days when prudent, but may need the full time period as provided by law. Once ERS provides payment information to the CPA, that office will need an additional time frame for the actual issuance of the check.

Amended §73.21 and the incorporated table are adopted under the following Texas Government Code provisions: §814.206(f), which provides authorization for the board of trustees (“board”) to adopt actuarial tables governing a standard nonoccupational disability retirement; §815.105, which provides authorization for the board to adopt tables the board considers necessary for the retirement system; and §815.102(a)(2), which provides authorization for the board to adopt rules for the administration of the funds of the retirement system.

No official comments were received on the proposed new rule as delineated in ERS’ publication of the proposed rule in accordance with state law. One audience member made public comments at the ERS Board meeting when this item was considered. The speaker suggested that reduction factors should be based on mortality assumptions for disabled members. He also requested that the implementation of the new reduction factors be delayed until March 2006. ERS and pension consulting actuary Towers Perrin responds that actuarial standards require that the reduction factors be based on the set of actuarial standards as needed to provide for actuarial equivalence. The law is effective September 1, 2005, and a delay in adopting reduction factors would cause disability applications to be put on hold until a reduction factor table could be developed for retroactive processing.

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Amended §73.21 and the incorporated table are adopted under the following Texas Government Code provisions: §814.206(f), which provides authorization for the board of trustees (“board”) to adopt actuarial tables governing a standard nonoccupational disability retirement; §815.105, which provides authorization for the board to adopt rules for the administration of the funds of the retirement system.

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

Filed with the Office of the Secretary of State on August 26, 2005.

TRD-200503694
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Effective date: September 15, 2005
Proposal publication date: July 15, 2005
For further information, please call: (512) 867-7421


CHAPTER 85. FLEXIBLE BENEFITS

34 TAC §§85.1, 85.7, 85.9, 85.11

ADOPTED RULES September 9, 2005 30 TexReg 5809
The Employees Retirement System of Texas ("ERS") adopts amendments to 34 Texas Administrative Code §§85.1, 85.7, 85.9, and 85.11, concerning the Flexible Benefits Program, without changes to the proposed text as published in the July 15, 2005, issue of the Texas Register (30 TexReg 4122), and these rules will not be republished.

These sections are amended to define and direct the administration of the state of Texas Employees Flexible Benefits Program ("TexFlex"). These sections are also amended with and conform to the provisions of the Internal Revenue Code, as amended, and the Texas Insurance Code, Chapter 1551.

Section 85.1 adds definitions of grace period and run-out period. Internal Revenue Service Notice 2005-42 authorizes plan sponsors to offer a grace period to participants of healthcare reimbursement accounts and dependent care reimbursement accounts. These adopted amendments define the grace period as authorized by the board of trustees and the run-out period which describes the period of time following the end of the plan year during which participants may file claims.

Section 85.7 amends the forfeiture provisions by adding the grace period to the end of the Plan Year thereby extending the period during which a participant may incur claims using balances accrued during the prior plan year.

Section 85.9 and §85.11 add the timeframe for the grace period. IRS Notice 2005-42 authorizes a grace period of up to two (2) months and 15 days. This adopted amendment specifies the grace period as authorized under the TexFlex Program. It also renames what was previously referred to as the "grace period" and more appropriately refers to it as the "run-out period."

No comments were received regarding the proposed amendments.

The amendments are adopted under the following Texas Insurance Code provisions: §1551.009, which provides authorization for the board of trustees ("board") to define by rule a word in terms necessary in the administration of this chapter; §1551.052, which provides authority for the board to adopt rules consistent with this chapter as it considers necessary to implement this chapter and its purposes; and §1551.206(e), which provides authorization for the board to develop, implement, and administer a cafeteria plan.

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

Filed with the Office of the Secretary of State on August 26, 2005.

TRD-200503695
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Effective date: September 15, 2005
Proposal publication date: July 15, 2005
For further information, please call: (512) 867-7421

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

CHAPTER 6. LICENSE TO CARRY HANDGUNS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

37 TAC §§6.41 - 6.46

The Texas Department of Public Safety adopts the repeal of Subchapter D, §§6.41 - 6.46, concerning Time, Place, and Manner Restrictions on License Holders, without changes to the proposal as published in the June 10, 2005, issue of the Texas Register (30 TexReg 3399).

The repeal of §6.41 is necessary because Texas Penal Code, §46.035, Unlawful Carrying of Handgun by License Holder and the definition of "intoxicated" in Texas Penal Code, §49.01 prohibits carrying of a concealed handgun by a license holder while intoxicated. This rule was simply a restatement of the law under Penal Code, §46.035(d).

The repeal of §6.42 is necessary because Texas Penal Code, §46.035, Unlawful Carrying of Handgun by License Holder requires a license holder to carry the handgun concealed unless a justification defense exists under Texas Penal Code, Chapter 9. This rule was simply a restatement of the law under Penal Code, §46.035(a), (h).

The repeal of §6.43 is necessary because Texas Government Code, §411.187, Suspension of License and Displaying License; Penalty, requires a license holder carrying a concealed handgun on or about their person to display the driver license and concealed handgun license on demand for identification from a peace officer or magistrate. This rule was simply a restatement of the law under Texas Government Code, §411.187(a)(2) and §411.205.

The repeal of §6.44 is necessary because Texas Penal Code, §46.03, Places Weapons Prohibited, and Texas Penal Code, §46.035, Unlawful Carrying of Handgun by License Holder, prohibits the license holder from carrying a concealed handgun in certain locations and give the license holders notice that such violations are felony offenses. This rule was simply a restatement of the law under Texas Penal Code, §46.03 and §46.035.

The repeal of §6.45 is necessary because the current rule separates out the Class A misdemeanor level offense of carrying a concealed handgun in certain places. The rule does not provide additional information to license holders under Texas Government Code, §411.711 et. seq. Since the enactment of current §6.45, the law has not changed. The repeal of §6.45 will not deprive the public of information and will not affect the Texas Department of Public Safety’s administration of the Concealed Handgun Licensing Statute. This rule was simply a restatement of the law under Texas Penal Code, §46.035.

The repeal of §6.46 is necessary because Texas Parks and Wildlife Code, §62.081, gives license holders carrying concealed handguns notice that carrying a concealed handgun on Lower Colorado River Authority lands is a Class C misdemeanor. This rule was simply a restatement of the law under Texas Parks and Wildlife Code, §62.081.

No comments were received regarding repeal of the sections.

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to
adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which requires the Director of the Texas Department of Public Safety to adopt rules, subject to commission approval, considered necessary for control of the department; and Texas Government Code, §411.197, which authorizes the department to adopt rules to administer this chapter.

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

Filed with the Office of the Secretary of State on August 23, 2005.
TRD-200503611
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: September 12, 2005
Proposal publication date: June 10, 2005
For further information, please call: (512) 424-2135

CHAPTER 35. PRIVATE SECURITY
SUBCHAPTER E. GENERAL ADMINISTRATION AND EXAMINATIONS
37 TAC §35.77

The Texas Department of Public Safety adopts new §35.77, concerning Termination of Incomplete Applications, without changes to the proposed text as published in the June 24, 2005, issue of the Texas Register (30 TexReg 3722).

The adoption of the new section is necessary in order to provide a mechanism for the termination of incomplete applications within a definite time period. Additionally, the new section provides a mechanism for the applicant to request a hearing from the Private Security Board for the application to be processed in the event the applicant is unable to provide the necessary information to complete the application.

No comments were received regarding adoption of the new section.

The new section is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules necessary for carrying out the department’s work and Texas Occupations Code, Chapter 1702.

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

Filed with the Office of the Secretary of State on August 23, 2005.
TRD-200503612
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: September 12, 2005
Proposal publication date: June 24, 2005
For further information, please call: (512) 424-2135

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES
CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

40 TAC §101.3611

The amendment is adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

Filed with the Office of the Secretary of State on August 23, 2005.
TRD-200503605
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: September 12, 2005
Proposal publication date: July 8, 2005
For further information, please call: (512) 424-4050

SUBCHAPTER H. PURCHASE OF GOODS AND SERVICES FOR REHABILITATION SERVICES
DIVISION 4. PURCHASE OF GOODS AND SERVICES
40 TAC §101.4525
The amendment is adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

Filed with the Office of the Secretary of State on August 23, 2005.

TRD-200503606
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: September 12, 2005
Proposal publication date: July 8, 2005
For further information, please call: (512) 424-4050

40 TAC §101.4527
Adopted Rule Review
Texas Board of Pardons and Paroles
Title 37, Part 5
The Texas Board of Pardons and Paroles files this notice of readoption without changes of 37 TAC Chapter 143, relating to Executive Clemency, and Chapter 149, relating to Mandatory Supervision. The readoption of Chapters 143 and 149 is filed in accordance with the Board of Pardons and Paroles’ Notice of Intent to Review published in the July 29, 2005, issue of the Texas Register (30 TexReg 4337).

No public comments were received.

The assessment of Chapters 143 and 149 indicates that the original justification for the rules continues to exist, and the Board is readopting these rules in accordance with Texas Government Code, §2001.039. This concludes the review of 37 TAC Chapters 143 and 149.

TRD-200503767
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Filed: August 29, 2005

♦ ♦ ♦ ♦
Figure: 16 TAC §33.21(a)

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### Liquor Permits

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</tr>
<tr>
<td>Food and Beverage Certificate</td>
<td>$245.00</td>
</tr>
<tr>
<td>Forwarding Center Authority</td>
<td>$118.00</td>
</tr>
<tr>
<td>Industrial Permit</td>
<td>$111.00</td>
</tr>
<tr>
<td>Local Cartage Permit</td>
<td>$86.00</td>
</tr>
<tr>
<td>Local Distributor's Permit</td>
<td>$192.00</td>
</tr>
<tr>
<td>Local Industrial Alcohol Manufacturer's Permit</td>
<td>$139.00</td>
</tr>
<tr>
<td>Manufacturer's Agent's Permit</td>
<td>$40.00</td>
</tr>
<tr>
<td>Market Research Packager's Permit</td>
<td>$54.00</td>
</tr>
<tr>
<td>Minibar Permit</td>
<td>$149.00</td>
</tr>
<tr>
<td>Mixed Beverage Permit</td>
<td>$256.00</td>
</tr>
<tr>
<td>Mixed Beverage Late Hours Permit</td>
<td>$139.00</td>
</tr>
<tr>
<td>Mixed Beverage Restaurant Permit with Food and Beverage Certificate</td>
<td>$256.00</td>
</tr>
<tr>
<td>Non Resident Brewer's Permit</td>
<td>$160.00</td>
</tr>
<tr>
<td>Non Resident Seller's Permit</td>
<td>$160.00</td>
</tr>
<tr>
<td>Package Store Permit</td>
<td>$213.00</td>
</tr>
<tr>
<td>License Description</td>
<td>Fee</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>Package Store Tasting Permit</td>
<td>$75.00</td>
</tr>
<tr>
<td>Wine Only Package Store Permit</td>
<td>$235.00</td>
</tr>
<tr>
<td>Passenger Train Beverage Permit</td>
<td>$256.00</td>
</tr>
<tr>
<td>Private Carrier's Permit</td>
<td>$107.00</td>
</tr>
<tr>
<td>Private Club Registration Permit</td>
<td>$383.00</td>
</tr>
<tr>
<td>Private Club Beer and Wine Permit</td>
<td>$383.00</td>
</tr>
<tr>
<td>Private Club Late Hours Permit</td>
<td>$149.00</td>
</tr>
<tr>
<td>Private Storage Permit</td>
<td>$86.00</td>
</tr>
<tr>
<td>Temporary Charitable Auction Permit</td>
<td>$171.00</td>
</tr>
<tr>
<td>Public Storage Permit</td>
<td>$86.00</td>
</tr>
<tr>
<td>Wholesaler's Permit</td>
<td>$298.00</td>
</tr>
<tr>
<td>General Class B Wholesaler's Permit</td>
<td>$277.00</td>
</tr>
<tr>
<td>Local Class B Wholesaler's Permit</td>
<td>$277.00</td>
</tr>
<tr>
<td>Wine and Beer Retailer's Permit Railway Car</td>
<td>$235.00</td>
</tr>
<tr>
<td>Wine and Beer Retailer's Permit Excursion Boat</td>
<td>$235.00</td>
</tr>
<tr>
<td>Wine Bottler's Permit</td>
<td>$256.00</td>
</tr>
<tr>
<td>Winery Permit</td>
<td>$298.00</td>
</tr>
<tr>
<td>Winery Storage Permit</td>
<td>$86.00</td>
</tr>
</tbody>
</table>

**Beer Licenses**

<table>
<thead>
<tr>
<th>License Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agent's Beer License</td>
<td>$40.00</td>
</tr>
<tr>
<td>Branch Distributor's License</td>
<td>$298.00</td>
</tr>
<tr>
<td>General Distributor's License</td>
<td>$298.00</td>
</tr>
<tr>
<td>Importer's License</td>
<td>$118.00</td>
</tr>
<tr>
<td>Importer's Carrier's License</td>
<td>$86.00</td>
</tr>
<tr>
<td>Local Distributor's License</td>
<td>$298.00</td>
</tr>
<tr>
<td>Manufacturer's License</td>
<td>$277.00</td>
</tr>
<tr>
<td>Manufacturer's Warehouse License</td>
<td>$235.00</td>
</tr>
<tr>
<td>Non Resident Manufacturer's License</td>
<td>$245.00</td>
</tr>
<tr>
<td>Beer Retailer's Off Premise License</td>
<td>$235.00</td>
</tr>
<tr>
<td>Beer Retailer's On Premise License</td>
<td>$235.00</td>
</tr>
<tr>
<td>License Type</td>
<td>Fee</td>
</tr>
<tr>
<td>--------------------------------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>Retail Dealer’s On Premise Late Hours License</td>
<td>$139.00</td>
</tr>
<tr>
<td>Storage License</td>
<td>$86.00</td>
</tr>
<tr>
<td>Temporary License</td>
<td>$171.00</td>
</tr>
<tr>
<td>Temporary License Special 3 Day Wine and Beer</td>
<td>$171.00</td>
</tr>
<tr>
<td>Temporary License Special 4 Day Wine and Beer</td>
<td>$171.00</td>
</tr>
<tr>
<td>Wine and Beer Retailer’s Permit</td>
<td>$235.00</td>
</tr>
<tr>
<td>Wine and Beer Retailer’s Off Premise Permit</td>
<td>$235.00</td>
</tr>
</tbody>
</table>
### Chart I. Eligible Nonimmigrants
Persons with Visas that Allow them to Domicile in the United States

<table>
<thead>
<tr>
<th>Visa Type</th>
<th>Nonimmigrant (Temporary) Visa Categories</th>
<th>Eligible to Domicile in the United States?</th>
</tr>
</thead>
<tbody>
<tr>
<td>A-1</td>
<td>Ambassadors, public ministers or career diplomats and their immediate family members</td>
<td>Yes</td>
</tr>
<tr>
<td>A-2</td>
<td>Other accredited officials or employees of foreign governments and their immediate family members</td>
<td>Yes</td>
</tr>
<tr>
<td>A-3</td>
<td>Personal attendants, servants or employees and their immediate family members of A-1 and A-2 visa holders</td>
<td>Yes</td>
</tr>
<tr>
<td>B-1</td>
<td>Temporary visitor for business</td>
<td>No</td>
</tr>
<tr>
<td>B-2</td>
<td>Temporary visitor for pleasure</td>
<td>No</td>
</tr>
<tr>
<td>C-1</td>
<td>Foreign travelers in transit through the United States</td>
<td>No</td>
</tr>
<tr>
<td>C-1D</td>
<td>Combined transit and crewmen visa</td>
<td>No</td>
</tr>
<tr>
<td>C-2</td>
<td>Person in transit to UN Headquarters under §11 (3), (4), or (5) of the Headquarter Agreement.</td>
<td>No</td>
</tr>
<tr>
<td>C-3</td>
<td>Foreign government official, members of immediate family, attendant or personal employee in transit</td>
<td>No</td>
</tr>
<tr>
<td>C-4</td>
<td>Transit without Visa. See TOWV</td>
<td>No</td>
</tr>
<tr>
<td>D-1</td>
<td>Crewmember departing on same vessel of arrival</td>
<td>No</td>
</tr>
<tr>
<td>D-2</td>
<td>Crewmember departing by means other than vessel of arrival</td>
<td>No</td>
</tr>
<tr>
<td>E-1</td>
<td>Treaty traders, spouse and children</td>
<td>Yes</td>
</tr>
<tr>
<td>E-2</td>
<td>Treaty investors, spouse and children</td>
<td>Yes</td>
</tr>
<tr>
<td>F-1</td>
<td>Academic student</td>
<td>No</td>
</tr>
<tr>
<td>F-2</td>
<td>Spouse or child of F-1</td>
<td>No</td>
</tr>
<tr>
<td>F-3</td>
<td>Academic students who are Canadian or Mexican citizens, who commute across the border to study full-time or part-time in the United States.</td>
<td>No**</td>
</tr>
<tr>
<td>G-1</td>
<td>Principal resident representative of recognized foreign member government to international organization, and members of immediate family.</td>
<td>Yes</td>
</tr>
<tr>
<td>G-2</td>
<td>Other accredited representatives of recognized foreign member governments to international organization and their immediate family members</td>
<td>Yes</td>
</tr>
<tr>
<td>G-3</td>
<td>Representatives of non-recognized or nonmember government to international organization, and members of immediate family</td>
<td>Yes</td>
</tr>
<tr>
<td>G-4</td>
<td>International organization officer or employee, and their immediate family members</td>
<td>Yes</td>
</tr>
<tr>
<td>Visa Type</td>
<td>Nonimmigrant (Temporary) Visa Categories</td>
<td>Eligible to Domicile in the United States?</td>
</tr>
<tr>
<td>-----------</td>
<td>------------------------------------------</td>
<td>-----------------------------------------</td>
</tr>
<tr>
<td>G-5</td>
<td>Attendants, servants and personal employees of G-1, G-2, G-3 or G-4 visa holders and their immediate family members</td>
<td>Yes</td>
</tr>
<tr>
<td>H-1B</td>
<td>Specialty Occupations, DOD workers, fashion models</td>
<td>Yes</td>
</tr>
<tr>
<td>H-1C</td>
<td>Nurses going to work for up to three years in health professional shortage areas</td>
<td>No</td>
</tr>
<tr>
<td>H-2A</td>
<td>Temporary agricultural workers</td>
<td>No</td>
</tr>
<tr>
<td>H-2B</td>
<td>Temporary workers, skilled and unskilled</td>
<td>No</td>
</tr>
<tr>
<td>H-3</td>
<td>Trainee</td>
<td>No</td>
</tr>
<tr>
<td>H-4</td>
<td>Spouse or child of H-1, H-2 or H-3 visa holders</td>
<td>H-4 dependents of H-1B Yes; all other H-4 dependents, no</td>
</tr>
<tr>
<td>I</td>
<td>Visas for foreign media representatives</td>
<td>Yes</td>
</tr>
<tr>
<td>J-1</td>
<td>Visas for exchange visitors</td>
<td>No</td>
</tr>
<tr>
<td>J-2</td>
<td>Spouse or child of J-1 visa holders</td>
<td>No</td>
</tr>
<tr>
<td>K-1</td>
<td>Fiancé(e)</td>
<td>Yes</td>
</tr>
<tr>
<td>K-2</td>
<td>Minor child of K-1</td>
<td>Yes</td>
</tr>
<tr>
<td>K-3</td>
<td>Spouse of a U.S. citizen (LIFE Act)</td>
<td>Yes</td>
</tr>
<tr>
<td>K-4</td>
<td>Child of a K-3 (LIFE Act)</td>
<td>Yes</td>
</tr>
<tr>
<td>L1-A</td>
<td>Executive, managerial</td>
<td>Yes</td>
</tr>
<tr>
<td>L1-B</td>
<td>Specialized knowledge</td>
<td>Yes</td>
</tr>
<tr>
<td>L-2</td>
<td>Spouse or child of L-1</td>
<td>Yes</td>
</tr>
<tr>
<td>M-1</td>
<td>Vocational or other nonacademic students, other than language students</td>
<td>No</td>
</tr>
<tr>
<td>M-2</td>
<td>Immediate families of M-1 visa holders</td>
<td>No</td>
</tr>
<tr>
<td>M-3</td>
<td>Vocational students who are Canadian or Mexican citizens, who commute across the border to study full-time or part-time in the U.S.</td>
<td>No**</td>
</tr>
<tr>
<td>N-8</td>
<td>Parent of alien classified as SK-3 “Special Immigrant”</td>
<td>Yes</td>
</tr>
<tr>
<td>N-9</td>
<td>Child of N-8, SK-1, SK-2, or SK-4 “Special Immigrant”</td>
<td>Yes</td>
</tr>
<tr>
<td>NATO 1</td>
<td>Principal Permanent Representative of Member State to NATO and resident members of official staff or immediate family</td>
<td>Yes</td>
</tr>
<tr>
<td>NATO 2</td>
<td>Other representatives of Member State; Dependents of Member of a Force entering in accordance with the provisions of NATO Status-of-Forces agreement; Members of such a Force if issued visas</td>
<td>Yes</td>
</tr>
<tr>
<td>NATO 3</td>
<td>Official clerical staff accompanying Representative of Member State to NATO or immediate member</td>
<td>Yes</td>
</tr>
<tr>
<td>Visa Type</td>
<td>Nonimmigrant (Temporary) Visa Categories</td>
<td>Eligible to Domicile in the United States?</td>
</tr>
<tr>
<td>-----------</td>
<td>-----------------------------------------</td>
<td>-------------------------------------------</td>
</tr>
<tr>
<td>NATO 4</td>
<td>Official of NATO other than those qualified as NATO-1 and immediate family</td>
<td>Yes</td>
</tr>
<tr>
<td>NATO 5</td>
<td>Expert other than NATO officials qualified under NATO-4, employed on behalf of NATO and immediate family</td>
<td>Yes</td>
</tr>
<tr>
<td>NATO 6</td>
<td>Members of civilian component who is either accompanying a Force entering in accordance with the provisions of the NATO Status-of-Forces agreement; attached to an Allied headquarters under the protocol on the Status of International Military headquarters set up pursuant to the North Atlantic Treaty; and their dependents</td>
<td>Yes</td>
</tr>
<tr>
<td>NATO 7</td>
<td>Attendants, servants or personal employees of NATO-1, NATO-2, NATO-3, NATO-4, NATO-5 or NATO-6, or immediate</td>
<td>Yes</td>
</tr>
<tr>
<td>O-1</td>
<td>Extraordinary ability in the sciences, arts, education, business, athletics</td>
<td>Yes</td>
</tr>
<tr>
<td>O-2</td>
<td>Essential support staff of 0-1 visa holders</td>
<td>No</td>
</tr>
<tr>
<td>O-3</td>
<td>Immediate family members of 0-1 and O-2 visa holders</td>
<td>O-3 dependents of O-1 holders Yes; O-3 dependents of O-2 holders, No</td>
</tr>
<tr>
<td>P-1</td>
<td>Individual or team athletes</td>
<td>No</td>
</tr>
<tr>
<td>P-2</td>
<td>Artists and entertainers in reciprocal exchange programs</td>
<td>No</td>
</tr>
<tr>
<td>P-3</td>
<td>Artists and entertainers in culturally unique programs</td>
<td>No</td>
</tr>
<tr>
<td>P-4</td>
<td>Spouse or child of P-1, P-2 and P-3.</td>
<td>No</td>
</tr>
<tr>
<td>Q-1</td>
<td>International cultural-exchange visitors</td>
<td>No</td>
</tr>
<tr>
<td>Q-2</td>
<td>Irish Peace Process Cultural and Training Program (Walsh Visas)</td>
<td>No</td>
</tr>
<tr>
<td>Q-3</td>
<td>Spouse or child of Q-2</td>
<td>No</td>
</tr>
<tr>
<td>R-1</td>
<td>Religious workers</td>
<td>Yes</td>
</tr>
<tr>
<td>R-2</td>
<td>Spouse or child of R-1</td>
<td>Yes</td>
</tr>
<tr>
<td>S-5</td>
<td>Informant of criminal organization information</td>
<td>No</td>
</tr>
<tr>
<td>S-6</td>
<td>Informant of terrorism information</td>
<td>No</td>
</tr>
<tr>
<td>T-1</td>
<td>Victim of a severe form of trafficking in persons</td>
<td>Yes</td>
</tr>
<tr>
<td>T-2</td>
<td>Spouse of a T-1</td>
<td>Yes</td>
</tr>
<tr>
<td>T-3</td>
<td>Child of a T-1</td>
<td>Yes</td>
</tr>
<tr>
<td>T-4</td>
<td>Parent of a T-1 visa holder (if the child is under 21 years of age)</td>
<td>Yes</td>
</tr>
<tr>
<td>TC</td>
<td>No longer issued. TN issued in its place.</td>
<td>No</td>
</tr>
<tr>
<td>TD</td>
<td>Spouse or child accompanying TN</td>
<td>No</td>
</tr>
<tr>
<td>TN</td>
<td>Trade visas for Canadians and Mexicans in NAFTA</td>
<td>No</td>
</tr>
<tr>
<td>Visa Type</td>
<td>Nonimmigrant (Temporary) Visa Categories</td>
<td>Eligible to Domicile in the United States?</td>
</tr>
<tr>
<td>-----------</td>
<td>------------------------------------------</td>
<td>--------------------------------------------</td>
</tr>
<tr>
<td>TPS</td>
<td>Temporary Protected Status</td>
<td>Yes</td>
</tr>
<tr>
<td>TWOV</td>
<td>Passenger or Crew</td>
<td>No</td>
</tr>
<tr>
<td>U-1</td>
<td>Victim of certain criminal activity</td>
<td>Yes</td>
</tr>
<tr>
<td>U-2</td>
<td>Spouse of a U-1</td>
<td>Yes</td>
</tr>
<tr>
<td>U-3</td>
<td>Child of a U-1</td>
<td>Yes</td>
</tr>
<tr>
<td>U-4</td>
<td>Parent of a U-1 visa holder (if the child is under 21 years of age).</td>
<td>Yes</td>
</tr>
<tr>
<td>V-1</td>
<td>Spouse of Legal Permanent Resident (LPR) who is the principal beneficiary of a family-based petition (I-130) which was filed prior to December 21, 2000, and has been pending for at least three years</td>
<td>Yes</td>
</tr>
<tr>
<td>V-2</td>
<td>Child of Legal Permanent Resident (LPR) who is the principal beneficiary of a family-based petition (I-130) which was filed prior to December 21, 2000, and has been pending for at least three years</td>
<td>Yes</td>
</tr>
<tr>
<td>V-3</td>
<td>Derivative child of a V-1 or V-2 visa holder</td>
<td>Yes</td>
</tr>
</tbody>
</table>

**Please note: these international, commuting students may be eligible for a waiver of nonresident tuition under Texas Education Code §54.060(b).**
Figure: 19 TAC §21.731(a)

Chart II
Core Residency Questions

Texas Higher Education Coordinating Board §21.731 requires each student applying to enroll at an institution to respond to a set of core residency questions for the purpose of determining the student's eligibility for classification as a resident.

PART A. Student Basic Information. All Students must complete this section.

Name: ___________________________ Student ID Number: ______
Date of Birth: ____________

PART B. Previous Enrollment. For all students.

1. Did you attend a public college or university in Texas during a fall or spring term during the past 12 months?
   Yes ___ No ___
   If you answered “no”, please go on to Part C.
   If you answered “yes”, complete questions 2-4:

2. What institution did you last attend? ____________________________

3. In which terms were you last enrolled? (check all that apply)
   ___ fall, 200___ ___ spring, 200___

4. During that semester, did you pay resident (in-state) or nonresident (out-of-state) tuition in your last term or semester at that institution?
   ___ resident (in-state) ___ nonresident (out-of-state)

Please proceed to Part C.

PART C. Residency Claim. All students must complete this section.

Are you a resident of Texas? Yes ___ No ___
If you answered yes, continue to Part D.
If you answered no, complete the following question and continue to Part I.
   Of what state or country are you a resident? ________________

PART D. Acquisition of High School Diploma or GED. All students must complete this section.

<table>
<thead>
<tr>
<th>1. Did you graduate from high school or complete a GED in TX?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Did you live in TX the 36 months leading up to high school graduation or completion of the GED?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. When you begin the semester for which you are applying, will you have lived in TX for the previous 12 months?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Are you a U.S. Citizen or Permanent Resident?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Instructions to Part D:

- If you answered "no" to question 1 or 2 or 3, go to Part E.
- If you answered "yes" to all four questions, go to Part I.
- If you answered "yes" to questions 1, 2 and 3, but "no" to question 4,
  complete a copy of the Affidavit provided as Attachment __ to this form,
  complete Part I of this form, and submit both forms to your institution.

PART E. Basis of Claim to Residency. TO BE COMPLETED BY EVERYONE WHO DID NOT ANSWER "YES" TO QUESTIONS 1, 2, AND 3 OF PART C.

1. Do you file your own federal income tax as an independent tax payer? Yes ___ No ___

2. Are you claimed as a dependent or eligible to be claimed as a dependent by a parent or court-appointed legal guardian? Yes ___ No ___

3. If you answered "No" to both questions above, who provides the majority of your support?
   Self___ parent or guardian___ other: (list)________________________

Instructions to Part E.

- If you answered "yes" to question 1, go to Part F.
- If you answered "yes" to question 2, go to Part G.
- If you answered "no" to 1 and 2 and "self" to question 3, go to Part F.
- If you answered "no" to 1 and 2 and "parent or guardian" to question 3, go to Part G.

PART F. Questions for students who answered "Yes" to Question 1 or "Self" to Question 3 of PART E.

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Years</th>
<th>Mo.</th>
<th>Visa/Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Are you a U.S. Citizen or Permanent Resident of the U.S.?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Are you a foreign national whose application for Permanent Resident Status has been approved? (For this to be true you should have received a Notice of Approval (I-797) from USCIS).</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Are you a foreign national here with a visa or are you a Refugee, Asylee, Parolee or here under Temporary Protective Status? If so, indicate which.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Do you currently live in Texas?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. If you currently live in Texas, how long have you been living here?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. If you are a member of the U.S. military, is Texas your Home of Record? Is Texas listed as your military legal residence for tax purposes on your Leave and Earnings Statement?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
7. For the past 12 months: (Check all that apply)
   a. Have you been gainfully employed in TX?
   b. Have you owned real (real estate) property in Texas?
   c. Have you owned a business in Texas?
   d. Have you been licensed by the State of Texas to conduct a business or practice a profession (such as plumbing or law) in Texas?
   e. Have you been married to a US citizen or permanent resident who has lived in Texas for at least 12 months and who can answer “yes” to either question 8, 9, 10 or 11? If so, please explain below.

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Years</th>
<th>Mo.</th>
<th>Visa/Status</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Explanation for answer to Question 12.

PART G. Questions for students who answered “Parent” or “Legal Guardian” to Question 3 of PART E.

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Years</th>
<th>Mo.</th>
<th>Visa/Status</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. Is the parent or legal guardian upon whom you base your claim of residency a U.S. citizen or Permanent Resident?

2. Is this parent or legal guardian a foreign national whose application for Permanent Resident Status has been approved? (who has a Notice of Approval (I-797) from the USCIS)

3. Is this parent or legal guardian a foreign national here with a visa or a Refugee, Asylee, Parolee or here under Temporary Protective Status? If so, indicate which.

4. Does this parent or legal guardian currently live in Texas?

5. If he or she is currently living in Texas, how long has he or she been living here?

6. If he or she is a member of the U.S. military, is Texas his or her Home of Record?
   Is Texas listed as your military legal residence for tax purposes on your Leave and Earnings Statement?
7. For the past 12 months: (Check all that apply)
   a. Has he or she been gainfully employed in TX?
   b. Has he or she owned real (real estate) property in Texas?
   c. Has he or she owned a business in Texas?
   d. Has he or she been licensed by the State of Texas to conduct a business or practice a profession (such as plumbing or law) in Texas?
   e. Has he or she been married to a US citizen or permanent resident who has lived in Texas for at least 12 months and who can answer "yes" to either question 8, 9, 10 or 11? If so, please explain below.

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Years</th>
<th>Mo.</th>
<th>Visa/Status</th>
</tr>
</thead>
</table>

Part H. General Comments. Is there any additional information that you believe your college should know in evaluating your eligibility to be classified as a resident? If so, please provide it below:

PART I. Certification of Residency. All students must complete this section.

I understand that officials of my college/university will use the information submitted on this form to determine my status for residency eligibility. I authorize the college/university to verify the information I have provided. I agree to notify the proper officials of the institution of any changes in the information provided. I certify that the information on this application is complete and correct and I understand that the submission of false information is grounds for rejection of my application, withdrawal of any offer of acceptance, cancellation of enrollment, or appropriate disciplinary action.

Signature: __________________________ Date: ________________
Figure: 19 TAC §21.731(c)

Chart III

AFFIDAVIT

STATE OF TEXAS §

COUNTY OF §

Before me, the undersigned Notary Public, on this day personally appeared ___________________________________, known to me, who being by me duly sworn upon his/her oath, deposed and said:

1. My name is ________________________________, I am ___ years of age and have personal knowledge of the facts stated herein and they are all true and correct.

2. I graduated or will graduate from a Texas high school or received my GED certificate in Texas.

3. I resided in Texas for three years leading up to graduation from high school or receiving my GED certificate.

4. I have resided or will have registered in Texas for the 12 months prior the census date of the semester in which I will enroll in ________________________________ (college/university).

5. I will file or have filed an application to become a permanent resident at the earliest opportunity that I am eligible to do so.

In witness whereof, this ___________day of ________________________, __________

(Signature)

(Printed Name)

(Student I.D.#)

SUBSCRIBED TO AND SWORN TO BEFORE ME, on the ________________ day of ________________, ________________, to certify which witness my hand and official seal.

Notary Public in and for the State of Texas
**Chart IV**
Support Documentation to Support Domicile and Residency

The following documentation shall be submitted to the institution in support of the statement of a person or the parent of a dependent on the Residency Questionnaire that the person is domiciled in Texas and has resided in Texas continuous for 12 months prior to the census date.

<table>
<thead>
<tr>
<th>Part A</th>
<th>Documentation to be Used to Support the Establishment of a Domicile</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Title to real property in Texas</td>
</tr>
<tr>
<td>2.</td>
<td>Marriage Certificate with documentation to support that spouse is a domiciliary of Texas</td>
</tr>
<tr>
<td>3.</td>
<td>Gainful employment in Texas</td>
</tr>
<tr>
<td>4.</td>
<td>Lease of real property in the name of the person or the dependent's parent for the 12 months preceding the census date.</td>
</tr>
<tr>
<td>5.</td>
<td>Ownership of business in Texas with documents that evidence the organization or the business as a partnership or corporation and reflect the ownership interest of the person or dependent's parent.</td>
</tr>
<tr>
<td>6.</td>
<td>State or local licenses to conduct a business or practice a profession in this state.</td>
</tr>
<tr>
<td>7.</td>
<td>Filing of U.S. Armed Forces form DD 2058, indicating Texas as one's permanent residence</td>
</tr>
<tr>
<td>8.</td>
<td>For a homeless person, written statements from the office of one or more social service agencies located in Texas that attests to the provision of services to the homeless person.</td>
</tr>
<tr>
<td>9.</td>
<td>Execution of a currently-valid Last Will and Testament that has been deposited with a county clerk in Texas, indicating the person is a resident of Texas.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Part B</th>
<th>Any Three of the Following Types of Documents May be Used to Establish Maintenance of Residence for 12 Months</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Property tax receipt for the tax year preceding the census date;</td>
</tr>
<tr>
<td>2.</td>
<td>Utility bills for the 12 months preceding the census date;</td>
</tr>
<tr>
<td>3.</td>
<td>A high school transcript for full senior year preceding the census date;</td>
</tr>
<tr>
<td>4.</td>
<td>A transcript from an institution showing presence in the state for the 12 months preceding the census date;</td>
</tr>
<tr>
<td>5.</td>
<td>A Texas driver's license with an expiration date of not more than three years;</td>
</tr>
<tr>
<td>6.</td>
<td>Cancelled checks that reflect a Texas residence for the 12 months preceding the census date;</td>
</tr>
</tbody>
</table>
Part B, continued

7. A current credit report that documents the length and place of residence of the person or the dependent’s parent.

8. Lease of real property in the name of the person or the dependent’s parent for the 12 months preceding the census date;

9. Pay stubs for the 12 months preceding the census date;

10. An employer’s statement of dates of employment (beginning and current or ending dates).

11. Bank statements reflecting a Texas address for the 12 months preceding the census date;

12. Ownership of real property with copies of utility bills for the 12 months preceding the census date.

13. Registration or verification from licensor, showing Texas address for licensee;

14. Written statements from the office of one or more social service agencies, attesting to the provision of services for at least the 12 months preceding the census date.

Figure: 30 TAC Chapter 330--Preamble

<table>
<thead>
<tr>
<th>County</th>
<th>Major Source Thresholds (tons/yr) One-Hour</th>
<th>Major Source Thresholds (tons/yr) Eight-Hour</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>VOC</td>
<td>NOx</td>
</tr>
<tr>
<td>Brazoria, Chambers, Fort Bend, Galveston,</td>
<td>25</td>
<td>25</td>
</tr>
<tr>
<td>Harris, Liberty, Montgomery, and Waller</td>
<td></td>
<td></td>
</tr>
<tr>
<td>El Paso</td>
<td>50</td>
<td>100</td>
</tr>
<tr>
<td>Collin, Dallas, Denton, Tarrant, Hardin,</td>
<td>50</td>
<td>50</td>
</tr>
<tr>
<td>Jefferson, and Orange</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ellis, Johnson, Kaufman, Parker, and Rockwall</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hardin, Jefferson, and Orange</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>
**TABLE OF BORINGS**

<table>
<thead>
<tr>
<th>Size of Area in Acres</th>
<th>Number of Borings</th>
<th>Min. No. of Borings 30 Feet below the Elev. of Deepest Excavation</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 or less</td>
<td>2-4</td>
<td>2</td>
</tr>
<tr>
<td>5-10</td>
<td>4-6</td>
<td>3</td>
</tr>
<tr>
<td>10-20</td>
<td>6-10</td>
<td>5</td>
</tr>
<tr>
<td>20-50</td>
<td>10-15</td>
<td>7</td>
</tr>
<tr>
<td>50-100</td>
<td>15-20</td>
<td>7-12</td>
</tr>
<tr>
<td>100-150</td>
<td>20-30</td>
<td>12-13</td>
</tr>
<tr>
<td>150-200</td>
<td>23-26</td>
<td>13-15</td>
</tr>
<tr>
<td>200-250</td>
<td>26-29</td>
<td>15-16</td>
</tr>
<tr>
<td>250-300</td>
<td>29-32</td>
<td>16-17</td>
</tr>
<tr>
<td>300-350</td>
<td>32-35</td>
<td>17-18</td>
</tr>
<tr>
<td>350-400</td>
<td>35-38</td>
<td>18-20</td>
</tr>
<tr>
<td>400-450</td>
<td>38-42</td>
<td>20-21</td>
</tr>
<tr>
<td>450-500</td>
<td>42-44</td>
<td>21-22</td>
</tr>
<tr>
<td>500-550</td>
<td>44-47</td>
<td>22-24</td>
</tr>
<tr>
<td>550-600</td>
<td>47-50</td>
<td>24-26</td>
</tr>
<tr>
<td>More than 600</td>
<td>Determined in consultation with the executive director</td>
<td></td>
</tr>
</tbody>
</table>

* The executive director may approve different boring depths if site-specific conditions justify variances.

**Figure: 30 TAC §330.205(d)**

<table>
<thead>
<tr>
<th>Contaminant</th>
<th>Total Limit</th>
<th>TCLP Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benzene</td>
<td>10 milligrams per kilogram (mg/kg)</td>
<td>0.5 milligrams per liter (mg/L)</td>
</tr>
<tr>
<td>Lead</td>
<td>30 mg/kg</td>
<td>1.5 mg/L</td>
</tr>
<tr>
<td>Total petroleum hydrocarbons (TPH)</td>
<td>1,500 mg/kg</td>
<td>not applicable</td>
</tr>
<tr>
<td>Effluent Characteristics</td>
<td>Maximum for any one day:</td>
<td>Average of daily values for 30 consecutive days shall not exceed:</td>
</tr>
<tr>
<td>-------------------------</td>
<td>--------------------------</td>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td>Oil and grease</td>
<td>0.10</td>
<td>0.05</td>
</tr>
<tr>
<td>Total petroleum hydrocarbons (TPH)</td>
<td>0.01</td>
<td>0.01</td>
</tr>
<tr>
<td>pH</td>
<td>5.5 - 10.5</td>
<td>5.5 - 10.5</td>
</tr>
</tbody>
</table>

**Metric units (kilograms (kg)/1,000 kg of raw material)**

<table>
<thead>
<tr>
<th>Effluent Characteristics</th>
<th>Maximum for any one day:</th>
<th>Average of daily values for 30 consecutive days shall not exceed:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oil and grease</td>
<td>0.10</td>
<td>0.05</td>
</tr>
<tr>
<td>TPH</td>
<td>0.01</td>
<td>0.01</td>
</tr>
<tr>
<td>pH</td>
<td>5.5 - 10.5</td>
<td>5.5 - 10.5</td>
</tr>
</tbody>
</table>

**English units (pounds (lbs)/1,000 lb of raw material)**
Figure: 30 TAC §330.331(a)(1)

<table>
<thead>
<tr>
<th>Chemical</th>
<th>MCL (mg/l)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arsenic</td>
<td>0.05</td>
</tr>
<tr>
<td>Barium</td>
<td>1.0</td>
</tr>
<tr>
<td>Benzene</td>
<td>0.005</td>
</tr>
<tr>
<td>Cadmium</td>
<td>0.01</td>
</tr>
<tr>
<td>Carbon tetrachloride</td>
<td>0.005</td>
</tr>
<tr>
<td>Chromium (hexavalent)</td>
<td>0.05</td>
</tr>
<tr>
<td>2,4-Dichlorophenoxy acetic acid</td>
<td>0.1</td>
</tr>
<tr>
<td>1,4-Dichlorobenzene</td>
<td>0.075</td>
</tr>
<tr>
<td>1,2-Dichloroethane</td>
<td>0.005</td>
</tr>
<tr>
<td>1,1-Dichloroethylene</td>
<td>0.007</td>
</tr>
<tr>
<td>Endrin</td>
<td>0.0002</td>
</tr>
<tr>
<td>Fluoride</td>
<td>4</td>
</tr>
<tr>
<td>Lindane</td>
<td>0.004</td>
</tr>
<tr>
<td>Lead</td>
<td>0.05</td>
</tr>
<tr>
<td>Mercury</td>
<td>0.002</td>
</tr>
<tr>
<td>Methoxychlor</td>
<td>0.1</td>
</tr>
<tr>
<td>Nitrate</td>
<td>10</td>
</tr>
<tr>
<td>Selenium</td>
<td>0.01</td>
</tr>
<tr>
<td>Silver</td>
<td>0.05</td>
</tr>
<tr>
<td>Toxaphene</td>
<td>0.005</td>
</tr>
<tr>
<td>1,1,1-Trichloroethane</td>
<td>0.2</td>
</tr>
<tr>
<td>Trichloroethylene</td>
<td>0.005</td>
</tr>
<tr>
<td>2,4,5-Trichlorophenoxy acetic acid</td>
<td>0.01</td>
</tr>
<tr>
<td>Vinyl chloride</td>
<td>0.002</td>
</tr>
</tbody>
</table>
Table 1: Maximum Allowable Concentrations

<table>
<thead>
<tr>
<th>PARAMETER</th>
<th>Grade 1 Soil (mg/kg)</th>
<th>Grade 2 Soil (mg/kg)</th>
</tr>
</thead>
<tbody>
<tr>
<td>As</td>
<td>10</td>
<td>41</td>
</tr>
<tr>
<td>Cd</td>
<td>16</td>
<td>39</td>
</tr>
<tr>
<td>Cr (total)</td>
<td>180</td>
<td>1200</td>
</tr>
<tr>
<td>Cu</td>
<td>1020</td>
<td>1500</td>
</tr>
<tr>
<td>Pb</td>
<td>300</td>
<td>300</td>
</tr>
<tr>
<td>Hg</td>
<td>11</td>
<td>17</td>
</tr>
<tr>
<td>Mo</td>
<td>75</td>
<td>75</td>
</tr>
<tr>
<td>Ni</td>
<td>160</td>
<td>420</td>
</tr>
<tr>
<td>Se</td>
<td>36</td>
<td>36</td>
</tr>
<tr>
<td>Zn</td>
<td>2190</td>
<td>2800</td>
</tr>
<tr>
<td>PCBs</td>
<td>1</td>
<td>10</td>
</tr>
</tbody>
</table>
Figure: 30 TAC §330.615(c)(1)(D)

<table>
<thead>
<tr>
<th>PARAMETER</th>
<th>Grade 1 Soil</th>
<th>Grade 2 Soil</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salinity (mmhos/cm)(^1)</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>pH(^1)</td>
<td>5.0 to 8.5</td>
<td>5.0 to 8.5</td>
</tr>
<tr>
<td>Pathogens:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fecal Coliform</td>
<td>less than 1,000 MPN per gram of solid or meets PFRP</td>
<td>geometric mean density less than 2,000,000 MPN per gram of solids or meets PSRP</td>
</tr>
<tr>
<td>Salmonella</td>
<td>less than 3 MPN per 4 grams total solid or meets PFRP</td>
<td>No value</td>
</tr>
</tbody>
</table>

\(^1\) A higher conductivity or pH outside the indicated range may be appropriate if the soil is specified for a special use.
<table>
<thead>
<tr>
<th>Arrest Title</th>
<th>Driver Responsibility Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aggravated assault with motor vehicle</td>
<td>Yes</td>
</tr>
<tr>
<td>ALR CMV .04 &gt; ADM</td>
<td>No</td>
</tr>
<tr>
<td>ALR CMV HZMT .04 &gt; ADM</td>
<td>No</td>
</tr>
<tr>
<td>ALR-CMV HZMT REF-ADM</td>
<td>No</td>
</tr>
<tr>
<td>ALR-CMV REFUSAL-ADM</td>
<td>No</td>
</tr>
<tr>
<td>Backed up on shoulder (or roadway) of controlled access highway</td>
<td>Yes</td>
</tr>
<tr>
<td>Bus driver failed to activate warning signal/equipment</td>
<td>Yes</td>
</tr>
<tr>
<td>Bus failed to stop at RR crossing</td>
<td>Yes</td>
</tr>
<tr>
<td>Bus shifting gears while crossing RR tracks</td>
<td>Yes</td>
</tr>
<tr>
<td>Changed lane when unsafe</td>
<td>Yes</td>
</tr>
<tr>
<td>Coasting</td>
<td>Yes</td>
</tr>
<tr>
<td>Coasting (truck, truck tractor or bus, specify) with clutch disengaged</td>
<td>Yes</td>
</tr>
<tr>
<td>Consume alcohol while driving</td>
<td>Yes</td>
</tr>
<tr>
<td>Criminal negligent homicide with motor vehicle--1st or 2nd degree</td>
<td>Yes</td>
</tr>
<tr>
<td>Crossed RR with heavy equipment without notice</td>
<td>Yes</td>
</tr>
<tr>
<td>Crossed RR with heavy equipment without stop (or safety)</td>
<td>Yes</td>
</tr>
<tr>
<td>Crossing fire hose without permission</td>
<td>Yes</td>
</tr>
<tr>
<td>Crossing physical barrier</td>
<td>Yes</td>
</tr>
<tr>
<td>Cut across driveway to make turn</td>
<td>Yes</td>
</tr>
<tr>
<td>Cut corner left turn</td>
<td>Yes</td>
</tr>
<tr>
<td>Cut in after passing</td>
<td>Yes</td>
</tr>
<tr>
<td>Did not use designated lane or direction</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregard solid green turn signal arrow</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded flashing red signal (at stop sign, etc.)</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded flashing yellow signal</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded lane control signal</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded no lane change sign</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded no passing zone</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded police officer</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded RR crossing gate or flagman</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded signal at RR crossing</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded traffic control device</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded turn marks at intersection</td>
<td>Yes</td>
</tr>
<tr>
<td>Disregarded warning sign at construction</td>
<td>Yes</td>
</tr>
<tr>
<td>Drive into block where fire engine stopped</td>
<td>Yes</td>
</tr>
<tr>
<td>Driving under influence</td>
<td>No</td>
</tr>
<tr>
<td>Driving under influence (DUI)--minor</td>
<td>Yes</td>
</tr>
<tr>
<td>Driving under influence of drugs</td>
<td>No</td>
</tr>
<tr>
<td>Driving while impaired</td>
<td>No</td>
</tr>
<tr>
<td>Driving while intoxicated &gt; 0.16</td>
<td>No</td>
</tr>
<tr>
<td>Driving while intoxicated with child younger than 15 yoa</td>
<td>No</td>
</tr>
<tr>
<td>Driving while intoxicated--felony</td>
<td>No</td>
</tr>
<tr>
<td>Driving while intoxicated--juvenile</td>
<td>No</td>
</tr>
<tr>
<td>Driving while intoxicated--misdemeanor</td>
<td>No</td>
</tr>
<tr>
<td>Driving while intoxicated--on beach</td>
<td>No</td>
</tr>
<tr>
<td>Driving while intoxicated—probated</td>
<td>No</td>
</tr>
<tr>
<td>-----------------------------------</td>
<td>-----</td>
</tr>
<tr>
<td>Driving while intoxicated—under 21</td>
<td>No</td>
</tr>
<tr>
<td>Driving while license disqualified—CMV</td>
<td>No</td>
</tr>
<tr>
<td>Driving while license suspended under provisions of DL laws</td>
<td>No</td>
</tr>
<tr>
<td>Driving while license suspended--SR</td>
<td>No</td>
</tr>
<tr>
<td>Drove center lane (not passing, not turning left)</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on (or across) streetcar tracks where prohibited</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on sidewalk</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on wrong side—RR crossing</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on wrong side of approaching bridge</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on wrong side of divided highway</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on wrong side of road</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on wrong side road approaching intersection</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on wrong side road approaching RR grade crossing</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove on wrong side road awaiting access to ferry</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove onto (or from) controlled access highway where prohibited</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove through safety zone</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove to left of rotary traffic island</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove without lights--when required</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove wrong way in designated lane</td>
<td>Yes</td>
</tr>
<tr>
<td>Drove wrong way on one-way roadway</td>
<td>Yes</td>
</tr>
<tr>
<td>Endorsement violation CDL</td>
<td>Yes</td>
</tr>
<tr>
<td>Excessive acceleration (NO LONGER OFFENSE 9/01/2003)</td>
<td>No</td>
</tr>
<tr>
<td>Exhibition of Acceleration (NO LONGER OFFENSE 9/01/2003)</td>
<td>No</td>
</tr>
<tr>
<td>Offense</td>
<td>Yes</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>Fail to control speed</td>
<td></td>
</tr>
<tr>
<td>Fail to dim headlights—following</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to dim headlights—meeting</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to drive in single lane</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to give hand signals when required</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to give info/render aid</td>
<td>No</td>
</tr>
<tr>
<td>Fail to give one-half of roadway</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to keep to right on mountain road</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to pass left safely</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to pass met vehicle to right</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to pass to right safely</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to signal for stop</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to signal required distance before turning</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to signal turn</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to signal with turn indicator</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to sound horn—mountain road</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop--designated point--at stop sign</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop--designated point--at yield sign</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop and render aid--felony</td>
<td>No</td>
</tr>
<tr>
<td>Fail to stop and render aid--misdemeanor</td>
<td>No</td>
</tr>
<tr>
<td>Fail to stop at marked RR crossing</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop at proper place (at traffic light)</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop at proper place (flashing red signal)</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to stop at proper place (not at intersection)</td>
<td>Yes</td>
</tr>
<tr>
<td>Offense</td>
<td>Yes</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>-----</td>
</tr>
<tr>
<td>Fail to stop for approaching train</td>
<td></td>
</tr>
<tr>
<td>Fail to stop for approaching train—hazardous proximity</td>
<td></td>
</tr>
<tr>
<td>Fail to stop for school bus (or remain stopped, specify)</td>
<td></td>
</tr>
<tr>
<td>Fail to stop for streetcar—or stop at wrong location</td>
<td></td>
</tr>
<tr>
<td>Fail to stop—emerging from alley, driveway or bldg.</td>
<td></td>
</tr>
<tr>
<td>Fail to use due care for pedestrian</td>
<td></td>
</tr>
<tr>
<td>Fail to use proper headlight beam</td>
<td></td>
</tr>
<tr>
<td>Fail to yield at stop intersection</td>
<td></td>
</tr>
<tr>
<td>Fail to yield at yield intersection</td>
<td></td>
</tr>
<tr>
<td>Fail to yield for blind or incapacitated person</td>
<td></td>
</tr>
<tr>
<td>Fail to yield right of way</td>
<td></td>
</tr>
<tr>
<td>Fail to yield right of way from private road</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row at open intersection (specify type)</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row leaving (private drive, alley, building)</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row on green arrow signal</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row on green signal</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row on left at obstruction</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row to emergency vehicle</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row to pedestrian at signal intersection</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row to pedestrian in crosswalk</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row to pedestrian in crosswalk—no signal</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row to pedestrian on sidewalk</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row to pedestrian turning right or left at intersection</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row to pedestrian—green arrow signal</td>
<td></td>
</tr>
<tr>
<td>Traffic Violation</td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Fail to yield row--changing lanes</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield row--turning left (at intersection, alley, private road or driveway)</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield row--turning right on red signal</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield to vehicle in intersection</td>
<td>Yes</td>
</tr>
<tr>
<td>Fail to yield to vehicle leaving highway</td>
<td>Yes</td>
</tr>
<tr>
<td>Failed to give way when overtaken</td>
<td>Yes</td>
</tr>
<tr>
<td>Failed to signal lane change</td>
<td>Yes</td>
</tr>
<tr>
<td>Fleeing from police officer</td>
<td>Yes</td>
</tr>
<tr>
<td>Following ambulance</td>
<td>Yes</td>
</tr>
<tr>
<td>Following fire apparatus</td>
<td>Yes</td>
</tr>
<tr>
<td>Following too closely</td>
<td>Yes</td>
</tr>
<tr>
<td>Following too closely--caravan</td>
<td>Yes</td>
</tr>
<tr>
<td>Following too closely--truck</td>
<td>Yes</td>
</tr>
<tr>
<td>Head lamps glaring not adjusted</td>
<td>Yes</td>
</tr>
<tr>
<td>Heavy equipment disregarded signal of train</td>
<td>Yes</td>
</tr>
<tr>
<td>Illegal backing</td>
<td>Yes</td>
</tr>
<tr>
<td>Illegal pass on right</td>
<td>Yes</td>
</tr>
<tr>
<td>Illegally passed streetcar</td>
<td>Yes</td>
</tr>
<tr>
<td>Impeding traffic</td>
<td>Yes</td>
</tr>
<tr>
<td>Improper turn</td>
<td>Yes</td>
</tr>
<tr>
<td>Improper turn or stop hand signal</td>
<td>Yes</td>
</tr>
<tr>
<td>Improper use of auxiliary driving lamps</td>
<td>Yes</td>
</tr>
<tr>
<td>Improper use of auxiliary passing lamps</td>
<td>Yes</td>
</tr>
<tr>
<td>Improper use of lighting--hwy. equip.</td>
<td>Yes</td>
</tr>
<tr>
<td>Offense</td>
<td>Yes/No</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Improper use of spot lamps</td>
<td>Yes</td>
</tr>
<tr>
<td>Improper use of turn indicator</td>
<td>Yes</td>
</tr>
<tr>
<td>Increased speed while being overtaken</td>
<td>Yes</td>
</tr>
<tr>
<td>Interfere with streetcar</td>
<td>Yes</td>
</tr>
<tr>
<td>Intoxication assault</td>
<td>No</td>
</tr>
<tr>
<td>Intoxication assault motor vehicle</td>
<td>No</td>
</tr>
<tr>
<td>Intoxication manslaughter</td>
<td>No</td>
</tr>
<tr>
<td>Intoxication manslaughter motor vehicle</td>
<td>No</td>
</tr>
<tr>
<td>Involuntary manslaughter with motor vehicle</td>
<td>Yes</td>
</tr>
<tr>
<td>Leaving scene of accident</td>
<td>Yes</td>
</tr>
<tr>
<td>Leaving scene of accident--vehicle damage</td>
<td>Yes</td>
</tr>
<tr>
<td>Made U-turn on curve or hill</td>
<td>Yes</td>
</tr>
<tr>
<td>Murder--with motor vehicle</td>
<td>Yes</td>
</tr>
<tr>
<td>Negligent collision</td>
<td>Yes</td>
</tr>
<tr>
<td>No commercial driver license (CDL)</td>
<td>No/Yes</td>
</tr>
<tr>
<td>No double trailer endorsement (CDL)</td>
<td>No/Yes</td>
</tr>
<tr>
<td>No driver license</td>
<td>No</td>
</tr>
<tr>
<td>No hazmat endorsement (CDL)</td>
<td>No/Yes</td>
</tr>
<tr>
<td>No motorcycle endorsement</td>
<td>No/Yes</td>
</tr>
<tr>
<td>No passenger vehicle endorsement (CDL)</td>
<td>No/Yes</td>
</tr>
<tr>
<td>No tank vehicle endorsement (CDL)</td>
<td>No/Yes</td>
</tr>
<tr>
<td>No school bus endorsement (CDL)</td>
<td>No</td>
</tr>
<tr>
<td>Obstructed view through windshield</td>
<td>Yes</td>
</tr>
<tr>
<td>Obstructing traffic</td>
<td>Yes</td>
</tr>
<tr>
<td>Description</td>
<td>Yes/No</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Open Container DRIVER</td>
<td>Yes</td>
</tr>
<tr>
<td>Operate vehicle more than one passenger-minor</td>
<td>Yes</td>
</tr>
<tr>
<td>Operate vehicle where prohibited</td>
<td>Yes</td>
</tr>
<tr>
<td>Operate vehicle with child in open bed</td>
<td>Yes</td>
</tr>
<tr>
<td>Passed streetcar on left without reducing speed or without caution</td>
<td>Yes</td>
</tr>
<tr>
<td>Passed vehicle stopped for pedestrian</td>
<td>Yes</td>
</tr>
<tr>
<td>Passed--insufficient clearance</td>
<td>Yes</td>
</tr>
<tr>
<td>Passengers/load obstruct driver's view or control</td>
<td>Yes</td>
</tr>
<tr>
<td>Passing authorized emergency vehicle</td>
<td>Yes</td>
</tr>
<tr>
<td>Permitted/operated unsafe vehicle</td>
<td>Yes</td>
</tr>
<tr>
<td>Person(s) riding in trailer or semi-trailer</td>
<td>Yes</td>
</tr>
<tr>
<td>Prohibited motor vehicle on controlled-access highway</td>
<td>Yes</td>
</tr>
<tr>
<td>Racing--drag racing--acceleration contest, etc.</td>
<td>Yes</td>
</tr>
<tr>
<td>Ran red light</td>
<td>Yes</td>
</tr>
<tr>
<td>Ran stop sign</td>
<td>Yes</td>
</tr>
<tr>
<td>Reckless driving</td>
<td>Yes</td>
</tr>
<tr>
<td>Restriction violation--CDL</td>
<td>Yes</td>
</tr>
<tr>
<td>Slower vehicle failed to keep to right</td>
<td>Yes</td>
</tr>
<tr>
<td>Speed under minimum</td>
<td>Yes</td>
</tr>
<tr>
<td>Speeding</td>
<td>No</td>
</tr>
<tr>
<td>Speeding &gt; 10% above posted speed limit</td>
<td>Yes</td>
</tr>
<tr>
<td>Speeding--15 miles or over (CDL)</td>
<td>Yes</td>
</tr>
<tr>
<td>Speeding--school zone</td>
<td>Yes</td>
</tr>
<tr>
<td>Too many riders on motorcycle</td>
<td>Yes</td>
</tr>
<tr>
<td>Scenario</td>
<td>Result</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Turned across dividing section</td>
<td>Yes</td>
</tr>
<tr>
<td>Turned left from wrong lane</td>
<td>Yes</td>
</tr>
<tr>
<td>Turned right from wrong lane</td>
<td>Yes</td>
</tr>
<tr>
<td>Turned right too wide</td>
<td>Yes</td>
</tr>
<tr>
<td>Turned so as to impede or interfere with streetcar</td>
<td>Yes</td>
</tr>
<tr>
<td>Turned when unsafe</td>
<td>Yes</td>
</tr>
<tr>
<td>Unauthorized use of siren, bell or whistle</td>
<td>Yes</td>
</tr>
<tr>
<td>Unsafe speed (too fast for conditions)</td>
<td>Yes</td>
</tr>
<tr>
<td>Unsafe start from parked, stopped or standing position</td>
<td>Yes</td>
</tr>
<tr>
<td>Use of school bus signal for wrong purpose</td>
<td>Yes</td>
</tr>
<tr>
<td>Veh. hauling explosives (or flammable materials) failed to stop at RR crossing</td>
<td>Yes</td>
</tr>
<tr>
<td>Veh. hauling explosives failed to reduce speed at RR crossing</td>
<td>Yes</td>
</tr>
<tr>
<td>Vehicle without required equipment or in unsafe condition</td>
<td>Yes</td>
</tr>
<tr>
<td>Violate DL restriction</td>
<td>Yes</td>
</tr>
<tr>
<td>Violate DL restriction on occupational license</td>
<td>Yes</td>
</tr>
<tr>
<td>Violate operating hours-minor</td>
<td>Yes</td>
</tr>
<tr>
<td>Violated out of service order</td>
<td>Yes</td>
</tr>
<tr>
<td>Wrong side road—not passing</td>
<td>Yes</td>
</tr>
<tr>
<td>Wrong side, 4 or more lane, two-way roadway</td>
<td>Yes</td>
</tr>
</tbody>
</table>
Texas State Affordable Housing Corporation

Notice of Public Hearing

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") at 10:00 a.m. on September 26, 2005 at 1005 Congress Avenue, Suite B10 (Conference Room), Austin, Texas 78701, on the proposed issuance by the Issuer of (a) one or more series of revenue bonds (the "Fire Fighter and Law Enforcement or Security Officer Program Bonds") to provide financing for the acquisition of single family mortgages in the State of Texas, pursuant to its professional nursing program faculty member home loan programs (the "Nursing Project"). The maximum aggregate face amount of the Fire Fighter and Law Enforcement or Security Officer Project and (b) one or more series of revenue bonds (the "Nursing Program Bonds") to provide financing for the acquisition of single family mortgages in the State of Texas, pursuant to its professional nursing program faculty member home loan programs (the "Nursing Project"). The maximum aggregate face amount of the Fire Fighter and Law Enforcement or Security Officer Program Bonds to be issued with respect to the Fire Fighter and Law Enforcement or Security Officer Project is $25,000,000. The maximum aggregate face amount of the Nursing Program Bonds to be issued with respect to the Nursing Project is $5,000,000. All interested persons are invited to attend the public hearing to express orally, or in writing, their views on the proposed issuance by the Issuer of the Bonds.

Department of Aging and Disability Services

Notice of Invitation for Offers for Consulting Services for a Service Delivery System

In accordance with the provisions of the Texas Government Code, Chapter 2254, Subchapter B, the Department of Aging and Disability Services (DADS) invites offers for consulting services to develop a comprehensive report and plan for a systematic approach to improve DADS service delivery through identification of cost savings opportunities, improved management of resources, and improved consumer care.

Selection and Evaluation: DADS seeks a qualified vendor to analyze current DADS’ service delivery systems and develop a report and plan outlining a systematic approach to improving areas such as, but not limited to, service delivery and consumer navigation. This analysis and report will also address opportunities for cost-saving and improved management of resources, as well as other changes that might serve in improving the proposed system design.

Terms and/or Amount: The tentative contract start date is October 17, 2005, and the contract term is six months with the option to extend the contract for two periods of three months each. The award amount will be up to $50,000 for the period of six months, and DADS reserves the right to extend the contract and to modify the contract amount.

Selection and Evaluation: DADS will evaluate proposals based on respondent’s demonstrated competence, knowledge and skills, and the reasonableness of the cost. Vendors will be scored according to past performance on similar projects, approach to meeting the requirements of the request for proposals (RFP) and skills and experience of personnel. Major skills required to perform the services and functions outlined in the RFP, include but are not limited to, facilitation and coordination of fact-finding research, conducting stakeholder meetings, gathering and documenting pertinent data, analyzing data, and developing a proposal and project plan for improved service delivery. Additionally, preference will be given, all other considerations being equal, to the vendor whose principal place of business is within the State of Texas, or who will manage the project entirely from its office within the State of Texas.

Reports Due: For each month during the contract period, the vendor shall provide a status report to the State Project Manager on the 15th day and the last work day of each month (if the 15th day falls on a weekend, the report is due on the Friday prior to the 15th). The vendor will be responsible for developing comprehensive meeting notes, including as appropriate, a description of issues discussed, identified problems, and proposed resolution of the issues and include a summary of the above in each of the required reports in which meeting(s) were held. The vendor shall use an inventory sheet to track all documents created during the contract period. The inventory sheet should contain at a minimum, the name of the document, date developed, date delivered to State staff, and name of person to whom the document was delivered. The vendor shall meet with the Steering Committee no less than three times during the contract period, or as requested by the Steering Committee. The vendor shall produce a Final Project Report.
that must meet the State’s approval, outlining recommendations for improvements to DADS’ service delivery systems and a Final Project Plan for implementing recommended changes. All reports are due to the DADS Project Manager by the assigned due date for review and determination of accuracy and completeness.

Closing Date: Prospective vendors must submit a Notice of Intent to Propose to the DADS Point of Contact listed below no later than September 26, 2005, at 5:00 pm central/standard time.

Vendor proposals are due on October 5, 2005, at 5:00 pm central/standard time. All offers for proposal should be returned to Melody J. Conner, CTP/CTPM, 1901 N. Highway 87, Bldg 507, Big Spring, TX 79720; Fax: (423) 268-7299. Vendors must submit one original and two copies of the proposal. The original must be signed in ink by an authorized representative of the respondent. In addition, submit one electronic copy of the proposal on a floppy disk or compact disk compatible with Microsoft Office 2000. If there are any disparities between the contents of the printed proposal and the electronic proposal, the contents of the printed proposal will take precedence. The proposal may not be more than 30 total pages, excluding required forms and resumes.

Contact Person: The person to contact with inquiries concerning this RFP is: Melody J. Conner, CTP/CTPM, 1901 N. Highway 87, Bldg 507, Big Spring, TX 79720; Phone: (423) 268-7258; Fax: (423) 268-7299; e-mail: melody.conner@hhsc.state.tx.us.

Texas Department of Agriculture

Notice of Public Hearings

In accordance with the Texas Agriculture Code, §§76.004 and 76.005, the Texas Department of Agriculture (the department) hereby provides notice of hearings to take public comment on the department’s proposed amendments to Texas Administrative Code (TAC), Title 4, Chapter 7, §§7.10, 7.20, 7.23, 7.24 and 7.35, concerning pesticide registration and regulation. The proposed amendments were published in the Texas Register on August 25, 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 August 31, 2005. The public comment period for these projects will close at 5:00 p.m. on September 30, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: BOSS Exploration & Production Corporation; Location: This project proposal is known as Well #5 in State Tract (ST) 391. The project is located in Corpus Christi Bay approximately 4 miles east of Gulf Intracoastal Waterway Marker 69, in ST 391, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, TX. Approximate UTM Coordinates in NAD 83 (meters): Zone 14; Easting: 683450; Northing: 3075866. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of typical marine barges and keyways. 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.: 05-0435-F1; Type of Application: U.S.A.C.E. permit application #23909 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: BOSS Exploration & Production Corporation; Location: This project proposal is known as Well #3 in State Tract (ST) 391. The project is located in Corpus Christi Bay approximately 4 miles east of Gulf Intracoastal Waterway Marker 69, in ST 391, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, TX. Approximate UTM Coordinates in NAD 27 (meters): Surface Location: Zone 14; Easting: 683852; Northing: 3076528. Bottom-hole Location: Zone 14; Easting: 6841311; Northing: 3076622. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. The proposal is to drill an oil well from a surface location at ST 391-3 to a bottom-hole location approximately 500 feet east of the surface location, also in ST 391. Such activities include installation of typical marine barges and keyways. 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.: 05-0436-F1; Type of Application: U.S.A.C.E. permit application #23910 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: Texas Parks and Wildlife Department; Location: The project is located in West Galveston Bay, at Bird Island, in Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Christmas Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 292004; Northing: 3219578. Project Description: The applicant proposes to create and enhance 63 acres of marsh and 12 acres of rookery habitat. The applicant will hydraulically dredge approximately 300,000 cubic yards of material from a 30-acre submerged area, east of the project site, to create a dredge flow relief channel. Fill removed will be used to create the habitat area. In addition, the applicant proposes to create a 500-foot-long flow diverting dike out of rock riprap to assist in stabilizing the enhanced marsh area. CCC Project No.: 05-0446-F1; Type of Application: U.S.A.C.E. permit application #23813 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 Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Brazoria County Parks Department; Location: The project is located in the Brazos River at its confluence with Buffalo Camp Bayou, in Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Lake Jackson, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 258746; Northing: 3213757. Project Description: The applicant requests permission to retain a 100-foot-long by 45-foot-wide boat ramp, two 100-foot-long bulkheads located on either side of the boat ramp, and a 67-foot-long by 6-foot-wide pier. Depth along the project site ranges from 0 to -3.60 feet below mean high water. No fill was placed below mean high water to construct the bulkheads. Twenty (20) cubic yards of concrete was placed below mean high water to construct the boat ramp. CCC Project No.: 05-0447-F1; Type of Application: U.S.A.C.E. permit application #23545(01) 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 Commission on Environmental Quality 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 Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@tdeo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680. TRD-200503781
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: August 30, 2005

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and Sections 403.301 and 403.3011, Texas Government Code; Section 5.102, Property Tax Code; and Chapter 271, Local Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #174a) from qualified, independent firms to provide pooled consulting services to Comptroller. The successful respondent(s) will assist Comptroller in conducting Appraisal Standards Reviews (ASR) of up to twenty-five (25) county appraisal districts throughout the state, as well as thirty-nine (39) follow-up reviews. Comptroller reserves the right to select multiple contractors to participate in conducting the ASRs on a “pooled” basis, as set forth in the RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about November 10, 2005, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. Comptroller 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 Friday, September 9, 2005, after 10 a.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Texas Marketplace at: http://esbd.tbpc.state.tx.us after 10 a.m. (CZT) on Friday, September 9, 2005.

Non-Mandatory Proposers Conference: A Non-Mandatory Proposers Conference will be held in Austin on September 20, 2005. Time and location are outlined in the RFP. Potential proposers are strongly encouraged to attend the conference.

Non-Mandatory Letters of Intent and Questions: All Non-Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 475-0973, not later than 2:00 p.m. (CZT), on Friday, September 23, 2005. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace no later than Friday, September 30, 2005, or as soon thereafter as practical. Non-Mandatory Letters of Intent or Questions received after the deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be received in the Assistant General Counsel’s Office at the address specified above (ROOM G-24) no later than 2 p.m. (CZT), on Friday, October 7, 2005. Proposals received IN ADDITION September 9, 2005 30 TexReg 5847
The retail credit card annual rate as prescribed by §303.009 for the period of 10/01/05 - 12/31/05 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed §304.003 for the period of 09/01/05 - 09/30/05 is 6.50% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed §304.003 for the period of 09/01/05 - 09/30/05 is 6.50% for Commercial over $250,000.

1Credit for personal, family or household use.

2Credit for business, commercial, investment or other similar purpose.

3For variable rate commercial transactions only.

4Only for open-end credit as defined in §301.002(14), Tex. Fin. Code.

Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding City of Trinity, Docket No. 2003-0077-MWD-E on 08/24/2005 assessing $4,410 in administrative penalties with $882 deferred.

Information concerning any aspect of this order may be obtained by contacting Sunday Udoetok, Enforcement Coordinator at (512) 239-0739, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Adam Keller dba Adam’s Irrigation Co. dba Adams Landscape, Docket No. 2003-0534-LII-E on 08/24/2005 assessing $375 in administrative penalties with $75 deferred.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Naseer Ahmad, Docket No. 2003-0077-MWD-E on 08/24/2005 assessing $4,410 in administrative penalties with $882 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 Larry Anderson and AndTech Pollution Control, Inc., Docket No. 2001-0080-WOC-E on 08/24/2005 requiring certain action.
Information concerning any aspect of this order may be obtained by contacting Jim Biggins, Staff Attorney at (210) 403-4017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Parks & Wildlife Department, Docket No. 2003-0185-MWD-E on 08/24/2005 assessing $1,940 in administrative penalties with $388 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Murphy Oil USA, Inc. dba Murphy USA 6879, Docket No. 2004-0529-PST-E on 08/23/2005 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wyman-Gordon Forgings LP, Docket No. 2004-0860-IWD-E on 08/24/2005 assessing $26,500 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.

An agreed order was entered regarding Piyar Ali dba Crossroad Market, Docket No. 2004-0869-PST-E on 08/24/2005 assessing $18,190 in administrative penalties with $3,638 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-6006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mexia Independent School District, Docket No. 2004-1055-PST-E on 08/24/2005 assessing $1,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Chad Blevins, Enforcement Coordinator at (512) 239-6017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Norberto Reyes, Docket No. 2004-1126-MSW-E on 08/24/2005 assessing $2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney at (817) 588-5927, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sun Valley Distribution, Inc., Docket No. 2004-1218-AIR-E on 08/24/2005 assessing $900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sarah Utey, 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 Tradesman, L.L.C., Docket No. 2004-1313-EAQ-E on 08/24/2005 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Youth Commission, Docket No. 2004-1367-PST-E on 08/24/2005 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at (956) 430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fry Road Municipal Utility District, Docket No. 2004-1406-MWD-E on 08/24/2005 assessing $3,960 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aelina Enterprises, Inc. dba Leander Grocery, Docket No. 2004-1535-PST-E on 08/24/2005 assessing $3,150 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 Raheem Emiola dba Come & Go Food Store, Docket No. 2004-1564-PST-E on 08/24/2005 assessing $2,700 in administrative penalties.

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 Amirali Ladhani dba Henry’s Quick Stop, Docket No. 2004-1577-PST-E on 08/24/2005 assessing $1,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chemcentral Southwest, L.P., Docket No. 2004-1595-AIR-E on 08/24/2005 assessing $18,788 in administrative penalties with $3,758 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator at (512) 239-5839, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Azteca Milling, L.P. dba Dawn Corn Milling Facility, Docket No. 2004-1642-AIR-E on 08/24/2005 assessing $2,500 in administrative penalties with $500 deferred.
Information concerning any aspect of this order may be obtained by contacting Ronnie Kramer, Enforcement Coordinator at (806) 468-0512, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunoco, Inc. (R&M), Docket No. 2004-1685-AIR-E on 08/24/2005 assessing $5,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sunoco, Inc., 2415 W. 29th Street, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunoco, Inc. (R&M), Docket No. 2004-1685-AIR-E on 08/24/2005 assessing $5,800 in administrative penalties.

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An agreed order was entered regarding Sunoco, Inc. (R&M), Docket No. 2004-1685-AIR-E on 08/24/2005 assessing $5,800 in administrative penalties.
Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney at (817) 588-5927, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fair Oaks Club Corp., Docket No. 2004-2076-EAQ-E on 08/24/2005 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lyondell Chemical Company, Docket No. 2005-0008-AIR-E on 08/24/2005 assessing $7,550 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.


Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lone Star Corrugated Container Corporation, Docket No. 2005-0013-PST-E on 08/24/2005 assessing $800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mohammad Ghorashi dba Super Quick Market, Docket No. 2005-0026-PST-E on 08/24/2005 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator at (361) 825-3140, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John P. Brinkman dba Brinkman Homes, Docket No. 2005-0033-WQ-E on 08/24/2005 assessing $950 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 Sun Coast Resources, Inc., Docket No. 2005-0047-PST-E on 08/24/2005 assessing $600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator at (361) 825-3140, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cynthia Brown dba Cindy’s, Docket No. 2005-0061-PST-E on 08/24/2005 assessing $5625 in administrative penalties with $1125 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.


Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator at (512) 239-5839, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Zuma International, Inc. dba Manchaca Food Mart, Docket No. 2005-0090-PST-E on 08/24/2005 assessing $1,900 in administrative penalties.

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 Janu Enterprises, Inc. dba Broncos Country Corner, Docket No. 2005-0116-PST-E on 08/24/2005 assessing $4,270 in administrative penalties with $854 deferred.
Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Noltex, L.L.C., Docket No. 2005-0423-AIR-E on 08/24/2005 assessing $950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S R Burzynski, MD, Docket No. 2005-0354-IHW-E on 08/24/2005.

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.


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 Glass Texaco Distributors, Inc. dba Essex Texaco, Docket No. 2005-0275-PST-E on 08/24/2005 assessing $950 in administrative penalties with $190 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolynn 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 BP Products North America, Inc., Docket No. 2005-0284-AIR-E on 08/24/2005 assessing $912.50 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator at (361) 825-3140, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.


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.

An agreed order was entered regarding Coastal Transport Co., Inc., Docket No. 2005-0366-PST-E on 08/24/2005 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Chad Blevins, Enforcement Coordinator at (512) 239-6017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Three Vision II, Inc. dba Park Place Foods, Docket No. 2005-0244-PST-E on 08/24/2005 assessing $2,100 in administrative penalties with $420 deferred.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amanie Corp. dba Kwik Pantry Food Mart, Docket No. 2005-0371-PST-E on 08/24/2005 assessing $4,280 in administrative penalties with $856 deferred.

Information concerning any aspect of this order may be obtained by contacting Chad Blevins, Enforcement Coordinator at (512) 239-6017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Walid ak Husein dba McClains Food Store, Docket No. 2005-0312-PST-E on 08/24/2005 assessing $800 in administrative penalties with $160 deferred.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator at (361) 825-3140, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amanie Corp. dba Kwik Pantry Food Mart, Docket No. 2005-0371-PST-E on 08/24/2005 assessing $4,280 in administrative penalties with $856 deferred.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Universal Transport, Inc., Docket No. 2005-0274-PST-E on 08/24/2005 assessing $700 in administrative penalties with $140 deferred.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Walid ak Husein dba McClains Food Store, Docket No. 2005-0312-PST-E on 08/24/2005 assessing $800 in administrative penalties with $160 deferred.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator at (361) 825-3140, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amanie Corp. dba Kwik Pantry Food Mart, Docket No. 2005-0371-PST-E on 08/24/2005 assessing $4,280 in administrative penalties with $856 deferred.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Universal Transport, Inc., Docket No. 2005-0274-PST-E on 08/24/2005 assessing $700 in administrative penalties with $140 deferred.
Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Western Transportation, Inc., Docket No. 2005-0483-PST-E on 08/24/2005 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Charlie Hong dba Coastal Mart, Docket No. 2005-0589-PST-E on 08/24/2005 assessing $1,070 in administrative penalties with $214 deferred.

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 Abassi Holdings, Inc. dba Friend Food Mart, Docket No. 2005-0661-PST-E on 08/24/2005 assessing $3,150 in administrative penalties with $630 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandra Anaya, Enforcement Coordinator at (512) 239-0572, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.


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 Weatherford Aerospace, Inc., Docket No. 2005-1103-AIR-E on 08/24/2005 assessing $2,425 in administrative penalties.

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.

TRD-200503798
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 31, 2005

Notice of District Petition
Notes mailed August 30, 2005

TCEQ Internal Control No. 07182005-D05; Luella Water Supply Corporation (Petitioner) has filed a petition with the Texas Commission on Environmental Quality (TCEQ) to convert Luella Water Supply Corporation to Luella Special Utility District (District) and to transfer Certificate of Convenience and Necessity (CCN) No. 10179 from Luella Water Supply Corporation to Luella Special Utility District. Luella Special Utility District’s business address will be: 36 LWSC Road; Sherman, Texas 75090. The petition was filed pursuant to Chapters 13 and 65 of the Texas Water Code; 30 Texas Administrative Code Chapters 291 and 293; and the procedural rules of the TCEQ. The nature of the purpose of the petition are for the conversion of Luella Water Supply Corporation and the organization, creation and establishment of Luella Special Utility District under the provisions of Article XVI, Section 59, Texas Constitution, and Chapter 65 of the Texas Water Code, as amended. The District shall have the purposes and powers provided in Chapter 65 of the Texas Water Code, and CCN No. 10179 shall be transferred as provided in Chapter 13, of the Texas Water Code, as amended. The nature of the services presently performed by Luella Water Supply Corporation is to purchase, own, hold, lease and otherwise acquire sources of water supply; to build, operate and maintain facilities for the transportation of water; and to sell water to individual members, towns, cities, private businesses, and other political subdivisions of the State. The nature of the services proposed to be provided by Luella Special Utility District is to purchase, own, hold, lease, and otherwise acquire sources of water supply; to build, operate, and maintain facilities for the storage, treatment, and transportation of water; and to sell water to individuals, towns, cities, private business entities and other political subdivisions of the State. Additionally, it is proposed that the District will protect, preserve and restore the purity and sanitary condition of the water within the District. It is anticipated that conversion will have no adverse effects on the rates and services provided to the customers. The proposed District is located in Grayson County and will contain approximately 27.01 square miles. The territory to be included within the proposed District includes all of the singularly certified service area covered by CCN No. 10179. CCN No. 10179 will be transferred after a positive confirmation election.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication
of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district’s boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TCEQ can be found at our website at www.tceq.state.tx.us.

TRD-200503797
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 31, 2005

Notice of Public Hearing on Proposed Revisions to 30 TAC Chapters 106 and 116 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding the proposed repeal of §116.621 of 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification; and the amendment of §106.534 of 30 TAC Chapter 106, Permits by Rule, under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning state implementation plans (SIPs). This proposal would include the withdrawal of the September 11, 2000, submittal of §116.621 to the EPA as a revision to the SIP.

The proposed rulemaking would repeal the current standard permit authorizing air emissions from municipal solid waste landfills in conjunction with the proposal of a new standard permit in 30 TAC Chapter 330, Municipal Solid Waste. This action would also amend the permit by rule applicable to air emissions from municipal solid waste landfills to limit the authorization of air emissions to small landfills and solid waste transfer stations.

A public hearing for the proposed rulemaking and SIP revision will be held in Austin on September 29, 2005, at 10:00 a.m., in Building C, Room 131E, at the commission’s central office, located at 12100 Park 35 Circle. 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. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing 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 Joyce Spencer, Office of Legal Services at (512) 239-5017. Requests should be made as far in advance as possible.

Comments may be submitted to Joyce Spencer, 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 2003-066-116-PR. Comments must be received by 5:00 p.m. on October 31, 2005. For further information, please contact Beecher Cameron, Air Permits Division at (512) 239-1495.

TRD-200503690
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: August 26, 2005

Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 330

The Texas Commission on Environmental Quality (TCEQ or commission) will conduct a public hearing to receive comments concerning revisions to 30 TAC Chapter 330, Municipal Solid Waste, under the requirements of Texas Health and Safety Code, §382.017 and Texas Government Code, Chapter 2001, Subchapter B.

A public hearing on this proposal will be held in Austin on September 29, 2005, at 2:00 p.m. in Building E, Room 201S, at the commission’s central office, located at 12100 North IH-35. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals wishing to present oral statements will be asked to register. In an effort to aid in recording, individuals registering to speak will be asked to indicate their area of interest as medical waste, liquid waste, solid waste management, or general. Individuals will be called in that order to present comment. Individuals may comment on more than one area, but will be asked to do so in order. Regardless of area of interest, all individuals will be given the opportunity to comment. 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, agency staff members will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

The proposed rulemaking would: 1) provide an overall topic reorganization; 2) streamline low-risk waste activities to lower agency authorization levels, including allowing permits by rule and registrations by rule for certain low-impact waste management activities; 3) decrease regulatory requirements for small rural transfer stations; 4) increase ease or desirability for counties to license certain municipal solid waste (MSW) activities, within statutory constraints (see Texas Health and Safety Code, §§361.154 - 361.160); 5) streamline and clarify MSW transporter requirements; 6) allow a permit by rule for persons that compact or transport waste in enclosed containers or enclosed vehicles to Type IV landfills; 7) decrease regulatory requirements for medical waste management between hospitals and associated clinics; 8) revise the requirements for detecting and measuring landfill gas to establish more enforceable language; 9) establish basic levels of quality assurance and quality control reporting to be included in sampling and laboratory analysis reports submitted to the TCEQ; 10) harmonize with
the commercial industrial nonhazardous waste landfill rules; 11) clarify construction activities that are allowed prior to authorization; 12) remove the ban on trench burners at MSW facilities and establish requirements for trench burners (air curtain incinerators) at MSW facilities, consistent with the TCEQ permit by rule allowed by 30 TAC §106.496; 13) add appropriate professional geoscientist language; 14) revise the MSW permit and registration application format to ease the councils of government reviews of MSW applications; 15) revise the annual/quarterly maintenance fee for transporters with a special collection route permit for enclosed containers or enclosed vehicles transported to Type IV landfills so that municipal and other transporters are required to pay the same fee; 16) add new buffer zone requirements for landfills; 17) add new groundwater monitoring well spacing requirements for landfills; 18) harmonize the MSW landfill operational requirements for claiming the standard air permit under 30 TAC §116.621; 19) establish an MSW standard air permit for landfills and transfer stations; 20) incorporate changes from House Bills 1053 and 1609, 79th Legislature, 2005; 21) require sign posting as part of the public notice requirement for a registration application; 22) require the applicant for any permit, amendment, modification, or registration to post the application on a publicly accessible Web site; and 23) improve readability, correct citations and cross-references, delete obsolete requirements, make other changes as specified in the preamble, and update the agency name.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Lola Brown, Office of Legal Services at (512) 239-0348. Requests should be made as far in advance as possible.

Comments may be submitted to Lola Brown, 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 2005-031-330-PR. Comments must be received by 5:00 p.m., October 31, 2005. Copies of the proposed rules can be obtained from the commission’s Web site at http://www.tceq.state.tx.us/naw/rules/proposal_adopt.html. For further information, please contact Richard Carmichael, Waste Permits Division, at (512) 239-6784.

TRD-200503693 Stephanie Bergeron Perdue Director, Environmental Law Division Texas Commission on Environmental Quality Filed: August 26, 2005

Notice of Water Quality Applications

The following notices were issued during the period of August 29, 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.

HEADWATERS DEVELOPMENT, CO. has applied for a new permit, Proposed Permit No. WQ0014587001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 325,000 gallons per day via a subsurface drip irrigation system on a public accessible 12 acre wildflower meadow and drip irrigation system on a public accessible 63 acre area of natural habitat. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately three miles northeast of the intersection of Rural Route 12 and U.S. Highway 290 in the City of Dripping Springs, approximately 1.8 miles north of U.S. Highway 290 in Hays County, Texas.

CITY OF HOUSTON has applied for a renewal of TNRCC Permit No. 10495-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 39,900,000 gallons per day for Outfall No. 001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 54,000,000 gallons per day for Outfall No. 002, which authorizes the discharge of Belmont/Scott Wet Weather flow with a reporting requirement for Outfall No. 003, and which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 93,900,000 gallons per day for Outfall No. 004. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 39,900,000 gallons per day for Outfall No. 002. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 54,000,000 gallons per day for Outfall No. 004. The Sims Bayou North Wastewater Treatment Facilities are located at 9500 Lawndale, adjacent to the confluence of Plum Creek with Sims Bayou, in the City of Houston, in Harris County, Texas (Outfall No. 001). The Sims Bayou South Wastewater Treatment Facilities are located adjacent to and east of the intersection of Central Street and Old Galveston Road, in the City of Houston, in Harris County, Texas (Outfall No. 002). The Belmont/Scott Wet Weather Facility is located on the northeast side of the Houston Belt and Terminal railyard crossing, approximately 3,500 feet south of the intersection of Interstate Highway 45 and Calhoun Road, in the City of Houston, in Harris County, Texas (Outfall No. 003).

CITY OF HOUSTON has applied for a major amendment to TPDES Permit No. 10495-090 to review the effluent limitations and monitoring requirements for total copper in the light of the updated segment water effect ratio for total copper, seven-day, two-year low-flow (7Q2) flow and total suspended solids concentration data. The proposed amendment also requests to land apply Class A sludge for beneficial use. The current permit authorizes marketing and distribution of Class A sludge. The facility is located at 2525 S. Sgt. Macario Garcia Drive on the north bank of Buffalo Bayou in the City of Houston in Harris County, Texas. The sludge treatment works are located at the same site as the wastewater treatment facility.

WAYNE ROBERT JOHNSON who operates the Fabens Delinting Plant, a cottonseed delinting facility, has applied for a renewal of TPDES Permit No. WQ0000516000, which authorizes the discharge of delinting process wash water at a daily average flow not to exceed 38,000 gallons per day via Outfall 001. The facility is located at 410 Freidman Street, in the Community of Fabens, El Paso County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of TPDES Permit No. 11098-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 17,500 gallons per day. The facility is located within Bentsen Rio Grande Valley State Park; adjacent to State Park Loop 43; approximately 3.5 miles south of the intersection of State Highway Loop 374 and Farm-to-Market Road 2062 in Hidalgo County, Texas.

CITY OF WINK has applied for a renewal of Permit No. 10318-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 382,200 gallons per day via evaporation. The wastewater treatment facilities and disposal site are located approximately 0.8 mile east of the intersection of State Highway 115 and Farm-to-Market Road 1232 in the southeast corner of the City of Wink in Winkler County, Texas.
CITY OF WOLFE CITY has applied for a renewal of TPDES Permit No. 10383-002, which authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 90,000 gallons per day. The facility is located 3/4 mile east of the City of Wolfe City on Farm-to-Market Road 1563, south of the Western City Reservoir in Hunt County, Texas.

TRD-200503799
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 31, 2005

Notice of Water Rights Application
Notice mailed August 25, 2005

APPLICATION NO. 14-1318C; San Angelo Water Supply Corporation, P.O. Box 1928, San Angelo, Texas 76902, applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to a Certificate of Adjudication pursuant to 11.122 and 11.042, Texas Water Code, and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Certificate of Adjudication No. 14-1318 authorizes the owner, San Angelo Water Supply Corporation, to maintain a dam and reservoir on the Middle Concho River, South Concho River, and Spring Creek, tributaries of the Colorado River, Colorado River Basin, Tom Green County, and to impound therein not to exceed 170,000 acre-feet of water. Certificate of Adjudication No. 14-1318 also authorizes the owner to divert and use not to exceed 29,000 acre-feet of water per year from the reservoir for municipal purposes and an additional 25,000 acre-feet of water per year from the reservoir for agricultural purposes to irrigate a maximum of 15,000 acres of land within the boundaries of the Tom Green County Water Control and Improvement District No. 1. The maximum combined diversion rate at Diversion Point No. 1 is 270 cfs, 150 cfs of that being for agricultural (irrigation) purposes and 120 cfs being for municipal purposes. The maximum diversion rate for Diversion Point No. 2 is 120 cfs. Several special conditions apply. Special Condition 5C currently states "A conduit shall be constructed in the aforesaid dam with the inlet at elevation 1883.5 feet above mean sea level, having an opening of not less than five feet in diameter and equipped with a regulating gate for the purpose of permitting the free passage of the normal flow through the dam at all times and the passage of those waters to which the Department may determine lower appropriators are entitled." San Angelo Water Supply Corporation has a concurrent application, Application No. 14-1318B, to amend Special Condition 5C to modify the elevation referenced for the inlet to the conduit through the dam from 1,883.5 feet above mean sea level to the actual built elevation of 1,885.0 feet above mean sea level, to add an additional diversion point on the south end of the Twin Buttes Dam on the South Concho River, use the bed and banks of the South Concho River between the Twin Buttes Dam and Lake Nasworthy, and subsequently impound that water in Lake Nasworthy for authorized diversion and use. The Commission will review Application No. 14-1318B as submitted by the applicant and may or may not grant that application as requested. San Angelo Water Supply Corporation, applicant, now seeks an amendment to Certificate of Adjudication No. 14-1318, referred to as Application No. 14-1318C, to modify Special Condition 5C to read as follows: A conduit shall be constructed in the aforesaid dam with the inlet at elevation 1885 feet above mean sea level, having an opening of not less than five feet in diameter and equipped with a regulating gate for the purpose of being able to permit the passage of normal flow, as that term may be scientifically defined, through the dam at such times as needed to meet the calls of senior water right holders downstream. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on March 30, 2005. Additional fees and information were received on June 27 and 30, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on July 12, 2005. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200503796
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 31, 2005

Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is October 10, 2005. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and
(1) COMPANY: Builders Marble Company; DOCKET NUMBER: 2005-0520-AIR-E; IDENTIFIER: Regulated Entity Number (RN) 104491055; LOCATION: Farmersville, Collin County, Texas; TYPE OF FACILITY: synthetic marble manufacturing; RULE VIOLATED: 30 TAC §116.110(a)(1) and THSC §382.085(b) and §382.0518(a), by failing to obtain authorization prior to beginning operations; PENALTY: $1,440; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Ronnie Callahan; DOCKET NUMBER: 2005-0130-MSW-E; IDENTIFIER: RN104435441; LOCATION: Bonham, Fannin County, Texas; TYPE OF FACILITY: municipal solid waste (MSW) landfill and salvage yard; RULE VIOLATED: 30 TAC §330.4(a) and §335.2(a), by failing to prevent the disposal of industrial or MSW activity; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of Cooper; DOCKET NUMBER: 2005-1056-PWS-E; IDENTIFIER: RN101212082; LOCATION: Cooper, Delta County, Texas; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC §341.0315(c), by exceeding the maximum contaminant level (MCL) for trihalomethanes (TTHM); PENALTY: $1,680; ENFORCEMENT COORDINATOR: Jill McNew, (915) 655-9479; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(4) COMPANY: Econo Lube N'Tune, Inc.; DOCKET NUMBER: 2005-0805-PST-E; IDENTIFIER: RN101825347; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: used oil changing; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(c)(1), by failing to have a release detection method capable of detecting a release from any portion of the underground storage tank (UST) system; 30 TAC §334.10(b), by failing to make records readily accessible and available upon request; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay outstanding UST fees; PENALTY: $2,660; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Fort Bend County Municipal Utility District Number 50; DOCKET NUMBER: 2005-0872-MWD-E; IDENTIFIER: RN102815214; LOCATION: near Houston, Fort Bend County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 0013228001, and the Code, §26.121(a), by failing to comply with permitted effluent limits for ammonia nitrogen (NH3N), dissolved oxygen (DO), and total suspended solids (TSS); PENALTY: $3,744; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Headwaters Resources, Inc.; DOCKET NUMBER: 2005-0426-AIR-E; IDENTIFIER: RN103003117; LOCATION: Tatum, Rusk County, Texas; TYPE OF FACILITY: bulk mineral handling plant; RULE VIOLATED: 30 TAC §101.201(e) and THSC §382.085(b), by failing to notify the TCEQ after the discovery of an excess opacity event; and 30 TAC §111.111(a)(7)(A) and THSC §382.085(b), by failing to prevent an excess opacity event; PENALTY: $1,680; ENFORCEMENT COORDINATOR: Larry King, (512) 339-2929; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(7) COMPANY: Humbles Partners Limited Partnership dba Atascocita Village Mobile Home Park; DOCKET NUMBER: 2005-0306-PWS-E; IDENTIFIER: RN102687779; LOCATION: Humble, Harris County, Texas; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(m)(4), by failing to repair or replace the leaking valve located at the pressure tank and by failing to maintain the fence, fix broken boards, and replace the broken spigot; 30 TAC §290.45(b)(1)(C)(i) - (iii) and THSC §341.0315(c), by providing a well capacity of 0.6 gallons per minute (gpm) per connection, by failing to provide a total storage capacity of 200 gallons per connection, and by failing to provide a service pump capacity of two gpm per connection; and 30 TAC §290.51(a)(3) and the Code, §5.702, by failing to pay public health service fees; PENALTY: $294; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Hydrodynamics, Incorporated dba Associated Fiberglass; DOCKET NUMBER: 2005-0831-AIR-E; IDENTIFIER: RN101340818; LOCATION: Haltom City, Tarrant County, Texas; TYPE OF FACILITY: fiberglass manufacturing; RULE VIOLATED: 30 TAC §122.121 and THSC §382.054 and §382.085(b), by failing to obtain a Title V federal operating permit; PENALTY: $2,040; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 2916 Teague Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: City of Jasper; DOCKET NUMBER: 2005-0444-MWD-E; IDENTIFIER: TPDES Permit Number 0010197001, RN101052132; LOCATION: Jasper, Jasper County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0010197001, and the Code, §26.121(a), by failing to maintain compliance with the total copper daily average; PENALTY: $7,378; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: City of Jasper; DOCKET NUMBER: 2005-0804-MWD-E; IDENTIFIER: RN101052132; LOCATION: Jasper, Jasper County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(5), TPDES Permit Number 10197001, by failing to conduct adequate process control testing, by failing to properly maintain or close the ten sand cell drying beds, and by failing to properly operate and maintain the facility clarifiers; and 30 TAC §30.350(n) and the Code, §26.0301(a), by failing to employ appropriately licensed individuals to supervise the operation of the facility collection system; PENALTY: $5,292; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.
(11) COMPANY: Mr. Thomas A. Kalina; DOCKET NUMBER: 2005-1117-OSI-E; IDENTIFIER: RN10339628; LOCATION: Mount Calm, Hill County, Texas; TYPE OF FACILITY: on-site sewage; RULE VIOLATED: 30 TAC §285.61(4) and THSC, §366.051(c), by failing to comply with the effluent limits for DO, biochemical oxygen demand, and TSS, and by failing to submit monitoring results; PENALTY: $150; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Lucite International, Inc.; DOCKET NUMBER: 2005-0310-AIR-E; IDENTIFIER: RN102736089; LOCATION: Nederland, Jefferson County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §101.201(a)(1) and THSC, §382.085(b), by failing to properly notify the regional office of a reportable emissions event; and 30 TAC §116.115(b)(2)(F) and (c), Air Permit Number 19003, and THSC, §382.085(b), by failing to maintain an emission rate below the allowable emission limit; PENALTY: $2,680; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(13) COMPANY: Multiple Concepts, Inc. dba Tiger Trac Exxon; DOCKET NUMBER: 2005-0578-PST-E; IDENTIFIER: RN101723708; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2)(A)(i)(II) and (ii), and (d)(4)(A)(ii) and the Code, §26.3475, by failing to have line leak detectors tested, by failing to have each pressurized line tested or monitored for releases, and by failing to record inventory volume measurements; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures; and 30 TAC §334.10(b), by failing to develop and maintain all UST records pertaining to spill and overfill control; PENALTY: $3,754; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Pendleton Utility Corporation; DOCKET NUMBER: 2005-0764-PWS-E; IDENTIFIER: PWS Number 20020020, RN104097068; LOCATION: near Beaumont, Sabine County, Texas; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.13(b)(1) and (2), (f)(4) and (5), and THSC, §341.0315(c), by failing to comply with the MCL for haloacetic acids (HAA5) and overfill control; PENALTY: $3,360; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Reece Albert, Jr.; DOCKET NUMBER: 2004-0620-AIR-E; IDENTIFIER: RN104175864; LOCATION: San Angelo, Tom Green County, Texas; TYPE OF FACILITY: housing development project; RULE VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the outdoor burning rules; and 30 TAC §101.4 and THSC, §382.085(b), by failing to prevent the discharge of air contaminants; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Jill McNew, (915) 655-9479; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(16) COMPANY: Richards Independent School District; DOCKET NUMBER: 2004-0796- MWD-E; IDENTIFIER: TPDES Permit Number 0013527001, RN101513489; LOCATION: Richards, Grimes County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and the Code, §26.121(a), by failing to comply with the permitted effluent limits for DO, biochemical oxygen demand, and TSS, and by failing to submit monitoring results; PENALTY: $7,840; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: City of Rosenberg; DOCKET NUMBER: 2004-0842-MWD-E; IDENTIFIER: RN101701142; LOCATION: near Rosenberg, Fort Bend County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10607-002, and the Code, §26.121(a), by failing to comply with the effluent limits for NH3N; PENALTY: $12,720; ENFORCEMENT COORDINATOR: Mac Vilas, (512) 239-2557; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Sam Houston Area Council Boy Scouts of America; DOCKET NUMBER: 2004-0571-MWD-E; IDENTIFIER: TPDES Permit Number 14095001, RN101223543; LOCATION: Navasota, Grimes County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 14095001, and the Code, §26.121(a), by failing to comply with the effluent limits for TSS, biochemical oxygen demand, and total chlorine and by failing to submit the discharge monitoring reports; PENALTY: $3,360; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: Philip Sheridan dba Sheridan Water Supply; DOCKET NUMBER: 2004-1101-PWS-E; IDENTIFIER: RN104558531; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.42(e)(3)(A), by failing to provide continuous and effective disinfection to all parts of the PWS system; 30 TAC §290.46(e) and (n)(1) and THSC, §341.033(a), by failing to have the water system under the direct supervision of a competent water works operator and by failing to maintain as-built plans and specifications; 30 TAC §290.41(c)(3)(B), (J), (K), (N), and (O), by failing to provide a well casing at least 18 inches above the elevation of the finished floor, by failing to maintain a concrete sealing block over the well casing, by failing to provide well number one with a casing vent that faces downward and is covered with a 16-mesh or finer corrosion-resistant screening, by failing to have a flow meter installed on the well pump discharge line, and by failing to have a locked, intruder-resistant fence protecting the well; 30 TAC §290.45(b)(1)(A)(ii) and THSC, §341.0315(c), by failing to meet the minimum pressure tank capacity requirement of 50 gallons per connection; and 30 TAC §291.101(a) and the Code, §13.242(a), by failing to apply for and obtain a certificate of convenience and necessity; PENALTY: $1,360; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: Solutia, Inc.; DOCKET NUMBER: 2004-0555-AIR-E; IDENTIFIER: Air Account Number BL0038U, RN100238682; LOCATION: Alvin, Brazoria County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 39171, and THSC, §382.085(b), by allowing the unauthorized emission of benzene; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Texas Department of Public Safety; DOCKET NUMBER: 2004-0127-AIR-E; IDENTIFIER: Air Account Number EEO168, RN102385556; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: on-site sewage; RULE VIOLATED: 30 TAC §26.121(a), by failing to comply with the effluent limits for NH3N; PENALTY: $12,720; ENFORCEMENT COORDINATOR: Mac Vilas, (512) 239-2557; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2004-0716-AIR-E; IDENTIFIER: RN100225945; LOCATION: Freeport, Brazoria County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.715(a), Air Permit Number 20432, and THSC, §382.085(b), by failing to prevent unauthorized emissions of volatile organic compounds (VOCs) of carbon monoxide; 30 TAC §116.115(c), Air Permit Numbers 834, 5340, and 20996, and THSC, §382.085(b), by failing to prevent unauthorized emissions of VOCs; and 30 TAC §101.201(a)(1) and THSC, §382.085(b), by failing to submit an initial report within 24 hours after the discovery of an emissions event; PENALTY: $43,200;
ENFORCEMENT COORDINATOR: Trina Greico, (512) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: Three Stars Aviation, L.L.C. dba Town & Country Airpark; DOCKET NUMBER: 2005-1047-PST-E; IDENTIFIER: RN102277076; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: small plane servicing and refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the USTs for releases; PENALTY: $1,840;
ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-2136; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(24) COMPANY: Turtle Cove Lot Owners Association, Inc.; DOCKET NUMBER: 2005-1099-PWS-E; IDENTIFIER: RN101246148; LOCATION: Freeport, Brazoria County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(4) and (5), TPDES Permit Number 13436001, and the Code, §26.121(a), by failing to prevent the discharge of wastewater; PENALTY: $1,900;
ENFORCEMENT COORDINATOR: Sandra Anaya, (512) 239-0572; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: City of Walnut Springs; DOCKET NUMBER: 2005-0819-MWD-E; IDENTIFIER: RN101918472; LOCATION: Walnut Springs, Bosque County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(4) and (5), TPDES Permit Number 13436001, and the Code, §26.121(a), by failing to prevent the discharge of wastewater; PENALTY: $1,900;
ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5100; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200503789
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 31, 2005

Department of State Health Services
Notice of Intent to Revoke Certificates of Registration

Pursuant to 25 Texas Administrative Code (TAC), §289.205, the Radiation Control Program, Department of State Health Services (department), filed a complaint against Christopher V. Roudedub, Kansas City, Missouri, Texas Industrial Radiographer Identification Card audit number 14163. The department intends to revoke the industrial radiographer identification card, and order the industrial radiographer to cease and desist use of sources of radiation in Texas as a result of Final Order IA-04-019 issued by the U.S. Nuclear Regulatory Commission on December 30, 2004.

A copy of all relevant material is available, by appointment, for public inspection at the office of the Radiation Safety Licensing Branch, 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-200503771
Cathy Campbell
General Counsel
Department of State Health Services
Filed: August 29, 2005

Notice of Intent to Revoke the Industrial Radiographer Identification Card of Christopher V. Roudedub

Pursuant to 25 Texas Administrative Code (TAC), §289.205, the Radiation Protection Program, Department of State Health Services (department), filed a complaint against Christopher V. Roudedub, Kansas City, Missouri, Texas Industrial Radiographer Identification Card audit number 14163. The department intends to revoke the industrial radiographer identification card, and order the industrial radiographer to cease and desist use of sources of radiation in Texas as a result of Final Order IA-04-019 issued by the U.S. Nuclear Regulatory Commission on December 30, 2004.

A copy of all relevant material is available, by appointment, for public inspection at the office of the Radiation Safety Licensing Branch, 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-200503772
Cathy Campbell
General Counsel
Department of State Health Services
Filed: August 29, 2005
of $10,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

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-200503774
Cathy Campbell
General Counsel
Department of State Health Services
Filed: August 29, 2005

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on East Texas Medical Center-Crockett

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to East Texas Medical Center-Crockett (licensee—L01411-000) of Crockett. A total penalty of $12,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

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-200503773
Cathy Campbell
General Counsel
Department of State Health Services
Filed: August 29, 2005

Notice of Proposed Administrative Renewal of the Radioactive Material License of COGEMA Mining, Inc.

Notice is hereby given by the Department of State Health Services (department) that it proposes to grant an administrative renewal pursuant to 25 Texas Administrative Code (TAC), §289.260(h), for a two-year period of Radioactive Material License Number L03024 issued to COGEMA Mining, Inc. for facilities located in Duval and Webb Counties, Texas, near Bruni, Texas.

The department has determined that the licensee has paid its license renewal fee, has a satisfactory compliance history and otherwise complies with the requirements of 25 TAC, §289.260(h).

This notice affords the opportunity for a public hearing upon written request by a person affected within 30 days of the date of publication of this notice as required by Texas Health and Safety Code, §401.264, and as set out in 25 TAC, §289.205(d). 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 a county, in which the 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 Mr. Richard A. Ratliff, P.E., Radiation Program Officer, Division for Regulatory Services, 1100 West 49th Street, Austin, Texas 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the proposed issuance of the license will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, Chapter 401, the Administrative Procedure Act (Chapter 2001, Texas Government Code), the formal hearing procedures of the department (25 TAC, §1.21, et seq.) and the procedures of the State Office of Administrative Hearings (1 TAC, Chapter 155).

A copy of the proposed license and information regarding the license renewal is available for public inspection and copying, by appointment, at the office of the Radiation Safety Licensing Branch, Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays). Information relative to inspection and copying the documents may be obtained by contacting Chrissie Young, Custodian of Records, Radiation Safety Licensing Branch.

TRD-200503770
Cathy Campbell
General Counsel
Department of State Health Services
Filed: August 29, 2005

Texas Department of Housing and Community Affairs

2005 State of Texas Public Hearing Schedule for the 2006 Texas Low Income Housing Plan and Annual Report

The Texas Department of Housing and Community Affairs (TDHCA) announces the hearing schedule for thirteen public hearings to gather public comment on the following topics on the 2006 State of Texas Low Income Housing Plan and Annual Report (SLIHP).

TDHCA is required to submit the SLIHP annually in accordance with §2306.072 of the Texas Government Code. The document offers a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. It reviews TDHCA’s housing programs, current and future policies, resource allocation plan to meet state housing needs, and reports on 2005 performance.

The comment period for the SLIHP is September 19 through October 18. The document will be available at www.tdhca.state.tx.us at the beginning of the public comment period.

Public comment on the SLIHP and all TDHCA activities may also be provided in writing via: [MAIL] TDHCA DPPA, P.O. Box 13941, Austin, Texas 78711-3941 or [FAX] (512) 475-3746 or [E-MAIL] info@tdhca.state.tx.us.

Region 1: South Plains Association of Governments
1323 58th, Lubbock
Time: Tuesday, October 4, 2005, 11:00 a.m.
Facility Contact: (806) 762-8721

Region 2: West Central Texas Council of Governments
851 N. Judge Ely, Abilene
Time: Monday, October 3, 2005, 4:30 p.m.
Facility Contact: (325) 672-8544
Multifamily Housing Revenue Bonds (Rolling Creek Apartments) Series 2005

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Reed Elementary, 8700 Tami Renee, Houston, Harris County, Texas 77040, at 6:30 p.m. on September 29, 2005 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $14,600,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Rolling Creek Apartments, LP, a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 248-unit multifamily residential rental development to be located at approximately 8038 Gatehouse Drive, Harris County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbie.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Michael Lyttle at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados. Individuals who require auxiliary aids or services should contact Gina Esteves, ADA-Responsible Employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days prior to the scheduled hearing so that appropriate arrangements can be made.

TRD-200503805
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 31, 2005
Notice of Public Hearing

Single Family Mortgage Revenue and Refunding Bonds

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at 507 Sabine Street, Room 435, Austin, Texas, at 12:00 noon on October 10, 2005, with respect to one or more issues of tax-exempt single family mortgage revenue bonds or notes to be issued in an aggregate face amount of not more than $48,000,000 (the "Tax-Exempt Obligations"), an issue of tax-exempt single family mortgage revenue refunding bonds to be issued in one or more series in an aggregate face amount of not more than $40,000,000 (the "Tax-Exempt Refunding Bonds" and together with the Tax-Exempt Obligations, collectively, the "Tax-Exempt Bonds") and an issue of taxable single family mortgage revenue refunding bonds be issued in an aggregate face amount of not more than $13,000,000 (the "Taxable Bonds" and together with the Tax-Exempt Bonds, collectively, the "Bonds").

A portion of the proceeds of the Tax-Exempt Obligations will be used directly to make single family residential mortgage loans in an aggregate estimated amount not to exceed $48,000,000. All of such single family residential mortgage loans will be made to eligible very low, low and moderate income first-time home buyers for the purchase of homes located within the State of Texas. A portion of the proceeds of the Tax-Exempt Refunding Bonds will be used to refund all or a portion of the Department’s outstanding Single Family Mortgage Revenue Bonds, 1995 Series A-1 and a portion of the Department’s outstanding Single Family Mortgage Revenue Refunding Tax-Exempt Commercial Paper Notes, Series A, and a portion of the Taxable Bonds will be used to refund all or a portion of the Department’s Taxable Single Family Mortgage Revenue Refunding Bonds, 1995 Series C-1, the proceeds of which were used directly or indirectly to provide single family residential mortgage loans.

For purposes of the Department’s mortgage loan finance programs, eligible borrowers generally will include individuals and families whose family income does not exceed, (i) for families of three or more persons, 115% (140% in certain targeted areas) of the area median income, and (ii) for individuals and families of two persons, 100% (120% in certain targeted areas) of the area median income. In addition, substantially all of the borrowers under the programs will be required to be persons who have not owned a principal residence during the preceding three years. Further, residences financed with loans under the programs will be subject to certain other limitations, including limits on the purchase prices of the residences being acquired. All the limitations described in this paragraph are subject to revision and adjustment from time to time by the Department pursuant to applicable federal law and Department policy.

All interested parties are invited to attend such public hearing to express their views with respect to the Department’s mortgage loan finance program and the issuance of the Bonds. Questions or requests for additional information may be directed to Matt Pogor at the Texas Department of Housing and Community Affairs, 507 Sabine Street, 9th Floor, Austin, Texas 78701; (512) 475-3987.

Persons who intend to appear at the hearing and express their views are invited to contact Matt Pogor in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Matt Pogor prior to the date scheduled for the hearing.

TDICA WEBSITE: www.tdhca.state.tx.us/hf.htm

Individuals who require auxiliary aids for the hearing should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1-800-735-2989 at least two days before the hearing so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for the hearing should contact Matt Pogor at (512) 475-3987 at least three days before the hearing so that appropriate arrangements can be made. Persons que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

This notice is published and the above-described hearing is to be held in satisfaction of the requirements of State law and Section 147(f) of the Internal Revenue Code of 1986, as amended, regarding the public approval prerequisite to the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Bonds.

TRD-200503804
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 31, 2005

Texas Department of Insurance

Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under §1501.312, Texas Insurance Code. A small employer health benefit plan issuer is defined by §1501.002(16), Texas Insurance Code, as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Subchapters C-H of Chapter 1501, Texas Insurance Code. A risk-assuming health benefit plan issuer is defined by §1501.301(4), Texas Insurance Code, as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

SHA, L.L.C., doing business as FIRSTCARE.

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal & Compliance Division - Archie Clayton, 333 Guadalupe, Tower I, Room 860, Austin, Texas.

If you wish to comment on the application of SHA, L.L.C., doing business as FIRSTCARE, to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the Texas Register to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-200503785
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: August 30, 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 LONESTAR SELF-INSURED SOLUTIONS, INC., a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

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-200503800
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: August 31, 2005

Texas Department of Insurance, Division of Workers’ Compensation

Transfer of the Texas Workers’ Compensation Commission

Effective September 1, 2005, the current rules of the Texas Workers’ Compensation Commission become the rules of the Texas Department of Insurance, Division of Workers’ Compensation.

The heading for Title 28, Part 2 is now “Texas Department of Insurance, Division of Workers’ Compensation.” Rule numbers under Part 2 are unchanged.

Pursuant to the provisions of §4002.001(b), House Bill 7 (HB 7) of the 79th Texas Legislature, the Texas Workers’ Compensation Commission becomes a division of the Texas Department of Insurance effective September 1, 2005.

In accordance with the transfer of the Texas Workers’ Compensation Commission to the Texas Department of Insurance, Division of Workers’ Compensation, §8.005(c) of HB 7 provides that a rule of the Texas Workers’ Compensation Commission, relating to a duty of that Commission, that is transferred to the authority of the Texas Department of Insurance, Division of Workers’ Compensation (under Subtitle A, Title 5 of the Labor Code as amended by this Act), continues in effect as a rule of the Commissioner of Workers’ Compensation until the date on which the rule is superseded by a rule adopted by the Commissioner of Workers’ Compensation. Section 402.00114 of the Act mandates that the “Division shall regulate and administer the business of workers’ compensation in this state.”

TRD-200503819
Gene C. Jarmon
General Counsel
Texas Department of Insurance, Division of Workers’ Compensation
Filed: August 31, 2005

Texas Lottery Commission

Instant Game Number 635 “World Poker Tour $100,000 Texas Hold ’Em”

1.0 Name and Style of Game.
A. The name of Instant Game No. 635 is “WORLD POKER TOUR $100,000 TEXAS HOLD ’EM”. The play style is “cards”.

1.1 Price of Instant Ticket.
A. Tickets for Instant Game No. 635 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 635.
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 except for dual-image games. The possible black play symbols are: 2 SPADE SYMBOL, 3 SPADE SYMBOL, 4 SPADE SYMBOL, 5 SPADE SYMBOL, 6 SPADE SYMBOL, 7 SPADE SYMBOL, 8 SPADE SYMBOL, 9 SPADE SYMBOL, 10 SPADE SYMBOL, J SPADE SYMBOL, Q SPADE SYMBOL, K SPADE SYMBOL, A SPADE SYMBOL, 2 CLUB SYMBOL, 3 CLUB SYMBOL, 4 CLUB SYMBOL, 5 CLUB SYMBOL, 6 CLUB SYMBOL, 7 CLUB SYMBOL, 8 CLUB SYMBOL, 9 CLUB SYMBOL, 10 CLUB SYMBOL, J CLUB SYMBOL, Q CLUB SYMBOL, K CLUB SYMBOL, A CLUB SYMBOL, $2.00, $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $75.00, $100, $250, $500, $5,000 or $100,000. The possible red play symbols are: 2 DIAMOND SYMBOL, 3 DIAMOND SYMBOL, 4 DIAMOND SYMBOL, 5 DIAMOND SYMBOL, 6 DIAMOND SYMBOL, 7 DIAMOND SYMBOL, 8 DIAMOND SYMBOL, 9 DIAMOND SYMBOL, 10 DIAMOND SYMBOL, J DIAMOND SYMBOL, Q DIAMOND SYMBOL, K DIAMOND SYMBOL, A DIAMOND SYMBOL, 2 HEART SYMBOL, 3 HEART SYMBOL, 4 HEART SYMBOL, 5 HEART SYMBOL, 6 HEART SYMBOL, 7 HEART SYMBOL, 8 HEART SYMBOL, 9 HEART SYMBOL, 10 HEART SYMBOL, J HEART SYMBOL, Q HEART SYMBOL, K HEART SYMBOL and A HEART SYMBOL.
D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:
<table>
<thead>
<tr>
<th>PLAY SYMBOL</th>
<th>CAPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 SPADE SYMBOL (black)</td>
<td>TWS</td>
</tr>
<tr>
<td>3 SPADE SYMBOL (black)</td>
<td>THS</td>
</tr>
<tr>
<td>4 SPADE SYMBOL (black)</td>
<td>FRS</td>
</tr>
<tr>
<td>5 SPADE SYMBOL (black)</td>
<td>FVS</td>
</tr>
<tr>
<td>6 SPADE SYMBOL (black)</td>
<td>SXS</td>
</tr>
<tr>
<td>7 SPADE SYMBOL (black)</td>
<td>SNS</td>
</tr>
<tr>
<td>8 SPADE SYMBOL (black)</td>
<td>ETS</td>
</tr>
<tr>
<td>9 SPADE SYMBOL (black)</td>
<td>NIS</td>
</tr>
<tr>
<td>10 HEART SYMBOL (black)</td>
<td>TNS</td>
</tr>
<tr>
<td>J HEART SYMBOL (black)</td>
<td>JKS</td>
</tr>
<tr>
<td>Q SPADE SYMBOL (black)</td>
<td>QNS</td>
</tr>
<tr>
<td>K SPADE SYMBOL (black)</td>
<td>KGS</td>
</tr>
<tr>
<td>A SPADE SYMBOL (black)</td>
<td>ACS</td>
</tr>
<tr>
<td>2 CLUB SYMBOL (black)</td>
<td>TWC</td>
</tr>
<tr>
<td>3 CLUB SYMBOL (black)</td>
<td>THC</td>
</tr>
<tr>
<td>4 CLUB SYMBOL (black)</td>
<td>FRC</td>
</tr>
<tr>
<td>5 CLUB SYMBOL (black)</td>
<td>FVC</td>
</tr>
<tr>
<td>6 CLUB SYMBOL (black)</td>
<td>SXC</td>
</tr>
<tr>
<td>7 CLUB SYMBOL (black)</td>
<td>SNC</td>
</tr>
<tr>
<td>8 CLUB SYMBOL (black)</td>
<td>ETC</td>
</tr>
<tr>
<td>9 CLUB SYMBOL (black)</td>
<td>NIC</td>
</tr>
<tr>
<td>10 CLUB SYMBOL (black)</td>
<td>TNC</td>
</tr>
<tr>
<td>J CLUB SYMBOL (black)</td>
<td>JKC</td>
</tr>
<tr>
<td>Q CLUB SYMBOL (black)</td>
<td>QNC</td>
</tr>
<tr>
<td>K CLUB SYMBOL (black)</td>
<td>KGK</td>
</tr>
<tr>
<td>A CLUB SYMBOL (black)</td>
<td>ACC</td>
</tr>
<tr>
<td>2 DIAMOND SYMBOL (red)</td>
<td>TWD</td>
</tr>
<tr>
<td>3 DIAMOND SYMBOL (red)</td>
<td>THD</td>
</tr>
<tr>
<td>4 DIAMOND SYMBOL (red)</td>
<td>FRD</td>
</tr>
<tr>
<td>5 DIAMOND SYMBOL (red)</td>
<td>FVD</td>
</tr>
<tr>
<td>6 DIAMOND SYMBOL (red)</td>
<td>SXD</td>
</tr>
<tr>
<td>7 DIAMOND SYMBOL (red)</td>
<td>SND</td>
</tr>
<tr>
<td>8 DIAMOND SYMBOL (red)</td>
<td>ETD</td>
</tr>
<tr>
<td>9 DIAMOND SYMBOL (red)</td>
<td>NID</td>
</tr>
<tr>
<td>10 DIAMOND SYMBOL (red)</td>
<td>TND</td>
</tr>
<tr>
<td>J DIAMOND SYMBOL (red)</td>
<td>JKD</td>
</tr>
<tr>
<td>Q DIAMOND SYMBOL (red)</td>
<td>QND</td>
</tr>
<tr>
<td>K DIAMOND SYMBOL (red)</td>
<td>KGK</td>
</tr>
<tr>
<td>A DIAMOND SYMBOL (red)</td>
<td>ACD</td>
</tr>
<tr>
<td>2 HEART SYMBOL (red)</td>
<td>TWH</td>
</tr>
<tr>
<td>3 HEART SYMBOL (red)</td>
<td>THH</td>
</tr>
<tr>
<td>4 HEART SYMBOL (red)</td>
<td>FRH</td>
</tr>
<tr>
<td>5 HEART SYMBOL (red)</td>
<td>FVH</td>
</tr>
<tr>
<td>6 HEART SYMBOL (red)</td>
<td>SXH</td>
</tr>
<tr>
<td>7 HEART SYMBOL (red)</td>
<td>SNH</td>
</tr>
<tr>
<td>8 HEART SYMBOL (red)</td>
<td>ETH</td>
</tr>
</tbody>
</table>
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:

<table>
<thead>
<tr>
<th>9 HEART SYMBOL (red)</th>
<th>NIH</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 HEART SYMBOL (red)</td>
<td>TNH</td>
</tr>
<tr>
<td>J HEART SYMBOL (red)</td>
<td>JKH</td>
</tr>
<tr>
<td>Q HEART SYMBOL (red)</td>
<td>QNH</td>
</tr>
<tr>
<td>K HEART SYMBOL (red)</td>
<td>KGH</td>
</tr>
<tr>
<td>A HEART SYMBOL (red)</td>
<td>ACH</td>
</tr>
</tbody>
</table>

$2.00 (black)  TWO$          
$5.00 (black)  FIVE$          
$10.00 (black) TENS$          
$15.00 (black) FIFTN          
$20.00 (black) TWENTY         
$25.00 (black) TWY FIV        
$50.00 (black) FIFTY          
$75.00 (black) SVY FIV        
$100 (black) ONE HUND        
$250 (black) TWO FTY          
$500 (black) FIV HUND        
$5,000 (black) FIV THOU       
$100,000 (black) 100 THOU       

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 $10.00, $15.00 or $20.00.

H. Mid-Tier Prize - A prize of $25.00, $50.00, $75.00, $100, $250 or $500.

I. High-Tier Prize - A prize of $5,000 or $100,000.

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 (635), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 635-00000001-001.

L. Pack - A pack of "WORLD POKER TOUR $100,000 TEXAS HOLD 'EM" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 050 will be exposed on one side of the pack and ticket front 001 on the other side.

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.
A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 50 (fifty) 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 50 (fifty) 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 50 (fifty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 50 (fifty) 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 “spot for spot” play data.
B. No duplicate non-winning prize symbols on a ticket.
C. A ticket may only win once in each table for a total of five wins on a ticket.
D. No duplicate tables, in any order, on any ticket.
E. Each table on a ticket will use a deck of fifty-two (52) cards.
F. Listed below is a Glossary of Terms for use in the patterns to follow:

"Starting Hand" - The two (2) cards underneath the scratch-off coating marked "YOUR 2 CARDS," or underneath the Scratch-off coating marked "THEIR 2 CARDS".
"Board" - The five (5) cards underneath the scratch-off coating marked "COMMUNITY CARDS".
"Suit" - The Spades, Hearts, Diamonds and Clubs are the four (4) Suits.
"Suited" - Any amount of cards where each card is of the same Suit (for example, 4 of Hearts + 5 of Hearts).
"Non-suited" - Any amount of cards where at least one is of a different suit (for example, 4 of Hearts + 5 of Spades).
"Sequential" - Any amount of cards that are connected (for example, 10 of Hearts; Jack of Hearts; Queen of Diamonds; King of Clubs; Ace of Spades).
"Non-Sequential" - Any amount of cards that are not connected (for example, Ace of Hearts + Queen of Diamonds).
"Pair" - Two (2) cards of the exact same rank (for example, Ace of Diamonds + Ace of Spades or 7 of Hearts + 7 of Clubs).
Three of a Kind - Three (3) cards of the exact same rank.

Straight - Five (5) non-suited cards in sequential order (for example, 2 of Clubs; 3 of Hearts; 4 of Diamonds; 5 of Spades; 6 of Diamonds).

Flush - Five (5) non-sequential cards of the same suit (for example, 2 of Diamonds; 4 of Diamonds; 5 of Diamonds Jack of Diamonds; King of Diamonds).

Full House - Three (3) of a kind with a pair (for example, 4 of Diamonds; 4 of Clubs; 4 of Spades; 9 of Hearts; 9 of Diamonds).

Four of a Kind - Four (4) cards of the exact same rank.

Straight Flush - Five (5) suited and sequential cards, EXCEPT the highest five (5) sequential cards.

Royal Flush - The highest five (5) suited and sequential cards (for example, 10 of Diamonds; Jack of Diamonds; Queen of Diamonds; King of Diamonds; Ace of Diamonds).

Final Hand - The highest ranking five-card hand that uses the two (2) cards in either STARTING HAND with the five (5) cards on the Board.

G. The Suit or Suits used in one of the Starting Hands will NEVER match any of the Suit or Suits in the other Starting Hand for that table.

H. In any table, the two (2) starting Hands will NEVER be of the same rank (for example, Jack of Hearts + 10 of Hearts vs. Jack of Diamonds + 10 of Clubs or 4 of Clubs + 4 of Diamonds vs. 4 of Hearts + 4 of Spades).

I. Each and every Starting Hand (YOUR 2 CARDS or THEIR 2 CARDS) will come from one of the following groups:

A. Any Pair
B. Any Suited and Sequential two (2) cards
C. Any Non-Suited and Sequential or any Non-Suited and Non-Sequential Cards where BOTH cards are either a 10, Jack, Queen, King or Ace
J. No Board will ever contain a Straight, Flush, Full House, Four of a Kind, Straight Flush or Royal Flush.
K. No Board will ever contain four (4) cards of the same suit.
L. Every Straight or Straight Flush will use the card ranks below. An Ace will never be used in a Straight or Straight Flush.

2, 3, 4, 5, 6
3, 4, 5, 6, 7
4, 5, 6, 7, 8
5, 6, 7, 8, 9
6, 7, 8, 9, 10
7, 8, 9, 10, Jack
8, 9, 10, Jack, Queen
9, 10, Jack, Queen, King

M. A Straight will never appear in the same table with a Straight Flush or a Royal Flush.

2.3 Procedure for Claiming Prizes.

A. To claim a "WORLD POKER TOUR $100,000 TEXAS HOLD 'EM" Instant Game prize of $10.00, $15.00, $20.00, $25.00, $50.00, $75.00, $100, $250 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 $50.00, $75.00, $100, $250 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 "WORLD POKER TOUR $100,000 TEXAS HOLD 'EM" Instant Game prize of $5,000 or $100,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery’s Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WORLD POKER TOUR $100,000 TEXAS HOLD 'EM" 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. If the claim is 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;
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
"WORLD POKER TOUR $100,000 TEXAS HOLD 'EM" 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 "WORLD POKER TOUR $100,000 TEXAS
HOLD 'EM" 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. 635. The approximate num-
ber and value of prizes in the game are as follows:

![Table of Prize Amounts and Odds](image)

*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 3.04. 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 de-
creased 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. 635 with-
out 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 In-
stant Game No. 635, 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-200503777
Public Utility Commission of Texas

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 23, 2005, for retail electric provider (REP) certification, pursuant to Public Utility Regulatory Act (PURA) §§39.101 - 39.109. A summary of the application follows.

Docket Title and Number: Application of Lone Star Power, LLC for Retail Electric Provider (REP) certification, Docket Number 31539 before the Public Utility Commission of Texas.

Applicant’s requested service area by geography or service area by customers includes the entire State of Texas.

Persons wishing 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) 936-7136 or toll free at 1-800-735-2989 no later than September 14, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989.

All comments should reference Docket Number 31539.

TRD-200503688
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
 Filed: August 25, 2005

Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on August 23, 2005, with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Southwestern Bell Telephone, L.P. doing business as SBC Texas to Amend Certificate of Convenience and Necessity to Modify the Service Area Boundaries between the Fratt and Universal City Zones of the San Antonio Metropolitan Exchange. Docket Number 31541.

The Application: The minor boundary amendment is being requested to transfer a small portion of serving area from the Fratt Zone to the Universal City Zone of the San Antonio Metropolitan exchange of SBC Texas. This minor boundary amendment will allow SBC Texas to provide service to a new apartment complex from the neighboring wire center of Universal City where adequate facilities exist to provide local exchange service.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7130 or toll free at 1-888-782-8477 no later than September 14, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 31541.

TRD-200503689

Notice of Application for an Amendment to its Designation as an Eligible Telecommunications Carrier (ETC) and as an Eligible Telecommunications Provider (ETP)

Notice is given to the public of an application filed with the Public Utility Commission of Texas on August 25, 2005, for an amendment to its designation as an eligible telecommunications carrier (ETC) and to its designation as an eligible telecommunications provider (ETP).

Docket Title and Number: Application of nii communications, ltd. for an Amendment to its Designation as an Eligible Telecommunications Carrier (ETC) and to its Designation as an Eligible Telecommunications Provider (ETP). Docket Number 31549.

The Application: nii communications, inc. is seeking to amend its designation as an eligible telecommunications carrier and as an eligible telecommunications provider.

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) 936-7130 or toll free at 1-888-782-8477 no later than September 26, 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 31549.

TRD-200503782
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
 Filed: August 30, 2005

Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on July 21, 2005, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the Wells Exchange for Expanded Local Calling Service, Project Number 31378.

The petitioners in the Wells exchange request ELCS to the exchanges of Jacksonville, Nacogdoches and Rusk.

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) 936-7130 or toll free at 1-888-782-8477 no later than September 26, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2789. All comments should reference Project Number 31378.

TRD-200503783
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
 Filed: August 30, 2005

IN ADDITION  September 9, 2005   30 TexReg 5869
Stephen F. Austin State University

Notice of Consultant Contract Availability

Stephen F. Austin State University (University), Nacogdoches, Texas, requests proposals from environmental assessment firms.

PURPOSE: Stephen F. Austin State University is required to perform environmental assessments for projects as requested such as construction, land use, purchase of land and protection of University lands from outside environmental intrusions. Individual projects may be of a short duration such as a half day or less, or much more extensive and will be authorized by a University representative. Preliminary cost estimates may be requested for any project. The total to be expended during the contract period for all projects will not exceed $150,000. The firm selected must work very closely with the University, outside contractors and with contracted civil engineering providers. Provider should be familiar with area profiles and be available on short notice.

ELIGIBLE APPLICANTS: All governmental, public, nonprofit private, or for-profit private entities that can demonstrate the expertise necessary are encouraged to submit proposals.

PROPOSAL FORMAT: Interested parties must submit proposal with the following information: experience; qualifications; costs based on an hourly rate for services received; travel cost; the name, address, and phone number of the individual assigned to the account; and the vendor identification number/tax identification number of the applicant.

SELECTION CRITERIA: Proposal must be submitted to Diana Boubel, Director of Purchasing, PO Box 13030, Nacogdoches, TX 75962, (936) 468-4037, FAX (936) 468-4282. Evaluation will be made by the Director and Assistant Directors of Physical Plant and the Director of Purchasing based upon evidence of the applicant’s knowledge and experience in writing, familiarity with area conditions and ability to maintain ongoing projects related to existing and proposed construction, land use, etc.

DEADLINES: Proposals must be received in the office of Ms. Diana Boubel, by September 14, 2005 in order to be considered. Contract is to be effective through August 31, 2006.

The firm or individual selected to perform this project will be chosen on the basis of competitive proposals received in response to this request for proposals.

Documents, films, recording, or reports of intangible results may be presented by the outside consultant. Services will be on an as needed basis.

Please contact Ms. Boubel at (936) 468-4037 for further information.

TRD-200503776

R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: August 29, 2005

Texas Tech University System

Request for Information

Texas Tech University System (TTUS) requests information from law firms interested in representing the System in certain tax matters. This RFI is issued to establish (for the time frame beginning September 1, 2005 to August 31, 2006) a referral list from which the System, by and through its Office of General Counsel, will select appropriate counsel for representation on specific tax matters as the need arises.

Description: Texas Tech University System is supported by legislative appropriations, tuition, fees, income from auxiliary enterprises, grants, gifts, sponsored research and other sources of revenues, all of which may be impacted by the Internal Revenue Code and regulations of the Internal Revenue Service. For assistance with such issues, the System will engage outside counsel for review of and advice regarding tax matters as they relate to higher education, including but not limited to the following: retirement programs, unrelated business income tax; personal income tax issues as they relate to donors; and Federal and State tax matters regarding compensation issues and nonresident alien tax issues. The System invites proposals in response to this RFI from qualified firms for the provision of such legal and tax services under the direction and supervision of the Texas Tech University System’s Office of General Counsel.

Responses: Responses to this RFI should include at least the following:

1) a description of the firm’s or attorney’s qualifications for performing legal services, including the firm’s prior experience in tax-related matters and retirement plans as they relate specifically to institutions of higher education;
2) the names and experience of the attorneys who will be assigned to work on such matters;
3) the availability of the lead attorney and others assigned to the project;
4) appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of legal services;
5) the submission of fee information (either in the form of hourly rates for each attorney who may be assigned to perform such services in relation to the System’s tax matters, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and control costs and billable expenses;
6) a comprehensive description of the procedures to be used by the firm to supervise the provision of legal services in a timely and cost-effective manner;
7) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the System or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); and
8) confirmation of willingness to comply with the System’s and the Texas Attorney General’s policies, directives, and guidelines.

Format and Person to Contact: Three copies of the response are requested. The response should be typed, preferably double-spaced, on 8½ x 11 inch paper with all pages sequentially numbered, either stapled or bound together. They should be sent by mail or delivered in person, marked “Response to Request for Information” and addressed to Ms. Jennifer Adling, Managing Director of Contracting, Texas Tech University, 327 Drane Hall, Lubbock, Texas 79409-1101 (telephone 806/742-3841 for questions).

Evaluation: Proposals sent in response to this RFI will be evaluated in light of several criteria, including: expertise, availability of a lead attorney, prior experience in handling tax-related matters relating to higher education, and procedures for providing timely and cost-effective services. Although the fee structure and overall cost of this representation will be an extremely important factor in arriving at the final successful firm, that firm will clearly demonstrate expertise and experience with the tax matters made the subject of this RFI.

Deadline for Submission of Response: All responses must be received by the TTU’s Office of Contracting at the address set forth above no later than 5:00 p.m., Thursday, September 22, 2005. Any proposals received after that time will be returned unopened.

TRD-200503802
Texas Tech University System (TTUS) requests information from law firms interested in representing TTUS in tax-exempt bond matters. This Request for Information (RFI) is issued for the purpose of establishing (for the time frame beginning September 1, 2005 to August 31, 2006) a referral list from which TTUS, by and through its Office of General Counsel, will select appropriate counsel for representation on specific bond matters as the need arises. These needs include the usual and necessary services of a bond counsel in connection with the issuance, sale and delivery of bonds and notes on which the interest is excludable from gross income under existing federal tax law.

Description. Tax-exempt bonds and notes are issued by the Board of Regents of the Texas Tech University System (the ”Board”), acting separately and independently for and on behalf of TTUS. Public, tax-exempt bond issuance is conducted under two major programs and is rated by three major rating agencies; the System anticipates issuing revenue bonds totaling $100 million for capital improvements. A $100 million tax-exempt commercial paper program is also used for interim financing with long term fixed rate bonds sold to provide more permanent financing. The University employs a revenue bond program that offers a combined pledge of all legally available revenues with certain exceptions (the “Revenue Financing System”). Federal tax related matters regarding bonds issued by the System, including strategies and management practices in the conduct of an exempt bond program requires a close working relationship with bond counsel. Contact is frequent, particularly in regard to the commercial paper program, due to the significant level of capital improvements anticipated over the next several years. The System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of the System’s Office of General Counsel.

Responses. Responses to this RFI should include at least the following information: (1) a description of the firm’s or attorney’s qualifications for performing the legal services, including the firm’s prior experience in bond issuance matters, the names, experience, and technical expertise of attorneys who may be assigned to work on such matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of the firm’s legal services generally and bond matters in particular; (2) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the University or the State of Texas, or any of its boards, agencies, commissions, universities); (3) willingness to comply with policies, directives and guidelines of the University and the Attorney General of the State of Texas. No fee information shall be submitted in the initial response. Fees shall be negotiated in terms with the statutes of the State of Texas.

Format and Person to Contact: Three copies of the response are requested. The response should be typed, preferably double-spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered, either stapled or bound together. They should be sent by mail or delivered in person, marked “Response to Request for Information” and addressed to Ms. Jennifer Adling, Managing Director of Contracting, Texas Tech University, 327 Drane Hall, Lubbock, Texas 79409-1101 (telephone (806) 742-3841, E-mail jennifer.adling@ttu.edu, or fax (806) 742-0350 for questions).

Evaluation: Proposals sent in response to this RFI will be evaluated in light of several criteria, including: expertise, availability of a lead attorney, prior experience in handling bond-related matters relating to higher education, and procedures for providing timely and cost-effective services. Although the fee structure and overall cost of this representation will be an extremely important factor in arriving at the final successful firm, that firm will clearly demonstrate exceptional expertise and experience with the bond matters made the subject of this RFI.

Deadline for Submission of Response: All responses must be received by the TTU’s Office of Contracting at the address set forth above no later than 5:00 p.m., Thursday, September 22, 2005. Any proposals received after that time will be returned unopened.

Texas Tech University System is an equal opportunity employer and all historically underutilized businesses are encouraged to participate.

TRD-200503709
Jennifer Adling
Director of Contracting
Texas Tech University System
Filed: August 26, 2005

Texas Department of Transportation

Aviation Division--Request for Proposal for Aviation Engineering Services

The City of Paris, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Paris, Cox Field. TxDOT CSJ No.: 06HG-PARIS. Scope: Provide engineering/design/construction services for site development and the construction of an eight unit T-hangar pre-engineered metal building system with associated appurtenances and hangar access pavements at the Paris-Cox Field Airport.

The DBE goal is set at 0%. TxDOT Project Manager is Megan Caffall.

To assist in your proposal preparation, the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "Paris-Cox Field Airport".

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT web site, URL address http://www.dot.state.tx.us/avn/avn550.doc.

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form...
Five completed, unfolded copies of Form AVN-550 must be postmarked by U.S. Mail by midnight October 3, 2005 (CDT). Mailing address: TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDT) on October 4, 2005. Overnight address: TxDOT Aviation Division, 200 East Riverside Drive, Austin, Texas 78704. Hand delivery must be received by 4:00 p.m. on October 4, 2005 (CDT). Hand delivery address: 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by e-mail will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at www.dot.state.tx.us/business/avnconsultinfo.htm.

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following the interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or Megan Caffall, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200503791
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: August 31, 2005

Aviation Division--Request for Proposal for Aviation Engineering Services

The City of Taylor, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Taylor, Taylor Municipal Airport. TxDOT CSJ No.: 06HGTYLO. Scope: Provide engineering/design/construction services for site development and construction of a twelve unit nested T-hangar pre-engineered metal building system with associated utilities and appurtenances, hangar access and taxiway paving at the Taylor Municipal Airport.

The DBE goal is set at 0%. TxDOT Project Manager is Megan Caffall.

To assist in your proposal preparation, the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "Taylor Municipal Airport".

Interested firms shall utilize the latest version of Form AVN-550, titled “Aviation Engineering Services Proposal”. The form may be requested from TxDOT, Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT web site, URL address http://www.dot.state.tx.us/avn/avn550.doc.

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT web site as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Six completed, unfolded copies of Form AVN-550 must be postmarked by U.S. Mail by midnight October 3, 2005. (CDT). Mailing address: TxDOT, Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDT) on October 4, 2005. Overnight address: TxDOT, Aviation Division, 200 East Riverside Drive, Austin, Texas 78704. Hand delivery must be received by 4:00 p.m. on October 4, 2005 (CDT). Hand delivery address: 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by e-mail will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at www.dot.state.tx.us/business/avnconsultinfo.htm.

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following the interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or Megan Caffall, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200503792
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: August 31, 2005

Public Hearing Notice - Statewide Rail System Plan

Title 23 U.S.C. §135, as implemented by 23 C.F.R. Part 450, Subpart B, requires each state to carry out a continuing, comprehensive, and intermodal statewide transportation planning process, including the development of a statewide transportation plan and transportation improvement program that facilitates the efficient, economic movement of people and goods in all areas of the state. As part of that statewide planning process, a statewide rail plan is required to access certain federal funding sources for improvements to a state’s rail transportation system, as outlined in 49 C.F.R. Part 266, Subpart B. The Texas Department of Planning, Development, and Transportation's (TxDOT) Aviation Division is soliciting professional engineering services.
If you have any questions or need further assistance, please contact the Transportation Planning and Programming Division, Multi-modal Section, Texas Department of Transportation, P.O. Box 149217, Austin, Texas 78704, (512) 416-2349.

Forthcoming actions regarding the 2005 TRSP will be made following a public hearing on Friday, September 9, 2005, at 4:00 p.m., at the Greer Building, 125 East 11th Street, Big Hearing Room, 1st Floor, Austin, Texas 78701 to receive public comments on the proposed 2005 Texas Rail System Plan (TRSP).

The purpose of the TRSP is to identify current and proposed rail projects, determine infrastructure and capacity needs on the Texas rail system, and develop an awareness of the issues and processes by which to address rail infrastructure needs by transportation policy makers around the state. The TRSP focuses on major rail relocations and improvements to the state’s rail system that could provide public benefits related to improved safety, reliable mobility, economic vitality, and system preservation.

Title 49 C.F.R. Subpart B, Part 266.15, lists certain requirements for the provision of a state rail plan. Section 266.15(a) requires the state to provide an opportunity for public comments on that plan in accordance with the comprehensive, coordinated, and continuing planning process utilized for all transportation services in the state as outlined in 23 U.S.C. §§134 and §135 at the state and metropolitan area levels.

A copy of the proposed TRSP will be available for review, at the time the notice of hearing is published, at each of the department’s district offices, at the department’s Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas 78703 and on TxDOT’s website at:

www.dot.state.tx.us.

Persons wishing to review the TRSP may do so online or contact the Transportation Planning and Programming Division at (512) 416-2349.

Persons wishing to speak may register in advance of the hearing by notifying Mario Medina, Transportation Planning and Programming Division, at (512) 416-2349, or by E-mail at:

mmedina@dot.state.tx.us.

not later than 4:00 p.m., Monday, September 19, 2005, or they may register at the hearing location between 9:30 and 10:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing, however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs and who plan to attend the hearing may contact Randall Dillard, Public Information Office, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Further information on the 2005 TRSP may be obtained from Mario Medina, Transportation Planning and Programming Division, 150 East Riverside Drive, Austin, Texas 78704, (512) 416-2349. In order to be considered, all comments must be in writing. Written comments may be submitted to Mario Medina, Transportation Planning and Programming Division, Multimodal Section, Texas Department of Transportation, 150 East Riverside Drive, Austin, Texas 78704 or to Mario Medina, Transportation Planning and Programming Division, Multimodal Section, Texas Department of Transportation, P.O. Box 149217, Austin, Texas 78714-9217. The deadline for receipt of all comments on the 2005 TRSP is 4:00 p.m. on October 10, 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.

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 30 (2005) is cited as follows: 30 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 “30 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 30 TexReg 3.”

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using Texas Register indexes, the Texas Administrative Code, section numbers, or TRD number.

Both the Texas Register and the Texas Administrative Code are available online through the Internet. The address is: http://www.sos.state.tx.us. The Register is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (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
2. Agriculture
3. Banking and Securities
4. Community Development
5. Cultural Resources
6. Economic Regulation
7. Education
8. Examining Boards
9. Health Services
10. Insurance
11. Environmental Quality
12. Natural Resources and Conservation
13. Public Finance
14. Public Safety and Corrections
15. Social Services and Assistance
16. 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 21, April 15, July 8, and October 7, 2005). 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).
SALES AND CUSTOMER SUPPORT

Sales - To purchase additional subscriptions or back issues (beginning with Volume 30, Number 36 – Issued September 9, 2005), you may contact LexisNexis Sales at 1-800-223-1940 from 7am to 7pm, Central Time, Monday through Friday.

*Note: Back issues of the Texas Register, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (800) 226-7199.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

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