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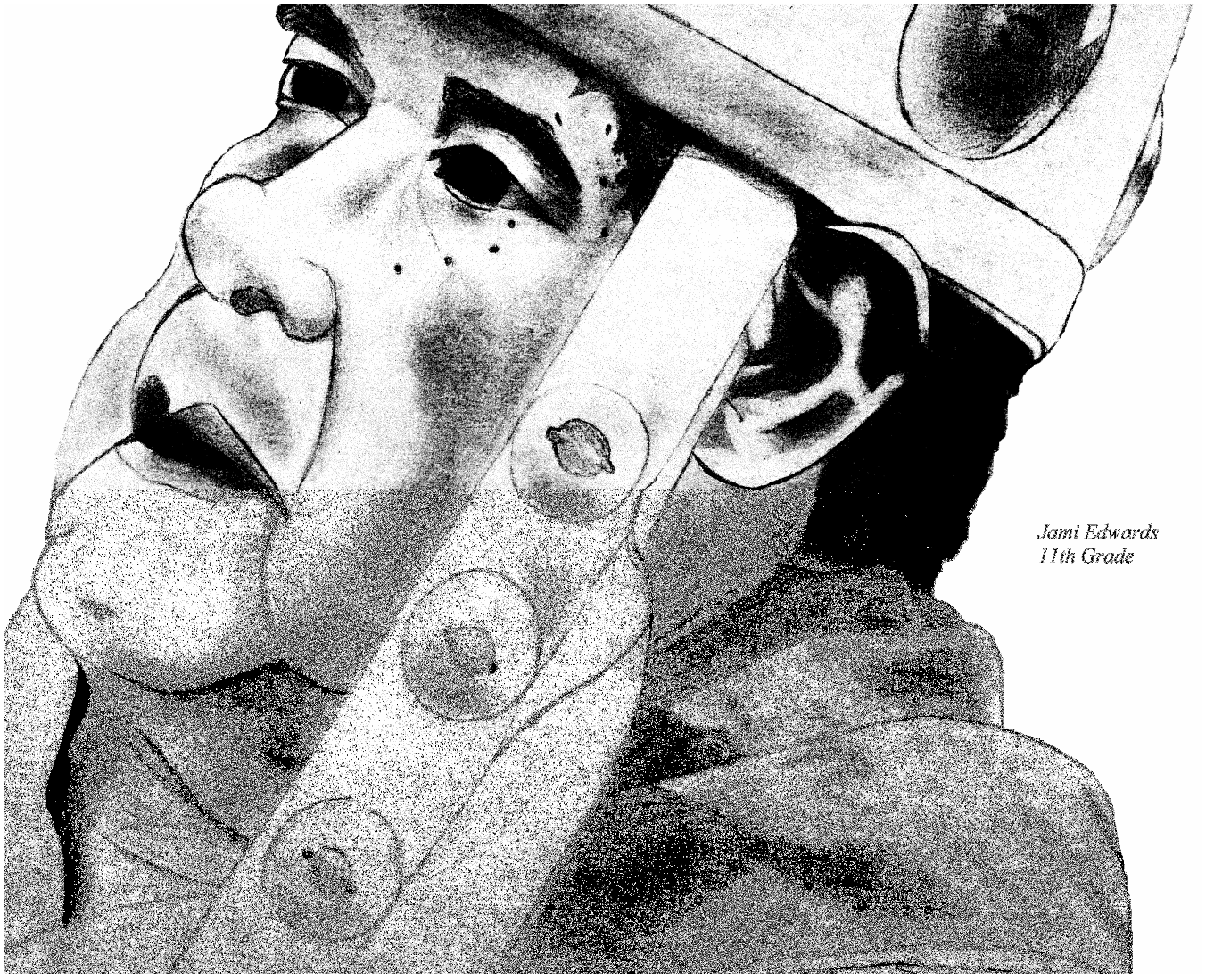

Jami Edwards
11th Grade

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

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

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IN THIS ISSUE

Open Meetings

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

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

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

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

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

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

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for March 1, 2007

Designating Donald R. Bethel as Chairman of the Texas Youth Commission for a term at the pleasure of the Governor. Mr. Bethel will replace Pedro Alfaro as chairman. Mr. Alfaro continues to serve on the board.

Appointments for March 5, 2007

Designating Tomas Cantu of McAllen as Presiding Officer of the Texas Structural Pest Control Board for a term at the pleasure of the Governor. Mr. Cantu is replacing John Morrison of San Antonio as presiding officer.

Appointed to be a member of the Teacher Retirement System of Texas Board of Trustees for a term to expire August 31, 2011, R. David Kelly of Dallas. Mr. Kelly is replacing Terence Ellis of New Ulm whose term expired.

Appointed to be a member of the Texas Public Safety Commission for a term to expire December 31, 2009, Allan B. Polunsky of San Antonio. Mr. Polunsky is replacing Carlos Cascos of Brownsville who resigned.

Designating Cliff Mountain of Austin as Presiding Officer of the Department of Information Resources Board of Directors for a term at the pleasure of the Governor. Mr. Mountain is replacing William Transier of Houston as presiding officer.

Rick Perry, Governor

TRD-200700864

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THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinions

RQ-0571-GA

Requestor:

The Honorable Cindy Stormer

235th Judicial District Attorney

Cooke County Courthouse

Gainesville, Texas 76240

Re: Whether a district attorney may accept donated funds and if so, how she may use them (RQ-0571-GA)

Briefs requested by March 30, 2007

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

TRD-200700887
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: March 7, 2007

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Opinions

Opinion No. GA-0523

Ms. Margie Ainsworth

Interim Auditor

San Jacinto County

1 State Highway 150, Room B1

Coldspring, Texas 77331

Re: County's payment of legal fees of a criminal district attorney charged with criminal offenses (RQ-0461-GA)

S U M M A R Y

A criminal district attorney is not a person covered by chapter 104 of the Civil Practice and Remedies Code and is not entitled to be defended by the attorney general or receive reimbursement of defense costs under the chapter. A commissioners court has discretion to pay for a person's legal expenses in a criminal matter upon findings that the payment furthers a county purpose and that the prosecution was for an act performed in the bona fide performance of official duties. After approving its budget, a county may not pay for unbudgeted legal defense expenses without a finding of grave public necessity.

Opinion No. GA-0524

The Honorable Shelia Bailey Taylor

Chief Administrative Law Judge

State Office of Administrative Hearings

Post Office Box 13025

Austin, Texas 78711-3025

Re: Whether the State Office of Administrative Hearings is required to furnish a free transcript in an administrative driver's license suspension appeal (RQ-0522-GA)

S U M M A R Y

The State Office of Administrative Hearings is not required to furnish a free transcript in an administrative driver's license suspension appeal.

Opinion No. GA-0525

Mr. Ronald Ensweiler, President

State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments

1100 West 49th Street

Austin, Texas 78756-3183

Re: Constitutionality of provisions of the Occupations Code, which prohibit the fitting and dispensing of hearing instruments ordered by mail by an unlicensed individual and the sale of a hearing instrument by mail (RQ-0524-GA)

S U M M A R Y

Subsections 402.451(a)(6) and 402.451(a)(7), Occupations Code, are preempted by the federal statutes and regulations governing hearing aid devices. However, no federal law or regulation imposes a cut-off date on a state's ability to request an exemption from preemption from the Food and Drug Administration (the "FDA"), although the extent to which such request receives consideration is subject to the FDA's discretion.

Opinion No. GA-0526

The Honorable Jane Nelson

Chair, Committee on Health and Human Services

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether a municipality may prohibit registered sex offenders from living in certain locations within the municipality (RQ-0526-GA)

S U M M A R Y

State law does not preempt a home-rule municipality's ordinance prohibiting registered sex offenders from living within a specified distance from locations where children typically congregate. Whether a particular ordinance is permitted by the Texas Constitution is a question that must be determined by a court after considering all of the relevant facts applicable to a specific ordinance; to date, however, no court has found that a statutory residence restriction violates any federal constitutional provision.

Opinion No. GA-0527

The Honorable Susan D. Reed

Bexar County Criminal District Attorney

Bexar County Justice Center

300 Dolorosa, Fifth Floor

San Antonio, Texas 78205-3030

Re: Whether a machine that records a player's winnings onto a stored-value debit card is a "gambling device" for purposes of section 47.01(4)(B) of the Penal Code (RQ-0529-GA)

S U M M A R Y

A stored-value card enabling the purchase of merchandise is a medium of exchange within the definition of cash and therefore does not constitute a "noncash merchandise prize" within the exception of section 47.01(4)(B), Penal Code. Eight-liner machines rewarding play with such a stored-value card are gambling devices.

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

TRD-200700889

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: March 7, 2007

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PROPOSED RULES

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

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

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.21

The Texas Department of Housing and Community Affairs (the Department) proposes new §1.21, concerning Action by the Department if Outstanding Balances Exist. The purpose of this section is, in accordance with §2306.052(b)(4), Texas Government Code, to provide a mechanism to increase the collection of funds owed to the Department by persons requesting additional action by the Department prior to providing voluntary services. The rule will not impact required services related to the delivery of compliance functions.

Michael Gerber, Executive Director, has determined that for the first five-year period the proposed new section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Gerber also has determined that for each year of the first five years the proposed new section is in effect, the public benefit anticipated as a result of enforcing this new section will be a more efficient use of state resources by collecting outstanding balances. There will be no effect on persons, small businesses or micro-businesses. There are no anticipated economic costs to persons, small businesses or micro-businesses who are required to comply with the section as proposed. The proposed new rule will not have an impact on any local economy.

Comments may be submitted to Kevin Hamby, General Counsel, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941 or by e-mail at the following address: kevin.hamby@tdhca.state.tx.us.

The new section is proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

The new section affects no other code, article or statute.

§1.21. Action by Department if Outstanding Balances Exist.

(a) Purpose. The purpose of this is to provide guidance to persons requesting action by the Department on Applications, Amendments, Awards, Appeals, Contracts, Commitment, Executed Form Documents, Loan Documents, or LURAs when outstanding balances are owed to the Department by any Administrator, Applicant, Person or Related Party on any relationship between the requestor and the Department, regardless if it is the subject of the request.

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

(1) Action--Request for the Department to perform a function required or allowed under Texas Government Code §2306.001 et seq.

(2) Administrator--The Person responsible for performing under a Contract with the Department.

(3) Affiliated Party--A person in a relationship with the Administrator on a Contract with the Department. Does not apply to an Affiliated Party for Application purposes.

(4) Appeal--Action filed on behalf of an Administrator, Affiliated Party, Applicant, to request reconsideration or challenge a prior decision made by the staff, Executive Director or Board.

(5) Applicant--A person who has submitted to the Department an Application for Department funds or other assistance.

(6) Application--The written request for Department funds or other assistance in the format required by the Department including any exhibits or other supporting material.

(7) Award--Any grant, commitment, or loan provided by the Department.

(8) Board--The Governing Board of the Texas Department of Housing and Community Affairs.

(9) Commitment--A fully executed document that commits the Department to funding or other activity related to a program administered by the Department.

(10) Contract--The executed written agreement between the Department and an Administrator performing an activity related to a program that outlines performance requirements and responsibilities assigned by the document.

(11) Department--The Texas Department of Housing and Community Affairs.

(12) Executed Form Documents--Documents that are signed by the Department at the Request of any Administrator, Applicant, Person or Related Party.

(13) Executive Director--The administrative head of the Department as defined under Texas Government Code §2306.036 and/or §2306.038.

(14) Loan Documents--An agreement between the Department and a Person regarding the terms and conditions of a loan provided to the Person from the Department.

(15) LURA--A Land Use Restriction Agreement that has been executed by the Department and a Person related to a specific

property or properties and filed with the responsible recording authority.

(16) Person--Any individual, partnership, corporation, association, unit of government, community action agency, or public or private organization of any character.

(17) Request--Action initiated by voluntarily seeking Department Action regardless of whether it is part of a statutory requirement (application cycle, etc.) or an action to alter a previous Action taken by the Department. Ongoing requirements such as compliance with reporting functions are not considered to be a voluntary function.

(c) The Department will not take Action on any Request involving Applications, Amendments, Awards, Appeals, Contracts, Commitment, Executed Form Documents, Loan Documents, or LURAs unless all funds owed to the Department are current by any Administrator, Applicant, Person or Related Party involved in any relationship between the requestor and the Department. The non-current account need not be directly related to the Request.

(d) Once the Department notifies an Administrator, Applicant, Person or Related Party that they are subject to this rule, if no corrective action has been taken by the Administrator, Applicant, Person or Related Party, the Executive Director, may, after seven (7) days, deny the requested action for failure to comply with this rule.

(e) When time of submission is a factor in the Action requested, the Action requested will not be considered submitted until this parameters of this rule are met.

(f) An appeal of any decision under this may be appealed in accordance with §1.7 of 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 March 5, 2007.

TRD-200700854
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: April 15, 2007
For further information, please call: (512) 475-4595

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TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 321. PARI-MUTUEL WAGERING

SUBCHAPTER A. MUTUEL OPERATIONS

The Texas Racing Commission proposes amendments to §§321.29, 321.33, and 321.43. The Commission also proposes new §321.2. These amendments are proposed in conjunction with the recommendations from the Commission's Pari-Mutuel Advisory Committee.

The sections proposed for amendment relate to odds manipulation, mutuel tickets, expiration dates, and cancellation of wagers.

Charla Ann King, Executive Secretary for the Commission, has determined that for each of the first five years that the new and amended rules will be in effect, the following statements regarding the anticipated public benefit will apply:

The addition of new rule §321.2 makes the intentional manipulation of Odds and Will Pays a practice that is inconsistent with the honesty and integrity of racing. The purpose of the rule is to prevent the dissemination of false information to the wagering public.

The change to §321.29 requires an expiration date to be printed on the face of the pari-mutuel ticket, enabling the betting patron to easily discern the expiration date of the ticket. This change will assist the betting patron by showing how long the ticket will be valid.

The change to §321.33 will require an association to print the expiration date on the face of a pari-mutuel ticket. This change will assist the betting patron by showing how long the ticket will be valid.

The change to §321.43 will allow the cancellation of wagers on self-serve machines. In order to allow cancellations, an association must first establish written policies detailing the procedures the association will use in permitting the cancellation of wagers and detecting odds manipulation. The written policies must be approved by the executive secretary prior to implementation. The mutuel manager shall be responsible for controlling all canceled wagers and for ensuring that the association complies with the rules permitting the cancellation of win wagers. This change will allow the associations to reduce costs by permitting self-serve machines to cancel some wagers that were previously handled only at manned teller windows. It will also provide more convenient access to cancellations for patrons.

There are no foreseeable implications relating to costs or revenues for state or local governments as a result of enforcing or administering the proposed amendments.

There are no foreseeable implications relating to costs or revenues for small or micro-businesses as a result of enforcing or administering the proposed amendments.

There are no economic costs to persons required to comply with the proposed amendments.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments.

All comments or questions regarding these proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Gloria Giberson, Assistant to the Executive Secretary for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

DIVISION 1. GENERAL PROVISIONS

16 TAC §321.2

The new section is proposed under the Texas Civil Statutes, Article 179e, §3.02 and §3.021, which authorizes the Commission to make rules relating to all aspects of greyhound and horse racing, and §11.01, which requires the Commission to adopt rules regulating pari-mutuel wagering on greyhound and horse racing.

The new section implements §11.01 of Texas Civil Statutes, Article 179e, which requires the Commission to adopt rules regulating wagering on greyhound and horse races.

§321.2. Odds Manipulation.

The commission recognizes that the wagering public uses Odds and Will Pays as a handicapping tool. To maintain the integrity of the pools, the Commission therefore identifies the practice of canceling wagers that were placed for the sole purpose of manipulating the posted Odds or Will Pays as being inconsistent with the honesty and integrity of racing under §307.7, Ejection and Exclusion, and as a detrimental practice under §309.9, Denial, Suspension, and Revocation of Licenses.

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 March 5, 2007.

TRD-200700857
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: April 15, 2007
For further information, please call: (512) 833-6699

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DIVISION 3. MUTUEL TICKETS AND VOUCHERS

16 TAC §§321.29, 321.33, 321.43

The amendments are proposed under the Texas Civil Statutes, Article 179e, §3.02 and §3.021, which authorizes the Commission to make rules relating to all aspects of greyhound and horse racing, and §11.01, which requires the Commission to adopt rules regulating pari-mutuel wagering on greyhound and horse racing.

The rule amendments implement §11.01 of Texas Civil Statutes, Article 179e, which requires the Commission to adopt rules regulating wagering on greyhound and horse races, and implement §11.03 of Texas Civil Statutes, Article 179e, which requires the Commission to prescribe by rule the information to be printed on each pari-mutuel ticket.

§321.29. Mutuel Tickets.

Each mutuel ticket issued must have printed on its face:

(1) the name of the racetrack facility where the wager was placed;

(2) the name of the racetrack where the race was conducted;

(3) the number of the race;

(4) the unique computer-generated ticket number;

(5) the date the ticket was issued;

(6) the date of the race for which the ticket was issued;

(7) the number of the ticket-issuing machine;

(8) the type of pool;

(9) the number of each entry on which the wager was placed; [~~and~~]

(10) the dollar amount of the wager; and [~~.~~]

(11) the expiration date of the ticket.

§321.33. Expiration Date.

(a) Due to the year-round nature of simulcasting and the state's fiscal year, the Commission finds a need to establish a "mutuel year" for purposes of expiration of mutuel tickets and the collection of revenue from outstanding tickets pursuant to the Act, §11.08. The mutuel year begins on August 1 and ends on July 31.

(b) A mutuel ticket:

(1) expires on the 60th day after the last day of the mutuel year in which the ticket was purchased; and

(2) may not be cashed by an association after the expiration date for any reason.

(c) A voucher has no expiration date.

(d) The expiration date of the wager must be printed on the face of a pari-mutuel ticket.

§321.43. Cancellation of Win Wagers.

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

(e) The cancellation of wagers on self-serve wagering machines shall not be permitted except in accordance with the written policies established by the association and approved by the executive secretary.

(f) The mutuel manager shall be responsible for controlling all canceled wagers and ensuring that the association complies with the rules 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 March 5, 2007.

TRD-200700858
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: April 15, 2007
For further information, please call: (512) 833-6699

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.6

The Texas State Board of Pharmacy proposes amendments to §297.6, concerning Pharmacy Technician and Pharmacy Technician Trainee Training. The amendments, if adopted, clarify that pharmacy technicians and pharmacy technician trainees must receive training with regard to the handling of confidential patient records.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to ensure that pharmacy technicians and pharmacy technician trainees are prop-

erly trained with regard to handling of confidential patient records and that confidential patient records are not inappropriately released. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 p.m., April 23, 2007.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§297.6. Pharmacy Technician and Pharmacy Technician Trainee Training.

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

(e) Pharmacy technician and pharmacy technician trainee training shall be outlined in a training manual. Such training manual shall, at a minimum, contain the following:

(1) (No change.)

(2) instruction in the following areas and any additional areas appropriate to the duties of pharmacy technicians and pharmacy technician trainees in the pharmacy:

(A) - (I) (No change.)

(J) Drug product prepackaging; [~~and~~]

(K) Written policy and guidelines for use of and supervision of pharmacy technicians and pharmacy technician trainees; and[~~.~~]

(L) Confidential patient medication records.

(f) - (g) (No change.)

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

Filed with the Office of the Secretary of State on March 5, 2007.

TRD-200700848
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: April 15, 2007
For further information, please call: (512) 305-8028

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.21 - 537.23, 537.35, 537.39 - 537.41, 537.48

The Texas Real Estate Commission (TREC) proposes amendments to §§537.21 - 537.23, 537.35, 537.39 - 537.41, and 537.48, concerning Professional Agreements and Standard Contract Forms. The amendments would adopt by reference eight revised contract forms to be used by Texas real estate licensees.

Texas real estate licensees are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and a public member appointed by the governor.

Generally speaking most of the revisions to the forms are non-substantive in nature and update and conform the text and format for consistency with current contract forms.

The amendment to §537.21 would adopt by reference Standard Contract Form TREC No. 10-5, Addendum for Sale of Property by Buyer. The revisions to Paragraphs A & B of the form remove references to a specific time of day in the definition of Contingency and in the deadline date to waive the Contingency. Paragraph D is rewritten for clarity and deletes extraneous language regarding Buyer's failure to obtain loan or assumption approval.

The amendment to §537.22 would adopt by reference Standard Contract Form TREC No. 11-6, Addendum for "Back-Up" Contract. The blank line for the Buyer's name is removed from Paragraph A. Paragraphs B & C are rewritten and combined for clarity. In Paragraph B, the reference to a specific time of day is deleted consistent with the proposed revisions to TREC No. 10-5; the reference to a Contingency Date is deleted in the last sentence of Paragraph B, which defines the Amended Effective Date for purposes of performance of the Back-Up Contract. Therefore, as proposed, the Amended Effective Date hinges solely on the date the Buyer receives notice of termination of the First Contract.

The amendment to §537.23 would adopt by reference Standard Contract Form TREC No. 12-2, Addendum for Release of Liability on Assumed Loan and/or Restoration of Seller's VA Entitlement. The amendments to the form change the title to more accurately reflect the purpose and use of the addendum. Redundant phrases in Paragraphs A.2, B.2, and the Notice are removed. The paragraph that addresses payment of costs for obtaining the release and restoration, which includes a sentence regarding negotiation of payment of such costs that exceed a specified amount, is amended to delete the sentence so that seller pays all such costs under the addendum.

The amendment to §537.35 would adopt by reference Standard Contract Form TREC No. 28-1, Environmental Assessment, Threatened or Endangered Species, and Wetlands Addendum. The amendments to the form remove redundant text and make non-substantive conforming changes consistent with current forms.

The amendment to §537.39 would adopt by reference Standard Contract Form TREC No. 32-1, Condominium Resale Certificate. The amendments to the form add two additional paragraphs: Paragraph O regarding disclosure of association fees resulting from the transfer, and Paragraph P regarding disclosure of contributions, if any, to the capital reserves account.

The amendment to §537.40 would adopt by reference Standard Contract Form TREC No. 33-1, Addendum for Coastal Area

Property. The amendments to the form make non-substantive conforming changes consistent with current forms.

The amendment to §537.41 would adopt by reference Standard Contract Form TREC No. 34-2, Addendum for Property Located Seaward of the Gulf Intracoastal Waterway. The amendments to the form make non-substantive conforming changes consistent with current forms.

The amendment to §537.48 would adopt by reference Standard Contract Form TREC No. 41-1, Loan Assumption Addendum. The amendments to the form make non-substantive conforming changes consistent with current forms.

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

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be the availability of current standard contract forms. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections, other than the costs of obtaining copies of the forms, which would be available at no charge through the TREC web site, and available from private printers at an estimated cost of $7.50 per set of 50 copies.

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

The amendments and forms are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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

§537.21. Standard Contract Form TREC No. 10-5 [4].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 10-5 [4] approved by the Texas Real Estate Commission in 2007 [2002] for use as an addendum concerning sale of other property by a buyer to be attached to promulgated forms of contracts. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.22. Standard Contract Form TREC No. 11-6 [5].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 11-6 [5] approved by the Texas Real Estate Commission in 2007 [2004] for use as an addendum to be attached to promulgated forms of contracts which are second or "back-up" contracts. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.23. Standard Contract Form TREC No. 12-2 [1].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 12-2 [1] approved by the Texas Real Estate Commission in 2007 [1992] for use as an addendum to be attached to promulgated forms of contracts where there is a Veterans Administration release of liability or restoration entitlement. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.35. Standard Contract Form TREC No. 28-1 [0].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 28-1 [0] approved by the Texas Real Estate Commission in 2007 [1993] for use as an addendum to be attached to promulgated forms of contracts where reports are to be obtained relating to environmental assessments, threatened or endangered species, or wetlands. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.39. Standard Contract Form TREC No. 32-1 [0].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 32-1 [0] approved by the Texas Real Estate Commission in 2007 [1994] for use as a condominium resale certificate. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.40. Standard Contract Form TREC No. 33-1 [0].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 33-1 [0] approved by the Texas Real Estate Commission in 2007 [1994] for use as an addendum to be added to promulgated forms of contracts in the sale of property adjoining and sharing a common boundary with the tidally influenced submerged lands of the state. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.41. Standard Contract Form TREC No. 34-2 [1].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 34-2 [1] approved by the Texas Real Estate Commission in 2007 [2002] for use as an addendum to be added to promulgated forms of contracts in the sale of property located seaward of the Gulf Intracoastal Waterway. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.48. Standard Contract Form TREC No. 41-1 [0].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 41-1 [0] approved by the Texas Real Estate Commission in 2007 [2002] for use as an addendum to be added to promulgated forms of contracts when there is an assumption of a loan. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

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 February 27, 2007.

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Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: April 15, 2007
For further information, please call: (512) 465-3900

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 412. LOCAL MENTAL HEALTH AUTHORITY RESPONSIBILITIES

SUBCHAPTER P. PROVIDER NETWORK DEVELOPMENT

25 TAC §§412.751 - 412.754, 412.756, 412.758, 412.760, 412.762, 412.764, 412.766

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS), proposes new §§412.751 - 412.754, 412.756, 412.758, 412.760, 412.762, 412.764, and 412.766, concerning local mental health authorities (LMHAs) and the development of a network of service providers within each LMHA's local service area. The proposed new rules establish the requirements of an LMHA in assembling and maintaining a network of service providers and set forth the conditions under which an LMHA may serve as a provider of services.

BACKGROUND AND PURPOSE

A negotiated rulemaking process was used to develop the proposed rules, in accordance with the requirements of the Texas Government Code, Chapter 2008, concerning Negotiated Rulemaking. DSHS appointed a negotiated rulemaking committee, which first met on October 10, 2006, and continued to meet over the course of the next several months, totaling more than 100 hours of discussion and negotiations presided over by facilitators appointed by DSHS. On January 10, 2007, the negotiated rulemaking committee submitted a final report to DSHS, which includes the text of the proposed rules. This report is public information and can be found on the DSHS website at http://www.dshs.state.tx.us/mhcommunity/provider.shtm. In addition, the negotiated rulemaking committee has submitted additional recommendations regarding the implementation of the rules; these recommendations can also be found on the website referenced above.

Section 533.035 of the Texas Health and Safety Code articulates a clear preference for a system of service delivery in which consumers have choice from among multiple service providers and in which the LMHA's role is to provide management and oversight. The extent to which this goal can be achieved in any given service area and how quickly it can be reached will depend on the circumstances, needs, and preferences of the local communities served by each LMHA.

Section 533.035(c) of the Texas Health and Safety Code charges LMHAs with responsibility for ensuring that mental health services are provided in their local service areas and, further, requires LMHAs to consider public input, ultimate cost-benefit, and client care issues to ensure consumer choice and the best use of public money in assembling a network of service providers. This language clearly recognizes that decisions regarding the structure of service delivery networks must balance a complex and diverse range of considerations and interests. These include the needs and preferences of the local community, prudent stewardship of public dollars, the need to achieve the best possible client outcomes, the right of consumers to exercise control and make decisions regarding their health, and the responsibility to achieve the greatest return on public investment in mental health services.

Given the diversity of LMHAs' local service areas and their constituent communities, it is impossible to create a single template defining the procedures and timelines for implementing the statutory provisions that would comply with these overarching principles. Instead, the proposed rules establish a uniform process for planning and implementation that provides a framework within which each LMHA must work with stakeholders and the local communities it serves in assembling a network of providers that provides the most appropriate and available treatment alternatives to individuals in need of mental health services.

This framework incorporates checks and balances to ensure that LMHA decisions reflect an appropriate consideration of the diverse and often competing interests and needs of stakeholders at both the state and local level. First, the process is public and transparent. LMHAs are required to make public their proposed local network development plans and proposed procurement documents prior to implementation. Second, LMHAs must solicit and respond to stakeholder comments at key points in the process: in the early phases of the planning process, prior to submitting a proposed plan to DSHS for approval, and before initiating either a request for proposals or open enrollment, the two methods of procurement an LMHA is likely to use extensively in assembling or expanding its provider network. Finally, DSHS is given responsibility for reviewing and approving each LMHA's local network development plans, including the LMHA's rationale and supporting documentation, response to any public input, previous efforts, and progress toward assembling a network of external providers; DSHS may require revisions prior to approval.

The approach laid out in this subchapter accommodates the circumstances and needs of local communities across the state and anticipates considerable diversity in the plans and activities undertaken by various LMHAs. The proposed rules recognize that the unique characteristics of the local communities served by each LMHA will result in a wide variance among the LMHAs in terms of the extent and rate to which they are able to assemble or expand their provider networks to include external providers and the rate at which they are able to make the transition away from being providers of services. For example, an LMHA in a local service area comprised strictly of rural and frontier counties may find few, if any, external providers willing to locate in such a sparsely populated region. With an insufficient supply of external providers to meet local demand, the LMHA might continue to serve as the primary provider in that area for an extended period with its external provider network comprised solely of a few individual practitioners. In contrast, an LMHA located in an urban area with a large number of experienced external providers might find it realistic to implement a plan designed to transition to a largely external provider network within just a few years. Another example would include an LMHA's determination that it is necessary to be a provider of certain services in order to ensure that contracted providers are able to comply with performance standards and other contract requirements over an extended period of time, before completely divesting itself of the provider role.

DSHS expects that each LMHA's local network development plan will incorporate strategies to ensure continuous consumer access to services while the LMHA maintains a steadily decreasing share of service provision responsibilities during the

transition period. In developing its local network development plan, the LMHA, while complying with the requirements of subchapter and with input from stakeholders and DSHS, will be allowed to determine the rate at which this transition period will occur.

While the proposed rules provide considerable flexibility to address local needs, they also lay out clear criteria for determining when an LMHA is authorized to provide services. These criteria, together with other provisions in this subchapter, integrate the language defining an LMHA as a provider of last resort with the broader considerations articulated in the Texas Health and Safety Code, §533.035(c), and provide structure for translating those considerations into decisions regarding the assembly of a provider network.

In addition to requiring LMHAs to develop local network development plans that establish the extent and rate at which external providers will be utilized, the proposed rules describe procurement practices specific to an LMHA's development of external provider networks. These provisions do not negate the application or effect of 25 TAC, Chapter 412, Subchapter B, relating to Contracts Management for Local Authorities. Those rules will be reviewed by DSHS to determine whether they should be amended or repealed, but while they are still in effect, the requirements of this subchapter will prevail if there is a conflict between those rules and this subchapter regarding an LMHA's responsibilities in contracting with providers of mental health services.

SECTION-BY-SECTION SUMMARY

§412.751. Purpose. Section 412.751 states that the purpose of the proposed rules is to establish the process for an LMHA to assemble and maintain a network of service providers, as required by the Texas Health and Safety Code, §533.035(b) - (f).

§412.752. Application. Section 412.752 indicates that the proposed rules would apply to LMHAs and their use of funds disbursed to them by DSHS pursuant to the Texas Health and Safety Code, §533.035(b). Therefore, the proposed rules would not apply to an LMHA's use of funds other than "department federal and department state funds" disbursed to an LMHA by DSHS by contract or other allocation method. Because DSHS currently allocates federal and state funds to LMHAs through the DSHS performance contract, the proposed rules would apply to funds received by the LMHAs through the DSHS performance contract, including, for example, federal Mental Health Block Grant funds and state general revenue funds. The proposed rules would not apply to an LMHA's use of funds received through local contributions from a participating local agency pursuant to the Texas Health and Safety Code §534.019, local match funds required by the Texas Health and Safety Code, §534.066, other contributions made to an LMHA by private or non-local funding sources, or funding from another state agency, such as the Department of Rehabilitative Services or the Department of Aging and Disability Services.

§412.753. Definitions. Section 412.753 defines certain words and terms used in the proposed new subchapter.

The term, "external provider," includes all providers other than an LMHA or its direct employees. This definition is at variance with the definition of external providers utilized in the Cost Accounting Methodology (CAM) that LMHAs are required to use in reporting their costs to DSHS. The CAM definition classifies some contract employees as internal providers based on application of criteria regarding the extent to which the LMHA controls the contracted employee's work. After review, DSHS may revise the current CAM definitions to eliminate this discrepancy.

The term, "qualified provider," is defined as (1) an individual practitioner with the minimum qualifications required by the DSHS performance contract and an LMHA's approved local network development plan, or (2) an organization that demonstrates the ability to provide services in accordance with the requirements of the DSHS performance contract. Use of this term is consistent with the requirements of the Texas Health and Safety Code, §533.035(e), under which an LMHA may only serve as a provider of services if the LMHA demonstrates to DSHS that (1) it has made every reasonable attempt to solicit the development of an available and appropriate provider base that is sufficient to meet the needs of consumers in its service area, and (2) there is not a willing provider of the relevant services in the authority's service area or in the county where the provision of services is needed.

An LMHA is not required by the statute to accept any provider that is willing to provide services; it must select providers that are available and appropriate to provide the relevant services, as more specifically addressed in the requirements of Resiliency and Disease Management (RDM), an array of evidence-based disease management practices adopted by DSHS. The DSHS performance contract currently requires each LMHA to implement the requirements of RDM. The RDM Utilization Management Guidelines establish minimum qualification for individual practitioners who are providers of mental health services. In addition, RDM establishes various requirements for providers that are organizations. These include application of a uniform assessment tool to determine the necessary level of care for the client; compliance with Clinical Guidelines that establish service packages for both children and adults that ensure the provision of evidence-based services and guide decisions on eligibility and appropriate discharge from a service package; management of limited resources through established utilization management processes; compliance with the requirements of the DSHS performance contract; compliance with established quality management and data management processes; and maximization of available funding strategies.

Providers who are individual practitioners must meet not only the minimum qualifications established by the RDM Utilization Management Guidelines, but also any additional qualifications required by an LMHA's local network development plan, as provided in this subchapter. For example, bilingual capabilities may be an essential requirement for some staff providing services in areas with large Spanish-speaking populations.

The definition of "service capacity" refers to the number of adults or children/adolescents served, or to be served, for each RDM service package. Service capacity represents consumer distribution among various service packages at a given point in time, based on historical information and projected needs. This definition recognizes that service capacity is not a static number that can be determined in advance; rather service capacity among service packages will fluctuate based on the clinical needs of consumers. While service capacity must be estimated for planning and procurement purposes, the service system must remain flexible so that it can accommodate the clinical needs of individual consumers who present for services and respond as their needs change over time.

The definition of "stakeholders" encompasses all individuals and organizations who may have an interest in or who may be impacted by the implementation and consequences of these rules and is intended to exclude no one. The specific stakeholder

groups named in the definition are those with a clear interest in public mental health services and the assembly of a provider network to which the LMHA should direct its outreach efforts during the network development planning process.

§412.754. Establishment of a Provider Network. Section 412.754, relating to Establishment of a Provider Network, references the general requirements of the Texas Health and Safety Code, §533.035(c) for an LMHA to assemble a network of service providers with consideration of public input, ultimate cost-benefit, and client care issues to ensure consumer choice and the best use of public money. The procedures and criteria found in subsequent sections of this subchapter describe how those considerations shall be applied in developing a provider network and determining the LMHA's role as a provider of services.

Public input is specifically required at three points in each two-year network development planning and implementation period. First, LMHAs are required to ensure community involvement and effective participation of stakeholders in the development of the local network development plan. Second, LMHAs are required to seek and respond to public comments regarding the draft plan before submitting their proposed plans to DSHS for approval. Finally, LMHAs are required to provide a period for public comment regarding draft procurement instruments before using them to procure services.

Client care issues are addressed through the requirement that LMHAs and their subcontractors adhere standards of care established by DSHS, especially those defined in Chapter 412, Subchapter G, of this title, relating to Mental Health Community Services Standards, the RDM system, and through the examination of a potential contractor's past performance.

Consumer choice is addressed through the criteria used to determine an LMHA's status as a service provider, which define a minimum level of consumer choice.

The terms, "ultimate cost-benefit" and "best use of public money," relate to decisions regarding the allocation of public dollars used to fund mental health services, which are provided by and/or through LMHAs (LMHAs may, under certain circumstances, provide services themselves and/or purchase services from external providers). Key decisions in determining how services are provided include the extent and rate at which external providers will provide services and whether or not an LMHA will be a provider of services. Decisions regarding ultimate cost-benefit and best use of public money therefore encompass comparisons between an LMHA and one or more external providers, as well as comparisons among external providers. Ultimate cost-benefit and best use of public money are closely related to "best value," a term commonly associated with procurement activities. Within the context of this subchapter, best value is a specific term applied to procurement decisions made by an LMHA in which the LMHA selects from among competing external providers.

Considerations in determining ultimate cost-benefit and best use of public money parallel those factors used to determine cost value detailed in §412.762(b), which may be broadly summarized as follows: (1) the extent to which the service conforms to established quality standards; (2) the extent to which the service meets the needs of consumers and the local community; (3) the reliability of the provider and the provider's ability to comply with applicable laws, regulations, and standards; (4) the cost of the service; and (5) the ability of the provider to work with other providers and community organizations to provide continuity of care and linkages to community-based support systems. The proposed rules address these considerations through the development of the local network development plan, procurement requirements, application of DSHS rules and standards, and the specific criteria used to determine an LMHA's status as a service provider.

Conformance with established quality standards is addressed through the requirement that all services adhere to DSHS established standards of care, especially those defined in Chapter 412, Subchapter G, of this title, relating to Mental Health Community Services Standards, and the RDM system; this requirement applies to both LMHAs and external providers. All providers meeting those standards are qualified to provide services funded through the DSHS performance contract.

The ability to meet consumer needs is also addressed through the RDM standards. In designing the RDM system, DSHS used the best available research evidence to identify those services most effective in meeting the needs of DSHS consumers and establish related standards. Local needs are currently defined in the local service area plan and, under the rules as proposed, will be defined in the local network development plan; both of these are developed with input from consumers and other stakeholders. The ability to meet consumer and local needs is also addressed in proposed §412.758, related to LMHA Provider Status, which requires a provider to demonstrate the ability to provide consumers with access to services that is equivalent to or better than that provided by an LMHA.

The reliability of the provider is addressed through the flexibility afforded to LMHAs and the local communities they serve in determining not only the percentage of service capacity that will be procured, but also the time frame within which such services will be procured. By designing a phased transition to service delivery by external providers, an LMHA can evaluate the ability of an external provider to fulfill its contractual obligations over an extended period of time. Reliability of the provider is also a factor considered in procurement; an LMHA is not required to procure services from a respondent if the LMHA has documented evidence that the provider has a clear and recent history of failing to fulfill its contractual obligations.

Cost of services is addressed through the procurement process. It is reasonable to assume that best use of public money is not achieved if an LMHA contracts for a service equivalent to that which it can provide but at a significantly higher cost, thus reducing the quantity of services that can be provided to consumers. Therefore, an LMHA may reject proposals from external providers during procurement based on a determination that it can deliver the service at a lower cost, provided that the procurement instrument specifies the maximum allowable rate for which the LMHA will contract for the service. However, the maximum allowable rate must include all expenses related to providing the service.

The ability of the provider to work with other providers and community organizations to provide continuity of care and linkages to community-based support systems is addressed through the requirement that all services adhere to DSHS established standards of care, especially those defined in Chapter 412, Subchapter G, of this title, relating to Mental Health Community Services Standards, and the RDM system; this requirement applies to both LMHAs and external providers.

§412.756. Local Network Development Plan. Proposed §412.756, Local Network Development Plan, requires each LMHA to develop a local network development plan that reflects local needs and priorities and maximizes consumer choice and access to services. DSHS will establish a biennial schedule for submission of plans, which is consistent with the statutory requirement for DSHS to review an LMHA's status as a service provider every two years. In establishing the schedule, DSHS may require some LMHAs to submit plans earlier than others, to achieve a staggered review cycle and refinement of the tools and procedures used in the implementation. However, every LMHA will have at least 180 days to develop its plan.

LMHAs are currently required to develop local service area plans using established guidelines on an annual basis. The planning process required under this subchapter is not intended to be a separate activity completed in isolation of other planning efforts. DSHS will work closely with the Department of Aging and Disability Services to review existing planning guidelines and revise them to reflect current conditions, including the requirements of these proposed new rules. DSHS anticipates that, under revised guidelines, the local network development plan will become the primary component of the mental health portion of the local service area plan.

Under proposed subsection (c) the process used to develop the plan must ensure effective participation by stakeholders, including the LMHA's Planning and Network Advisory Committee. This ensures that the planning process required under this subchapter is integrated with existing planning efforts at the local level and includes substantial input from consumers and family members as well as other stakeholders.

Proposed subsection (d) states that DSHS will develop a list of interested providers for each local service area. DSHS will provide a website listing minimum RDM services requirements and, for each local service area, service capacity and funding information. Providers will have an opportunity to submit a description of their qualifications and experience and indicate their interest in providing services in each local service area; DSHS will post provider responses. This process is made available as a convenience to providers, who will be able to indicate their interest in various areas of the state through a single submission, and to LMHAs, who can use the information to help them determine whether or not procurement is feasible. The list cannot be viewed as a definitive measure of the number of willing and qualified external providers; that can only be determined through actual procurement or through further inquiry by an LMHA, as described below. However, it can indicate a general level of interest and provide LMHAs with a starting point for collecting additional information. The list is one source of information the LMHA will use to assess the potential for acquiring services through external providers. While the absence of providers indicating interest in a particular local service area may be the primary basis for an LMHA to conclude that procurement is not feasible, the presence of providers indicating interest would not be considered conclusive evidence of a sufficient pool of interested providers to require procurement.

Proposed subsection (f) requires LMHAs to maximize dollars available to provide services and specifies strategies an LMHA must consider in doing this, including joint efforts with other local authorities on planning, administrative, purchasing and procurement, other authority functions, and service delivery activities. This language is consistent with legislative direction and recognizes that LMHAs may achieve economies of scale by working together. Some LMHAs are already engaged in such activities, but additional opportunities may be found as LMHAs expand their use of external providers. More extensive use of external providers will require development or strengthening of procurement, contracting, and oversight functions while at the same time decreasing activities and administrative functions related to direct service delivery. The proposed rule directs LMHAs to examine options for minimizing overhead and administrative costs and achieving purchasing efficiencies, which may include adoption of new business models and increased collaboration with other LMHAs.

The elements that must be included in a local network development plan are itemized in proposed subsection (g). These include a description of the planning processes and participants, projected service capacity, and baseline data showing the type and quantity of services provided by the LMHA and by external providers. DSHS will define how baselines are to be determined, which may involve information extracted from the DSHS data warehouse or supplemental inventories.

Proposed subsection (g)(5) requires the plan to include a summary of past inquiries received by the LMHA from external providers and the LMHA's response. This includes inquiries regarding traditional contracting arrangements as well as requests that the LMHA consider alternative proposals such as regional service delivery models covering more than one local service area.

According to proposed subsection (g)(6), the LMHA must present its assessment of the external provider market, and state whether or not it will assemble or expand its external provider network by service type and population served. The RDM model has multiple levels or packages of services for adults and for children/adolescents. External providers may or may not offer a comprehensive array of services, so procurement decisions must be made individually in relation to each service package for each population.

Proposed subsection (g)(7) requires the plan to include a clear rationale for the decisions regarding network assembly or expansion consistent with the LMHA's assessment of the external provider market. If the LMHA is currently providing a service, the presumptive expectation is that the LMHA will seek to establish or expand its external provider network through procurement. Under these circumstances, a decision not to procure the service must be based on one or more of the conditions listed in §412.758(a). These conditions include a determination that interested qualified providers are not available to provide services in the LMHA's service area. If the LMHA is not currently providing the service and has a network of external providers, the LMHA may or may not choose to initiate procurement. In this situation, a decision not to procure the service may be based on the rationale that the existing external provider network provides 100% of the service capacity and meets minimum standards of consumer choice and access. However, the LMHA should consider, among other factors, the length of time since it last procured the service and the benefits of opening the network to introduce competition or to expand capacity, access, and/or consumer choice. If the plan includes service provision by the LMHA, the rationale must identify and support the volume of services that must be provided by the LMHA as required in §412.758(f).

Under proposed subsection (g)(8), if the LMHA decides to assemble or expand the external provider network, the network development plan must describe the LMHA's plans for procurement, including the services and combinations of services to be

procured, the capacities to be procured, and the methods and timelines for procurement. An LMHA may "bundle" certain services for procurement so that a provider who wants to offer any one of the bundled services must offer all of them. This may be done for a number of reasons. For example, certain consumers may be expected to use multiple services, and having those services available from a single provider might enhance continuity of care. Also, it may not be economically advantageous to provide a specific service, and it might be necessary to combine that service with a more profitable one to attract external providers.

The description of procurement plans must also address steps and timelines for securing consumer choice decisions and transitioning consumers to new providers. According to procedures delineated in §412.760, Consumer Selection of Providers, the distribution of consumers across the provider network is consumer-driven. No provider is assured of receiving a minimum number of consumers or proportion of service capacity. Furthermore, the procedures allow for a gradual transition to facilitate clinically appropriate transfer planning and continuity of care for consumers moving from the LMHA as a provider to an external provider.

An estimate of the time needed for the LMHA to reestablish service volume lost should a contract be terminated must also be included in the description of procurement plans. The LMHA may use the estimated time required to reestablish lost service volume as a minimum notice period for contract termination by an external provider. While a contract provision does not guarantee that a provider will not abruptly terminate services, it does establish an expectation and a measure of what is necessary for a contacted external provider to leave the network in good standing. This timeframe is also relevant to determinations regarding the protection of critical infrastructure, as addressed in §412.758(a)(5).

Finally, procurement plans must state any additional qualifications that an LMHA will require of individual practitioners in addition to those described in the DSHS performance contract. This provision allows the LMHA to hold external individual practitioners to the same standard applied to the LMHA's employees.

Proposed subsection (g)(9) and (10) require the local network development plan to include a description of how the LMHA will address consumer choice and access and must identify any services to be provided by a single provider due to economic factors that prevent an LMHA from offering consumers choice of more than one provider. For example, it may not be economically feasible to establish more than one Assertive Community Treatment team in a local service area. In some cases, a consumer might have a choice of individual practitioners within the team, but not a choice of teams.

Another element of the plan, required in proposed subsection (g)(11), is a description of how service dollars will be preserved while maintaining the LMHA's ability to continue performing authority functions and administrative services related to the authority functions. This description must include the LMHA's strategies for minimizing overhead and administrative costs and achieving purchasing efficiencies as required in subsection (f), which directs LMHAs to consider joint efforts with other LMHAs. Producing this section of the plan will require the LMHA to clearly identify administrative costs associated with service delivery versus those supporting authority functions. Moving from direct service delivery to a system in which the LMHA's primary role is assembly and maintenance of an external provider network will change the scope and nature of its activities. Under a direct service delivery model, the LMHAs may have achieved certain economies through shared administrative services that support both authority and service delivery functions. As an increasing proportion of services are contracted out, those economies may diminish and require alternative business models to avoid shifting dollars away from service delivery to support authority and related administrative functions.

Additional elements required in the plan in proposed subsection (g)(12) - (14) address cultural and linguistic diversity issues, past efforts to develop an external provider network, and a description of barriers to attracting new external providers and conditions that must be present to attract new external providers to the local services area, as well the LMHA's plans to address any identified barriers. While the LMHA does not have an obligation to create an artificial market through inflated rates or other financial incentives, it is expected to consider any reasonable steps that might be taken to attract new providers to the area. For example, if the LMHA is able to provide services in outlying areas because local government provides free office space for service delivery on a part-time basis, securing permission for external providers under contract with the LMHA to have similar access to free office space might be sufficient to attract external providers to an area that might otherwise be financially unsupportable. Reasonable steps might also include collaborating with neighboring LMHAs to create a regional service delivery system or to provide certain resource-intensive services on a regional basis. If identified barriers include existing agreements or circumstances identified by the LMHA pursuant to §412.758(a)(6), the LMHA must indicate whether it is possible to make modifications to expand opportunities for external provider participation. For example, an LMHA may have an agreement with city and county health departments through which the agencies share a single facility in a central location to provide "one-stop" healthcare services to the local community. While the written agreement may specify that the LMHA is to provide the mental health services, it may be possible to modify the agreement to allow mental health services to be provided by an external provider under contract with the LMHA.

Finally, proposed subsection (g)(15) requires the LMHA to describe its plans for network development for at least an additional two years. While this information does not need to be as detailed as the information presented for the two years covered by the plan, it should be sufficient to provide context and give a general indication of the scope and rate of development anticipated.

Proposed subsection (h) requires the LMHA to send its draft local network development plan to local consumer and advocacy groups and make it available to the public through its website and other accessible media, invite public comment, consider all comments received, and make any revisions it deems appropriate in response to the public comment. The public comment required in the planning process is a critical element in the structure of the proposed subchapter. By requiring a period of public comment on the LMHA's draft plan, all stakeholders have an opportunity to review the plan, identify any elements that might be inconsistent with the provisions of this subchapter, and suggest changes reflecting their interests. Specific notice to consumer and advocacy groups ensures that key stakeholders are aware of the plans publication and can exercise their rights to review and provide comment. While the LMHA is not required to accept every comment and make corresponding changes to its plan, rejection of a comment does obligate the LMHA to articulate a reasoned justification for its decision that will be subject to review by DSHS.

Proposed subsection (i) requires the LMHA to submit its proposed local network development plan to DSHS together with a summary of the comments it has received and the LMHA's response to the comments. If the LMHA has made revisions to its plan, it must update its website with the revised version.

Proposed subsection (j) describes DSHS' review of local network development plans. DSHS will review the content of the plan to evaluate the LMHA's level of effort, its rationale for decisions and plans, and the extent to which it has implemented previous plans and made progress towards assembly of an external provider network. Particular attention will be given to stakeholder comments and the LMHA's responses to those comments. DSHS may request additional information from the LMHA if the initial submission does not provide sufficient information for DSHS to complete its evaluation.

The diversity of circumstances across the state precludes application of a single standard, so review of local plans will be conducted with consideration to the specific context of the local service area. For example, rural and frontier counties may not have a sufficient population base to attract external providers, and in those areas it is reasonable to expect that the LMHA may continue to be the primary or only provider of mental health services for the foreseeable future. However, as noted previously, these LMHAs are still required to identify and address the barriers to assembly of an external provider network, such as exploring alternative service models and other arrangements that might attract external providers to the area. In urban areas, the opportunities for and supply of external providers will be far greater, facilitating more extensive and rapid expansion of external provider networks. An LMHA in an urban area that does not demonstrate significant progress in assembling an external provider network will be subject to close examination by DSHS. While there may be legitimate circumstances and barriers that fall under a condition articulated in §412.758(a), the LMHA will be expected to provide clear, documented evidence justifying the condition.

DSHS will establish a mechanism for stakeholder involvement in the review process. This mechanism will not be restricted to passive receipt of comments but will provide an opportunity for stakeholders to have meaningful input during the review process. To ensure stakeholder input is not restricted to organizations and individuals represented in Austin, DSHS will explore use of teleconferencing and other available technology to facilitate interaction with stakeholders at both the state and local level.

If DSHS, with input from stakeholders, determines that an LMHA's local network development plan demonstrates the LMHA is in compliance with this subchapter and is making reasonable attempts to develop an external provider network, it will approve the plan. To ensure timely review, the rule specifies that DSHS will approve an acceptable plan within 60 days of receipt. If the plan is deemed to be unacceptable, DSHS will require the LMHA to revise the plan prior to approval; final approval of a plan requiring revisions is not required to be completed within the 60-day time frame.

Under proposed subsection (k), LMHAs are required to update public postings with their approved network development plans. To promote widespread accessibility, proposed subsection (l) states that DSHS will have a mechanism on its website linking to each of the LMHA websites so that stakeholders can access all approved local plans through a single portal.

Proposed subsection (m) anticipates that the results of procurement are unpredictable and may not conform to an LMHA's local network development plan. For example, the plan may state that the LMHA will contract with external providers for all services, but the procurement may fail to elicit responses from qualified external providers for certain services. In such cases, the LMHA must submit a plan amendment to DSHS and update all electronic or print copies of the plan that it has publicly posted, after receiving approval of the amendment from DSHS.

§412.758. LMHA Provider Status. Proposed §412.758, LMHA Provider Status, addresses the LMHA's status as a provider of services. The Texas Health and Safety Code, §533.035(e) states that an LMHA may serve as a provider of services only as a provider of last resort, and only if the LMHA demonstrates to DSHS that (1) it has made every reasonable attempt to solicit the development of an available and appropriate provider base that is sufficient to meet the needs of consumers in its service area, and (2) there is not a willing provider of the relevant services in the authority's service area or in a portion of the area where the provision of the services is needed. Proposed subsection (a), which sets out the conditions under which an LMHA is authorized to be a provider of services, outlines the circumstances under which an LMHA can meet these statutory criteria. These conditions constitute the sole basis for justifying continued service provision; an LMHA may not rely on other factors to justify maintaining its status as a service provider. In making the determination, each service package for adults and children/adolescents must be considered separately. An LMHA's authority to provide services under any of these conditions is limited to the two-year period covered by the local network development plan.

Proposed subsection (a)(1) states that an LMHA may provide services if it determines that interested qualified providers are not available in the local service areas or that no providers met procurement specifications. While procurement is the only method through which an LMHA can positively determine that a provider is qualified, information showing that a provider is not qualified may be available before a decision is made whether or not to initiate procurement. Under §412.756(d), providers have an opportunity to submit a description of their qualifications and experience to be posted on the DSHS list of interested providers. That information alone may be sufficient to establish that a provider lacks the necessary qualifications. For example, a provider with insufficiently credentialed staff and no history of providing mental health services similar to those defined in the RDM services packages is clearly not qualified. This condition may also exist based on the results of procurement when no qualified providers respond or when qualified providers fail to meet additional minimum requirements of the procurement. For example, a qualified provider may propose to provide services at a rate that exceeds the maximum rate specified in an RFP, or may have a clearly documented history of noncompliance.

Proposed subsection (a)(2) allows an LMHA to provide services in order to offer consumers a minimum level of consumer choice. A minimal level of consumer choice is present when consumers can choose from two or more qualified provider organizations in the LMHA's provider network for service package and from two or more qualified individual practitioners in the LMHA's provider network for specific services within a service package. Therefore, an LMHA may continue to provide services if there is only one external provider, even when that provider is able to meet 100 percent of service capacity. Consumer choice is limited to providers within the LMHA's network at any given time; consumer prefer-

ence does not require specific providers to be included or maintained in the network so that consumers can choose a particular provider. Furthermore, consumer choice may be limited by availability. Because a network has limited capacity, there may be times when only one provider is able to accept new clients. These limitations on consumer choice are consistent with industry standards for both public and private healthcare networks.

Proposed subsection (a)(3) addresses situations in which external providers are unable to offer access to services that is equivalent to or better than access provided by the LMHA. Access has multiple components, including timeliness and geographic proximity. DSHS has established standards for timeliness that are applicable to all providers, but equivalent standards do not exist for geographic proximity. Services should be located so that the greatest number of consumers can reach the service site without undue hardship. This issue is particularly critical in service areas with rural and frontier counties, where service sites must be strategically located to maximize consumer access. After procurement, an LMHA may find that the proposed service locations force a significantly greater number of consumers to travel long distances in order to access services, which would justify the LMHA continuing to provide services. When making this determination, the LMHA should consider all service sites proposed by a potential provider, including sites borrowed from another entity on a full time or part time basis, as well any alternative service model, such as telemedicine, proposed by a respondent. An LMHA relying on this condition must submit geographical access information to DSHS for verification. DSHS will measure access by using the latest healthcare access technology available to the agency, such as geomapping, thus providing an objective means of comparing the level of geographic access offered by various network configurations with and without participation by the LMHA. A provider's hours of operation may also relate to consumer access to services. However, because it may be more difficult to objectively measure a provider's hours of operation in comparison to those of an LMHA, this factor would be more appropriately addressed by the LMHA as a minimum requirement in any procurement document it issues.

Proposed subsection (a)(4) recognizes that an LMHA may be unable to procure sufficient volume to meet 100 percent of the service capacity. In those cases, the LMHA may provide the balance of the service capacity. When necessary, section (f) allows the LMHA to reduce the volume of services provided through contract so that it can retain a sufficient volume of services to be financially viable.

Proposed subsection (a)(5) allows an LMHA to provide services when necessary to protect critical infrastructure to ensure continuous provision of services. Specifically, this condition permits the LMHA to implement a phased transition to an external provider network by procuring an increasing proportion of service capacity over a period of time defined by the LMHA. At the end of this transition period, the LMHA must give up its role as a service provider if it determines that qualified external providers are willing and able to provide sufficient added service volume within the timeframe specified by the LMHA in its local network development plan.

Critical infrastructure is protected when external providers can be relied upon to provide the 100 percent of the service capacity indefinitely without significant disruption. This includes the willingness and ability of external providers to provide sufficient added service volume in a timely manner (defined by the LMHA in its network development plan) if one or more providers leave the network. This may be achieved by existing providers increasing their service volume or through emergency procurement of additional providers. The ability to determine not only the proportion of services to be procured for each two-year period, but also the timeframe over which the transition to an external provider network will occur, enables the LMHA to verify the reliability of the external provider network and the greater external provider market. Reliability may be judged through experience or through an assessment of relevant factors such as current providers' infrastructure, past performance, and expressed willingness to provide additional service volume, as well as the market response to past procurements.

Proposed subsection (a)(6) encompasses situations in which existing agreements impose restrictions on an LMHA's ability to contract with external providers or existing circumstances would result in the loss of a substantial source of revenue that supports service delivery if the LMHA did not provide services; specific examples are provided. Substantial revenue is an amount that would support a material volume of client services. These provisions apply to agreements regarding in-kind contributions, such as utilization of a building, as well as direct financial assistance.

The existence of such agreements or circumstances does not allow an LMHA to remain in the role of service provider for an indefinite period of time. A separate determination must be made in each two-year planning cycle, and the LMHA is expected to investigate options for modifying the agreements or circumstances to allow participation by external providers. Examples include an agreement requiring direct service provision by the LMHA that might be amended to allow subcontracting, and a building owned by the LMHA that may be sold or leased over time. The rule recognizes that funders and other contractual partners may not allow such modifications, but the LMHA is obligated to explore the possibility.

Proposed subsection (b) authorizes an LMHA to provide services during the two-year period if it determines, based on the rationale provided in its approved local network development plan, that it will not assemble or expand the external provider network because of one or more of the conditions identified in subsection (a). If the condition(s) apply to only certain services, the authorization is limited to those specific services.

Proposed subsection (c) states that an LMHA is not authorized to provide services during the two-year period covered by an approved local network development plan if it determines, based on the rationale provided in its approved plan, that it will not assemble or expand the external provider network because its current network of external providers delivers 100 percent of the service capacity and meets levels of consumer choice and access specified in §412.758(a)(2) and (3), relating to LMHA Provider Status.

Proposed subsection (d) recognizes that an LMHA's status as a provider cannot be definitively determined prior to a planned procurement; the decision must be based on the results of the procurement as well as the approved local network development plan. If the results of the procurement are not consistent with the LMHA's intended status as a provider described in the approved plan, the LMHA must submit a plan amendment to DSHS for approval.

Proposed subsection (e) clarifies that an LMHA is not required to breach existing contracts or to lose or forego substantial revenue that supports the provision of services in order comply with the provisions of this subchapter. LMHAs are required to give prospective funders information about the intent and re-

quirements of this subchapter and are prohibited from conditioning receipt of funds upon direct service provision by the LMHA. The rule does, however, recognize that funders have the right to make policy decisions regarding use of their funds. If a funder receives the information about the state's intent for LMHAs to establish external provider networks and still chooses to require direct service provision by the LMHA, the LMHA is permitted to accept the funds. Also, the restrictions of subsection (e) do not apply to grants, gifts, or other funding sources that do not involve the use of "department federal or department state funds" disbursed to an LMHA by DSHS.

Proposed subsection (f) applies when the LMHA provides services under one or more of the conditions in subsection (a). In such situations, the LMHA must identify the proportion of service capacity that it must provide in order to make service provision financially viable and provide the rationale for the decision. For example, an LMHA may be able to procure only 95 percent of the service capacity for a given service. Under subsection (a)(4), the LMHA would be authorized to provide services. However, the LMHA may find that it is not financially viable to provide only five percent of the service capacity. An example of this would be if the scope of the LMHA's direct service delivery would be reduced to the extent that certain staff or other resources must be retained in order to provide the service but the low volume of service results in idle capacity. Under such circumstances, the LMHA may calculate the proportion of service capacity necessary to fully utilize its resources and reduce the service capacity allowed from external providers by a commensurate amount.

§412.760. Consumer Selection of Providers. Proposed §412.760 describes the process that will be used by LMHAs to provide consumers and legally authorized representatives with the information and opportunities necessary to exercise consumer choice.

Proposed subsection (a) requires the LMHA to maintain a list with the most current information available about each provider in its network, including the provider's name, service locations, contact information, website address, and languages in which services are available. If the LMHA is a provider of services, the list must include the same information for the LMHA provider as for external providers. The number of required elements is minimal, and excludes items subject to frequent change to promote maintenance of accurate and current information that can be presented in a simple, easy-to-use format. The list is intended to be an objective source of comparable information about each provider, including how a consumer can obtain more detailed information. The LMHA is required to post the list on its website and distribute it at least annually to local consumer and advocacy groups.

Providers are free to engage in additional consumer and stakeholder education efforts using their own resources, but the LMHA is not required to distribute brochures or other materials supplied by external providers. The role of the LMHA is to provide consumers with accurate and consistent information about providers so that no provider is advantaged in the official presentation of information; each provider is responsible for its own marketing.

Proposed subsection (b) requires the LMHA to provide forums through which providers can present information to consumers and other stakeholders. Such forums might include presentations at advocacy group meetings, open houses, or participation in community health fairs. These forums are intended to provide consumers and stakeholders with more in-depth information and an opportunity to ask questions of various providers.

Under proposed subsection (b), LMHAs have defined but limited responsibilities for providing consumers and other stakeholders with information about providers consistent with the level of resources available to the LMHA to perform authority functions, including consumer education. The requirement to distribute the provider list to consumer and advocacy groups is based on the expectation that these groups will play an active role in disseminating consumer information and providing consumers with support and assistance.

Proposed subsection (c) describes the process through which consumers select their providers. The LMHA is required to provide consumers and legally authorized representatives with a copy of the provider list. New consumers receive this information after the LMHA conducts an assessment and recommends services based on the results of the assessment. The LMHA is also required to provide a description of the array of service options for which the consumer may be authorized. In describing the array of service options available to the consumer, the LMHA is expected to offer or allow a consumer to choose only some of the services for which the consumer may be authorized; a consumer is not required to accept all services for which he or she may be authorized.

The LMHA must provide the consumer or legally authorized representative with the list of providers offering services for which the consumer may be authorized and inform them that they have the right to choose from among available providers and may change providers. The LMHA must make a telephone and appropriate space available for consumers to use in selecting a provider. This is to support consumers in making an informed and timely selection and to facilitate linking the consumer with the chosen provider. If the consumer does not wish to choose a provider at the time of the assessment, the LMHA must give consumers a reasonable period of time to make a decision and cannot demand that a selection be made on site.

If the consumer does not make a selection within the designated time frame, the LMHA shall assign a provider with assignment rotating equally among all available providers. Available providers are those offering the required service who have sufficient capacity to accept new clients. Consumers are not required to contact the LMHA stating their choice of provider; they may indicate choice by contacting a provider directly. An LMHA can identify consumers who have not selected a provider within the designated time frame by generating a list from the Client Assignment and Registration (CARE) system of clients who have been assessed but for whom no subsequent service authorization has been requested.

All consumers and legally authorized representatives shall be given the current provider list and be offered the option of choosing a different provider at every scheduled treatment plan review. This is a mechanism through which consumers can learn about new providers and be reminded that the option to change providers remains available. Consumers are allowed to change providers at any time subject to approval by the LMHA. The rule does not restrict the frequency with which a consumer may change providers, but the LMHA may impose some restrictions based on the clinical appropriateness of the request within the context of the utilization management authorization process. Excessive movement from one provider to another may not be in the best interest of the consumer and may indicate the need for clinical intervention. Consumers may request a review of LMHA decisions under the existing notification and appeals process described in §401.464 of this title.

LMHAs are required to maintain documentation of the consumer's or legally authorized representative's provider selection. This includes documentation at every scheduled treatment plan evaluation as required in subsection (c)(6) of this section.

§412.762. Procurement Principles. Proposed §412.762, related to Procurement Principles, describes standards that govern all procurement activities undertaken by the LMHA in assembling and expanding an external provider network.

Proposed subsection (a) requires an LMHA to comply with applicable rules and statutes and clarifies that an LMHA may procure mental health services required by the DSHS performance contract and the LMHA's approved local network development plan by any procurement method allowed by applicable statutes and rules that provides the best value to the LMHA.

This subchapter includes procedures for two methods that are likely to be used extensively in the procurement of mental health services by an LMHA: Request for Proposal and Open Enrollment. An alternative competitive procurement method is informal solicitation, which may be used to competitively procure services when the contract amount will not exceed $25,000. Certain non-competitive procurement methods may be used in situations described in §412.59 of this title (relating to Non-competitive Procurement of Community Services). These include sole source procurement, which may be used when the services are proprietary to a single source or only one source can or is willing to provide the service; procurement from a governmental entity; emergency procurement, which may be used in an emergency situation in which a delay may result in harm to a consumer; procurement of services for less than $5,000; and procurement following an unsuccessful competitive procurement process. These processes are not specifically addressed in the proposed subchapter because it is anticipated that their use will be relatively rare in the purchase of mental health services.

The list of relevant factors used in determining best value in proposed subsection (b) is a compilation of factors from the Texas Health and Safety Code, §533.016(c) and §534.055(f), which an LMHA considers when determining best value. Minor changes have been made to eliminate redundancy and wording applicable only to goods rather than services. Proposed subsections (c) and (d) require that all competitively procured contracts and any renewals of mental health services contracts be based on best value, as determined by considering all relevant factors listed in proposed subsection (b).

§412.764. Request for Proposals. Proposed §412.764 describes procedures for competitive procurement using the request for proposal (RFP) method.

Under proposed paragraph (1) LMHAs choosing the RFP procurement method are responsible for developing a draft RFP to ensure public input. The proposed rule requires the draft RFP to include all elements required by applicable statutes, rules, and procurement standards as well as other elements related to transitioning to external providers and providing for consumer needs.

In the local network development plan required under proposed §412.756, Local network development plan, LMHAs must specify steps and timelines for transitioning consumers to new providers. These goals must be included in the draft RFP to inform potential respondents about the processes through which consumers will select a provider and, when applicable, transition to a new provider. In responding to the RFP, respondents are required to describe how they intend to implement those transition goals. If the LMHA expects external providers to consider or give hiring preference to LMHA employees who will lose their jobs as a result of procurement, this must be stated in the RFP.

The draft RFP requires respondents to describe how they will involve consumers, legally authorized representatives, and families at the policy and practice level. A key goal underlying the provisions of this subchapter is to empower consumers, their legally authorized representatives, and family members and promote their active involvement in the development of the mental health service system as well as their individual treatment and recovery. Providers may address this requirement by establishing special consumer advisory, planning, and review committees or by appointing consumers to such committees; utilizing consumers in staff orientation and training; involving consumers in the development of information given to consumers, staff, and members of the public; formalizing processes to solicit and respond to consumer comments and suggestions; and establishing other mechanisms through which consumers can contribute to the development and/or review of organizational policies and practices. The rule does not require responders to use a particular process or to implement suggestions received from consumers.

Respondents will also be required to specify where and when services will be provided within the LMHA's local service area. Services locations and hours of operation are important components of consumer access that must be considered in the assembly of a provider network. If the post-procurement network reduces consumer access to services, §412.758, LMHA Provider Status, allows the LMHA to provide services as part of the provider network. Sites identified by respondents in their proposals will be the basis for making this determination and may be submitted to DSHS.

An additional element that an LMHA must include in its draft RFP is the maximum allowable rate for the services being procured if the LMHA intends to reject any proposal with a rate exceeding that amount.

Proposed paragraph (2) requires the LMHA to publicize the draft RFP, solicit public comment, and invite potential providers to describe the challenges in providing services in the LMHA's local service area. In addition to posting the draft RFP on state and local websites, the LMHA is required to send the draft RFP to interested providers and local consumer and advocacy organizations. Interested providers include those who have contacted the LMHA and those identified through the DSHS website referenced in §412.756(d). This ensures that known stakeholders most impacted by the results of procurement are aware that the draft RFP is available for review. Publication of the draft RFP also provides an avenue for soliciting more general feedback from potential providers about barriers and challenges in providing services; this information may be useful to the LMHA in developing subsequent local network development plans.

The development and publication of a draft RFP allows potential respondents and other stakeholders to review the content and evaluate whether the proposed specifications are consistent with the requirements of this subchapter and encourage assembly and expansion of an external provider network. It also establishes a way for stakeholders to challenge specific provisions and suggest revisions to the draft RFP, which may result in a more successful procurement and reduce subsequent challenges and protests.

Proposed paragraph (3) requires the LMHA to consider all public comment it receives in developing the final RFP and lists addi-

tional elements that must be included. Proposed paragraphs (4) and (6) through (11) describe additional requirements for conducting a procurement using the RFP method. Proposed paragraph (7) permits minor changes to be made to the final RFP by the LMHA provided that everyone who has already obtained the final RFP is notified of the changes and is provided equal opportunity to respond. This provision is intended to allow for corrections or clarifications to be made to the final RFP; however, it would not allow changes such as a modification to the type(s) or volume of services to be procured or the maximum allowable rate for the services to be procured, which are considered more substantive in nature and would require the LMHA to re-publish the amended RFP as a draft RFP to ensure public input on the LMHA's new or amended requirements. Requirements related to developing and publishing an RFP Notice and making an award come from §412.58(2)(B)(i) and (2)(C) of this title (relating to Competitive Procurement Methods for Community Services), which currently applies to LMHAs.

Proposed paragraph (5) clarifies that an LMHA may not submit a proposal in response to its own RFP. The procurement process is used to make comparison among external respondents. The only mechanism in the RFP process for a comparison between the LMHA as a provider and an external provider is in the development of minimum specifications or requirements, which may reflect specific aspects of the LMHA's service delivery, such as hours of service or price.

§412.766. Open Enrollment. Proposed §412.766 describes procedures for procurement using the open enrollment method.

Under proposed paragraph (1) LMHAs choosing the open enrollment procurement method are responsible for developing a draft request for applications (RFA) to ensure public input. The proposed rule requires the draft RFA to include all elements required by applicable statutes, rules, and procurement standards as well as other elements related to transitioning to external providers and providing for consumer needs.

A critical element in the RFA is the rate of payment for the services that an applicant must agree to accept. The LMHA is responsible for including in the RFA the method it used to determine that rate of payment.

The LMHA must include in the draft RFA a detailed description of the LMHA's minimum requirements for a provider of the services to be procured. These minimum requirements must include requirements related to the cultural and linguistic needs of the consumers in the LMHA's local service area; the involvement of consumers, legally authorized representatives, and families at the policy and practice levels within the applicant's organization or individual practice; transition goals for LMHA employees, if applicable; transition plan for consumers; and location and hours of services. Additionally, the draft RFA requires the applicant to include information demonstrating how the applicant will meet the minimum requirements.

Proposed paragraph (2) requires the LMHA to publicize the draft RFA, solicit public comment, and invite potential providers to describe the challenges in providing services in the LMHA's local service area. In addition to posting the draft RFA on state and local websites, the LMHA is required to send the draft RFA to interested providers and local consumer and advocacy organizations. Interested providers include those who have contacted the LMHA and those identified through the DSHS website referenced in §412.756(d). This ensures that known stakeholders most impacted by the results of procurement are aware that the draft RFA is available for review. Publication of the draft RFA also provides a mechanism for soliciting more general feedback from potential providers about barriers and challenges in providing services; this information may be useful to the LMHA in developing subsequent local network development plans.

The development and publication of a draft RFA allows potential respondents and other stakeholders to review the content and evaluate whether the proposed specifications are consistent with the requirements of this subchapter and encourage assembly and expansion of an external provider network. It also establishes a way for stakeholders to challenge specific provisions and suggest revisions to the draft RFA, which may result in a more successful procurement and reduce subsequent challenges and protests.

Proposed paragraph (3) requires the LMHA to consider all public comment it receives in developing the final RFA and lists additional elements that must be included. Proposed paragraphs (4), (6), (7), and (8) describe additional requirements for conducting a procurement using the open enrollment method. Most provisions related to developing and publishing an RFA Notice and making an award come from §412.60(b)(1) and (c) of this title (relating to Open Enrollment), which currently applies to LMHAs.

Proposed paragraph (5) clarifies that an LMHA may not submit an application in response to its own RFA. Proposed paragraph (9) states that for every service procured through open enrollment after the effective date of this subchapter, the LMHA must, at least every two years procure the service using the same RFA developed in accordance with paragraphs (1) - (3); procure the service using another RFA developed in accordance with paragraphs (1) - (3); or procure the service using another procurement method.

FISCAL NOTE

Machelle Pharr, Chief Fiscal Officer, has determined the following fiscal impact as a result of enforcing or administering the proposed rules for the first five-year period the proposed rules are in effect. There are no foreseeable implications relating to costs or revenues to state government as a result of administering or enforcing the proposed rules. DSHS will have to reallocate existing resources to provide for certain new responsibilities associated with administering the proposed rules. These new functions include provision of technical assistance to LMHAs and reviewing the local network development plans required by the rules; development of training materials for distribution and presentation to LMHA staff and local stakeholders, including providers, consumers, and advocacy groups; and development of a submission and review schedule that prevents all local network development plans from coming due for review at the same time. Enforcement of the rules will be handled through the existing mechanisms provided in the DSHS performance contract with LMHAs based on the results of any reviews or complaints received by DSHS from local stakeholders.

There will be an increase in some costs, and decreases in other costs incurred by LMHAs, which are local governments, as a result of administering the rules as proposed. The additional costs and cost reductions experienced by each LMHA are difficult to quantify since each LMHA has unique processes and organizational and administrative structures.

Each LMHA is currently responsible for developing a local service area plan for mental health services. The proposed rules require a local network development plan, which DSHS anticipates will become the primary component of the local service area plan

for mental health services. The local network development plan may result in increased procurement and contract management costs to LMHAs as they assemble and expand their provider networks to include a greater number of external providers. This will be true for some LMHAs, but not all, depending upon the extent to which external providers are available and qualified to contract for services and the degree to which each LMHA is currently structured to manage a diverse provider network.

Cost reductions for LMHAs are also anticipated as infrastructure to support LMHA-provided mental health services is reduced due to expansion of the external provider network. Through the local planning process, the LMHA is allowed by the proposed rules to create a timetable for shifting the provision of services to external providers in a manner that does not jeopardize critical infrastructure. The LMHA will be able to make adjustments to its organizational and administrative structures to balance costs and cost offsets.

Local network development plans will be unique to each LMHA based on local community circumstances, therefore, estimating costs and cost offsets for the LMHAs are not possible at this time. Aside from the cost implications for LMHAs discussed above, there are no foreseeable cost implications for local governments.

Revenues to local governments are not expected to change as a result of enforcing or administering the proposed rules. The proposed rules do not change the allocation methodology or amount planned for each LMHA. Earned revenue is also not expected to change; however, payments to providers are likely to shift from the LMHA as a provider to external providers under contract with the LMHA.

There is no foreseeable increase or decrease in costs to local government as a result of enforcing the rules as proposed, because local governments do not have regulatory authority with respect to this rule. DSHS has the regulatory responsibility for enforcement of the rules.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Machelle Pharr has also determined that the proposed rules have the potential to both eliminate and create opportunities for small businesses or micro-businesses to become involved in providing mental health services funded by DSHS. Certain providers that are small businesses or micro-businesses may be impacted by the proposed rules. The increased competition resulting from implementation of the rules may cause certain small businesses or micro-businesses to lose contracts or a portion of the current business they currently have with an LMHA. In the aggregate, however, it is likely that the provider community, including providers that are small businesses or micro-businesses, will benefit from the increased opportunities resulting from the increased procurement of services by the LMHAs that will result from implementation of these rules.

While DSHS does anticipate a potential adverse economic effect on certain providers that are small or micro-businesses as a result of the proposed rules, this will not be a result of any costs of compliance with the rules, as the rules do not impose any requirements on providers. Instead, any adverse economic effect on providers that are small businesses or micro-businesses will be a result of the increased competition among providers of mental health services seeking to contract with LMHAs that are either assembling or expanding their network of providers in compliance with the new rules. It is not feasible to reduce this potentially adverse economic effect without undermining the express purposes of the Texas Health and Safety Code, §533.035(e): to require LMHAs to serve as a provider of services only as a provider of last resort and demonstrate to DSHS that it has made every reasonable attempt to solicit the development of an available provider base that is sufficient to meet the needs of consumers in its service area. The resulting increased competition among providers seeking to contract with the LMHA inevitably creates a potential for adverse economic effect on those providers who are not successful in contracting with the LMHA. This may occur, however, with respect to any provider, whether or not the provider is a small business or a micro-business.

There are no anticipated economic costs to persons, other than LMHAs as described above, who are required to comply with the section as proposed.

There is no anticipated negative impact on local employment as a result of the proposed rules. The rules as proposed will have no foreseeable net loss or gain in local employment, as they do not change the amount of resources available to provide mental health services within any local service area served by an LMHA. To the extent that private providers assume services previously provided by LMHA staff, it is expected that employees will be recruited from LMHAs to continue to perform the services.

PUBLIC BENEFIT

Joe Vesowate, Assistant Commissioner of Mental Health and Substance Abuse Services, has determined that for each year of the first five-year period the proposed rules are in effect, the public benefits anticipated include increased consumer choice of providers, increased competition to provide the best value to local communities and state government, and a transparent process for stakeholders to participate in the development of a local network development plan and ultimately a network of mental health providers that is uniquely suited to the needs of each local community. Mental health services in each community are expected to at least stay the same and are likely to increase in quantity and quality.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Sam Shore, Assistant Director, Center for Policy and Innovation, 1100 West 49th Street, Austin, Texas 78756 or by email to POLR@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal is scheduled for March 22, 2007, at 1:30 p.m., at the Department of State Health Services, Room K-100, 1100 West 49th Street, Austin, Texas 78756.

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The proposed new sections are authorized by the Texas Health and Safety Code, §533.035(a), which requires the Executive Commissioner to designate a LMHA in one or more local service areas; §533.035(b), which authorizes DSHS to disburse to LMHAs funds to be spent in the local service area for community mental health services and chemical dependency services for persons who are dually diagnosed as having both chemical dependency and mental illness; §533.035(c) which requires LMHAs to use the funds received from DSHS to ensure that mental health services are provided in the local service area; §533.035(d), which requires LMHAs to consider public input, ultimate cost-benefit, and client care issues to ensure consumer choice and the best use of public money in assembling a network of service providers and making recommendations relating to the most appropriate and available treatment alternatives for individuals in need of mental health services; §533.035(e), which requires an LMHA to serve as a provider of services only as a provider of last resort and only if the LMHA demonstrates to DSHS that the LMHA has made every reasonable attempt to solicit the development of an available and appropriate provider base that is sufficient to meet the needs of consumers in its service area and there is not a willing provider of the relevant services in the LMHA's service area or in the county where the provision of the services is needed; and §533.035(f), which requires DSHS to review the appropriateness of a LMHA's status as a service provider at least biennially. The proposed new sections are also authorized by the Texas Government Code, §531.0055, and the Texas 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 DSHS and for the administration of the Texas Health and Safety Code, Chapter 1001.

The proposed new sections affect the Texas Health and Safety Code, Chapters 533, and 1001; and the Texas Government Code, Chapter 531.

§412.751. Purpose.

The purpose of this subchapter is to establish the process for a local mental health authority (LMHA) to assemble and maintain a network of service providers as required by the Texas Health and Safety Code, §533.035(b) - (f).

§412.752. Application.

This subchapter applies to local mental health authorities (LMHAs) and their use of funds disbursed to them by the Department of State Health Services (DSHS) pursuant to the Texas Health and Safety Code, §533.035(b).

§412.753. Definitions.

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

(1) Consumer--A person seeking or receiving mental health services through a local mental health authority (LMHA).

(2) DSHS--The Texas Department of State Health Services.

(3) DSHS performance contract--The performance contract between DSHS and an LMHA that is in effect at the time of an action required under this subchapter.

(4) External provider--An organization that provides mental health services that is not an LMHA, or an individual who provides mental health services who is not an employee of an LMHA.

(5) Legally authorized representative--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and who may be a parent, guardian, or managing conservator of a child or adolescent, or a guardian of an adult.

(6) Local mental health authority (LMHA)--An entity designated as a local mental health authority in accordance with the Texas Health and Safety Code, §533.035(a).

(7) Local service area--A geographic area composed of one or more Texas counties delimiting the population which may receive mental health services through a local mental health authority.

(8) Provider--Also known as a service provider, an organization or individual who delivers mental health services.

(9) Qualified provider--A provider that is:

(A) an individual practitioner with the minimum qualifications required by the DSHS performance contract and an LMHA's approved local network development plan; or

(B) an organization that demonstrates the ability to provide services in accordance with the requirements of the DSHS performance contract.

(10) Request for Application (RFA)--A written request for applications concerning services the LMHA intends to acquire noncompetitively (i.e., every applicant who meets the requirements specified in the RFA is awarded a contract).

(11) Request for Proposal (RFP)--A written request for proposals the LMHA intends to acquire competitively (i.e., proposals are compared and one or more may be chosen for award).

(12) Service capacity--The estimated number of adults or children/adolescents served, or to be served, for each Resiliency and Disease Management service package.

(13) Stakeholders --Persons and organizations that have an interest in or who may be impacted by implementation and consequences of this subchapter, including current and former consumers; individuals eligible for mental health services through an LMHA; family members; advocacy organizations; providers; educational, social service, and other community organizations; public agencies responsible for appointing members of an LMHA's governing board; other local officials; and interested citizens.

§412.754. Establishment of a Provider Network.

Each LMHA shall assemble and maintain a network of service providers that are qualified to provide mental health services as necessary to meet the requirements of the DSHS performance contract. In assembling the network, the LMHA shall consider public input, ultimate cost-benefit, and client care issues to ensure consumer choice and best use of public money and shall comply with the requirements of this subchapter.

§412.756. Local Network Development Plan.

(a) Requirement to develop a plan. Each LMHA shall develop a local network development plan to guide the configuration and development of the LMHA's provider network. The plan shall reflect local needs and priorities and shall be designed to maximize consumer choice and consumer access to services provided by qualified providers.

(b) Schedule for plan submission. DSHS will establish a schedule for biennial submission of local network development plans that allows each LMHA at least 180 days to develop its plan.

(c) Community involvement. The LMHA's planning process shall incorporate the diversity of opinion, culture, and ethnicity of the local service area and shall ensure:

(1) active involvement of the LMHA's Planning and Network Advisory Committee; and

(2) effective participation of stakeholders.

(d) State list of interested providers. DSHS will develop a list of interested providers for each local service area.

(1) DSHS will post minimum service requirements and the service capacity information for each local service area on its website and provide a mechanism for provider response. Service capacity information will include:

(A) the overall service targets for the number of adults and children/adolescents to be served listed in the current DSHS performance contract;

(B) the current state funding allocation for the LMHA; and

(C) the number of adults and children/adolescents served in each Resiliency and Disease Management (RDM) service package for the previous fiscal year and for the current year through the most recent closed quarter.

(2) Providers may submit a description of their qualifications, including their experience as it relates to the same or similar services and populations defined in the RDM service packages, and indicate their interest in providing services in each local service area.

(3) Information submitted by interested providers will be posted on the DSHS website. This list will be available to inform procurement decisions made by LMHAs, but shall not be construed as conclusive evidence of the existence of interested qualified providers for purposes of determining that procurement is required.

(e) Assessment of network expansion. The LMHA shall assess the potential for securing external providers for the LMHA's network by using available information, including the state list of interested providers.

(f) Strategies to maximize dollars available to provide services. The LMHA shall maximize dollars available to provide services by minimizing overhead and administrative costs and achieving purchasing efficiencies. Strategies that an LMHA shall consider in achieving this objective include joint efforts with other local authorities on planning, administrative, purchasing and procurement, other authority functions, and service delivery activities.

(g) Plan content. The LMHA's local network development plan shall include the following components.

(1) A description of the process used to identify and obtain information from stakeholders and the results of community involvement.

(2) A list of the organizations and numbers of individuals by category (e.g., consumers, family members, interested citizens) who participated in the planning process.

(3) The LMHA's projected service capacity for each RDM service package based on service data from the previous fiscal year and the current year through the most recent closed quarter for services controlled by the DSHS performance contract.

(4) Baseline data, as defined by DSHS, showing the type and quantity of services provided by the LMHA and by external providers.

(5) A summary of any written inquiries received by the LMHA from external providers interested in contracting with the LMHA and the LMHA's response.

(6) An assessment of the availability of current and potential external providers, and a decision whether or not to assemble or expand an external provider network by service type and population served.

(7) Rationale for the decision whether or not to assemble or expand the external provider network.

(A) If only selected services are included in plans for network assembly or expansion, the rationale shall address each service type and population served.

(B) The rationale for a decision not to assemble or expand the external provider network shall be based on one or more of the conditions identified in §412.758(a) of this title (relating to LMHA Provider Status) or on a determination that the current network of external providers serves 100 percent of the service capacity and meets levels of consumer choice and access specified in §412.758(a)(2) and (3) of this title (relating to LMHA Provider Status).

(C) If the plan includes service provision by the LMHA, the rationale shall specify and support the volume necessary to make provision of services by the LMHA financially viable as required by §412.758(f) of this title.

(8) When the decision is to assemble or expand the external provider network, a description of the LMHA's plans for procurement, including:

(A) adult and child/adolescent services and combinations of services to be procured;

(B) percentage of service capacity to be procured for each RDM service package;

(C) the procurement methods to be used;

(D) timelines for conducting the procurement;

(E) steps and timelines for securing consumer choice decisions and transitioning consumers to new providers;

(F) for each service package, an estimate of the time needed to re-establish the service volume lost should a contract be terminated. This timeframe may be used as the minimum notice period for contract termination by an external provider; and

(G) any individual practitioner qualification(s) beyond those specified in the DSHS performance contract that the LMHA will establish as a minimum standard .

(9) Identification of services to be provided by a single provider due to economic factors that prevent an LMHA from offering consumers a choice of more than one provider.

(10) A description of how the LMHA will address consumer choice and access.

(11) A description of how service dollars will be preserved while maintaining the LMHA's ability to continue performing authority functions and administrative services related to the authority functions, which shall include a description of the LMHA's strategies, as described in subsection (f) of this section, for maximizing dollars available to provide services.

(12) A description of how the LMHA will address issues of cultural and linguistic diversity in the local community.

(13) A description of relevant past efforts to develop an external provider network and the results of those efforts.

(14) A description of barriers to attracting new external providers, the conditions that must be present to attract new external providers to the local service area, and the LMHA's plans to address any identified barriers, which may include any applicable existing agreements or circumstances identified by the LMHA pursuant to §412.758(a)(6) of this title.

(15) Plans and timeframes (covering at least two years) for developing the external provider network beyond the period covered by the current plan.

(h) Distribution of the draft plan. The LMHA shall send its draft local network development plan to local consumer and advocacy groups and shall also make it available to the public through its website and other accessible media. The LMHA shall invite public comment on the draft plan for a period of not less than 14 days and shall consider all comments received and make any revisions it deems appropriate to produce the proposed plan.

(i) Submission to DSHS. The LMHA shall submit its proposed local network development plan to DSHS with a summary of the public comments received and the LMHA's response to the comments. The LMHA shall also update its website with the proposed version of the plan, if applicable, and the date submitted to DSHS.

(j) Review by DSHS. DSHS will review each local network development plan to ensure compliance with the requirements of this subchapter and to determine whether the LMHA is making reasonable attempts to solicit the development of an available and appropriate provider base that is sufficient to meet the needs of consumers in its local service area.

(1) Key elements addressed in the review process will include:

(A) the LMHA's assembly or expansion of a network of external providers;

(B) the procurement method(s) selected by the LMHA;

(C) maximization of access and consumer choice;

(D) preservation of critical infrastructure for ensuring the continuous provision of services;

(E) preservation of service dollars while maintaining the LMHA's financial viability to continue performing authority functions; and

(F) timeframes for implementation.

(2) In reviewing an LMHA's local network development plan, DSHS will evaluate the level of effort made by the LMHA to achieve compliance and the rationale and supporting documentation for its decisions and plans, including the LMHA's response to public comment. This evaluation will include a review of any previous efforts or plans of the LMHA to determine the level of implementation and progress toward assembling a network of external providers.

(3) DSHS will review each LMHA's local network development plan with consideration of the specific context of the local service area, including population density and distribution, existing service organizations, linguistic and cultural characteristics, and local priorities.

(4) DSHS will review any plan amendment submitted in accordance with subsection (m) of this section when the results of procurement do not achieve the planned provider network assembly or expansion. This review shall include examination of the rationale for the LMHA's decision not to procure part or all of the services planned for procurement, as well as the proposed scope of the LMHA's role as a service provider in the plan amendment.

(5) DSHS will establish a mechanism for stakeholder involvement in the review process.

(6) If DSHS determines that an LMHA's local network development plan demonstrates that the LMHA is in compliance with the requirements of this subchapter and is making reasonable attempts to solicit the development of an available and appropriate provider base that is sufficient to meet the needs of consumers in its local service area, DSHS will approve the plan within 60 days of receipt. DSHS may require the LMHA to make revisions before DSHS approves the plan and will contact the LMHA within 60 days of receipt and include a timeframe for resubmission, which shall be negotiated with the LMHA.

(k) Approval of plan. After DSHS approves the local network development plan, the LMHA shall update public postings with the approved version of the plan and notice of the plan's approval by DSHS.

(l) Public access to plans. DSHS will provide a mechanism through the DSHS website for the public to access approved local network development plans.

(m) Post procurement plan amendment. If the results of a procurement alter the type or volume of services to be provided by the LMHA as described in its local network development plan, the LMHA shall submit a plan amendment to DSHS and update all publicly available copies of the plan after receiving approval from DSHS.

§412.758. LMHA Provider Status.

(a) The LMHA shall provide services only under one or more of the following conditions.

(1) The LMHA determines that interested qualified providers are not available to provide services in the LMHA's service area or that no providers met procurement specifications.

(2) The network of external providers does not provide the minimum level of consumer choice. A minimal level of consumer choice is present when consumers and their legally authorized representatives can choose from two or more qualified provider organizations in the LMHA's provider network for service packages and from two or more qualified individual practitioners in the LMHA's provider network for specific services within a service package.

(3) The network of external providers does not provide consumers of the LMHA's service area with access to services that is equivalent to or better than the level of access as of a date to be determined by DSHS. Any LMHA relying on this condition shall submit to DSHS information necessary for DSHS to verify level of access. DSHS will use the latest healthcare access technology available to the agency to measure access.

(4) The combined volume of services delivered by external providers is not sufficient to meet 100 percent of the LMHA's service capacity for each RDM service package as identified in the LMHA's local network development plan.

(5) The LMHA documents that it is necessary for the LMHA to provide certain services specified by the LMHA during the two-year period covered by the LMHA's local network development plan in order to preserve critical infrastructure to ensure continuous provision of services. Under this condition, the LMHA will identify a timeframe for transitioning to an external provider network, during which the LMHA procures an increasing proportion of the service capacity of the external provider network in successive procurement cycles. The LMHA shall give up its role as a service provider at the end of the transition period when the network has multiple external providers if the LMHA determines that external providers are willing and able to provide sufficient added service volume within the timeframe specified by the LMHA in its approved local network development plan, as provided in §412.756(g)(8)(F) of this title (relating to Local Network Development Plan), to compensate for service volume lost should any one of the external provider contracts be terminated.

(6) Existing agreements impose restrictions on the LMHA's ability to contract with external providers for specific services during the two-year period covered by the LMHA's local network development plan, or existing circumstances would result in the loss of a substantial source of revenue that supports service delivery during the two-year period covered by the plan. If the LMHA invokes this condition, DSHS may require the LMHA to provide DSHS with a copy of the relevant agreement(s). Examples of such agreements and circumstances include:

(A) grants or other sources of funding that require direct service provision by the LMHA and that cannot be amended;

(B) buildings or other physical infrastructure that are not reasonably expected to be sold, leased, or otherwise disposed of;

(C) tax-exempt government bonds or other long-term financing that place restrictions on the LMHA's ability to meet its financial obligations, either in whole or in part; and

(D) leases or contracts that cannot be terminated.

(b) If the LMHA determines, based on the rationale provided in its approved local network development plan, that the LMHA will not assemble or expand the external provider network during the two-year period covered by the plan because of one or more of the conditions identified in subsection (a) of this section, the LMHA is authorized to provide services during the two-year period covered by the plan.

(c) If the LMHA determines, based on the rationale provided in its approved local network development plan, that the LMHA will not assemble or expand the external provider network during the two-year period covered by the plan because the current network of external providers delivers 100 percent of the service capacity and meets levels of consumer access and choice specified in subsection (a)(2) and (3) of this section, the LMHA is not authorized to provide services during the two-year period covered by the plan.

(d) If the LMHA determines, based on the rationale provided in its approved local network development plan, that it will procure services from external providers, the LMHA's role as a service provider shall be based on the approved local network development plan and the results of the procurement. Any results of procurement that would change the LMHA's provider status described in its approved local network development plan shall be reflected in an approved amendment to the plan as required in §412.756(m) of this title (relating to Local Network Development Plan).

(e) Implementation of this subchapter is not intended to require the LMHA to breach existing contracts or to lose or forego substantial revenue to support the provision of services. However, the LMHA shall give prospective funders information explaining the intent and requirements of this subchapter and the LMHA shall not condition receipt of funds upon direct service provision by the LMHA. This provision does not preclude an LMHA from entering into an agreement in which the funder requires direct service provision by the LMHA.

(f) If the LMHA provides services under one or more of the conditions described in subsection (a) of this section, the LMHA shall, in its local network development plan, identify the proportion of service capacity that must be provided by the LMHA in order to make service provision financially viable and the basis for the decision. If this determination is made following procurement, the plan shall be revised through an approved amendment as required in §412.756(m) of this title.

§412.760. Consumer Selection of Providers.

(a) Provider list. The LMHA shall maintain a list with information about all providers in its network, including the LMHA when applicable.

(1) The LMHA shall require each provider in the LMHA's provider network to supply the LMHA with complete and accurate information and promptly inform the LMHA of any changes.

(2) The information shall include:

(A) provider name;

(B) provider's service location(s) and the type of services or service packages provided at each location;

(C) contact information;

(D) provider's website address; and

(E) for each location and service, the languages in which services are available.

(3) The LMHA shall maintain the provider list with the most current information supplied by providers.

(4) The LMHA shall make the current provider list available on its website and distribute it at least annually to local consumer and advocacy groups.

(b) Provider forums. The LMHA shall establish periodic forums through which providers can present information to consumers, legally authorized representatives, and other stakeholders.

(c) Process for provider selection. The LMHA shall give consumers and their legally authorized representatives the information needed to select a provider as required in this subsection.

(1) After conducting an assessment, the LMHA shall give the consumer and legally authorized representative a description of the services recommended by the LMHA and the array of service options for which the consumer may be authorized.

(2) The LMHA shall inform the consumer or legally authorized representative that they may choose any available provider on the LMHA's provider network offering services for which the consumer is authorized and that they may change providers. The LMHA shall give each consumer and legally authorized representative the list of providers offering services for which the consumer is authorized.

(3) The LMHA shall make a telephone and appropriate space available for consumers and legally authorized representatives to use in selecting a provider.

(4) Consumers and legally authorized representatives shall be given a reasonable period of time to select a provider.

(5) If a consumer or legally authorized representative does not select a provider within the designated time frame, the LMHA shall assign a provider with assignments rotating equally among all available providers.

(6) All consumers and legally authorized representatives shall be given the list of providers offering services for which the consumer is authorized and be offered the option of choosing a new provider at every scheduled treatment plan review.

(7) At any time, consumers and legally authorized representatives may request and change providers, subject to approval by the LMHA. Consumers and legally authorized representatives may request a review of any decision the LMHA makes regarding a change of providers in accordance with §401.464 of this title (relating to Notification and Appeals Process).

(8) The LMHA shall maintain documentation of the consumer's or legally authorized representative's provider selection.

§412.762. Procurement Principles.

(a) Procurement method. The LMHA shall develop and enforce procurement procedures that comply with applicable statutes and rules. The LMHA may procure mental health services required by the DSHS performance contract and the LMHA's approved network development plan by any procurement method allowed by applicable statutes and rules that provides the best value to the LMHA.

(b) Relevant factors. The LMHA shall consider all relevant factors in determining best value, which may include:

(1) the delivery terms;

(2) the quality and reliability of the respondent's services;

(3) the extent to which the services meet the LMHA's needs;

(4) indicators of probable respondent performance under the contract, such as the respondent's past performance, the respondent's financial resources and ability to perform, and the respondent's experience and responsibility;

(5) the impact on the ability of the LMHA to comply with laws and rules relating to historically underutilized businesses or relating to the procurement of services from persons with disabilities;

(6) the total long term cost to the LMHA of contracting for the respondent's services;

(7) the cost of any staff training associated with the contract;

(8) the contract price;

(9) the ability of the respondent to perform the contract and to provide the required services within the contract term, without delay or interference;

(10) the respondent's history of compliance with the laws relating to its business operations and the affected service(s) and whether it is currently in compliance;

(11) whether the respondent's financial resources are sufficient to perform the contract and to provide the service(s);

(12) whether necessary or desirable support and ancillary services are available to the respondent;

(13) the character, responsibility, integrity, reputation, and experience of the respondent;

(14) the quality of the facilities and equipment available to or proposed by the respondent;

(15) the ability of the respondent to provide continuity of services;

(16) the ability of the respondent to meet all applicable written policies, principles, regulations, and standards of care; and

(17) any other factor relevant to determining the best value for the LMHA in the context of a particular contract.

(c) Award. All competitively procured contracts must be awarded based on best value, as determined by considering all relevant factors.

(d) Renewal of mental health services contracts. The LMHA may renew a mental health services contract only if the contract meets best value as determined by considering all relevant factors.

§412.764. Request for Proposals.

If the LMHA procures mental health services through a request for proposal (RFP), the LMHA shall comply with the provisions of this section.

(1) The LMHA shall develop a draft RFP. The LMHA shall ensure the draft RFP includes all elements required by applicable statutes, rules, and procurement standards as well as:

(A) information related to the LMHA's purpose of procuring the services;

(B) the LMHA's transition goals for consumers;

(C) a detailed description of information to be included in a proposal, including:

(i) how the respondent will meet the cultural and linguistic needs of the consumers in the LMHA's local service area;

(ii) how the respondent will involve consumers, legally authorized representatives, and families at the policy and practice levels within the respondent's organization;

(iii) the respondent's transition goals for LMHA employees, if applicable;

(iv) the respondent's transition plan for consumers; and

(v) where and when the respondent will provide services within the LMHA's local service area;

(D) the maximum allowable rate for the services if the LMHA intends to reject any proposal with a rate that exceeds that amount.

(2) The LMHA shall publicize the draft RFP, request public comment on the draft RFP, and invite potential providers to describe the challenges in providing services in the LMHA's local service area. The public comment period must be at least 14 days. The LMHA shall publicize the draft RFP by:

(A) posting on the Electronic State Business Daily;

(B) posting on the LMHA's website;

(C) posting on the DSHS website;

(D) sending to providers known to be interested in providing services in the LMHA's local service area; and

(E) sending to local consumer and advocacy organizations.

(3) The LMHA shall consider all public comment in developing the final RFP. The final RFP must also include:

(A) instructions for the submission of questions concerning the procurement; and

(B) instructions for the submission of proposals.

(4) The LMHA shall publish an RFP Notice in accordance with paragraph (2)(A) - (E) of this section for at least 10 days, but not more than 90 days, prior to the due date for the submission of proposals. An RFP Notice must include:

(A) the contract term;

(B) a general description of the mental health service(s) to be purchased;

(C) the geographic area to be served;

(D) any limitations on who may submit a proposal;

(E) the procedures for obtaining the final RFP; and

(F) the date and time by which proposals must be received by the LMHA.

(5) The LMHA may not submit a proposal in response to its own RFP.

(6) The LMHA shall provide a copy of the final RFP to each person who requests one. The LMHA may not restrict competition by unreasonably eliminating or limiting participation in the procurement process.

(7) Minor changes to the final RFP may be made by the LMHA prior to the date designated for submission of proposals if everyone who has obtained the final RFP is notified of the changes and is provided equal opportunity to respond.

(8) The LMHA shall keep all information contained in proposals confidential until a contract has been awarded.

(9) The LMHA shall require that any changes to a proposal be made by the respondent in writing and be received by the LMHA prior to the submission date and time.

(10) The LMHA may validate any information in a proposal by using outside sources or materials.

(11) Award.

(A) For a proposal to be considered for award, the respondent must follow the instructions and meet the requirements specified in the final RFP.

(B) After the proposal submission date, the LMHA may obtain clarification or confirmation of information submitted in a proposal if such information is necessary to complete the award process; however, no respondent may be given information which would give that respondent a competitive advantage over any other respondent.

(C) Negotiations may be conducted with a respondent to complete the procurement process or to complete an evaluation of a proposal.

(i) If only one proposal is received that may be considered for award, the LMHA and the respondent may negotiate the contract requirements as necessary to complete the procurement process.

(ii) If more than one proposal is received that may be considered for award, the LMHA may negotiate to further evaluate proposals and to select one or more respondents for award; however, no respondent may be given information which will give that respondent a competitive advantage over any other respondent.

(D) The award of a contract procured through an RFP must be made in accordance with §412.762(c) of this title (relating to Procurement Principles).

(E) The LMHA may cancel an RFP without award.

§412.766. Open Enrollment.

If the LMHA procures mental health services through open enrollment, the LMHA shall comply with the provisions of this section.

(1) The LMHA shall develop a draft Request for Application (RFA). The LMHA shall ensure the draft RFA includes all elements required by applicable rules, statutes, and procurement standards, as well as:

(A) the rate of payment for the services and the method used to determine that rate;

(B) the percentage of service capacity the LMHA intends to procure through open enrollment;

(C) the geographic area to be served;

(D) the period of time during which the LMHA intends to accept applications;

(E) information related to the LMHA's purpose of procuring the services;

(F) the LMHA's transition goals for consumers;

(G) a detailed description of the LMHA's minimum requirements for a provider of the services to be procured, including requirements related to:

(i) the cultural and linguistic needs of the consumers in the LMHA's local service area;

(ii) the involvement of consumers, legally authorized representatives, and families at the policy and practice levels within the applicant's organization or individual practice;

(iii) transition goals for LMHA employees, if applicable;

(iv) transition plan for consumers; and

(v) location and hours of services; and

(H) a statement that the applicant must include information demonstrating how the applicant will meet the minimum requirements referenced in subparagraph (G) of this paragraph.

(2) The LMHA shall publicize the draft RFA, request public comment on the draft RFA, and invite potential providers to describe the challenges in providing services in the LMHA's local service area. The public comment period must be at least 14 days. The LMHA shall publicize the draft RFA by:

(A) posting on the Electronic State Business Daily;

(B) posting on the LMHA's website;

(C) posting on the DSHS website;

(D) sending to providers known to be interested in providing services in the LMHA's local service area; and

(E) sending to local consumer and advocacy organizations.

(3) The LMHA shall consider all public comment in developing the final RFA. The final RFA must also include:

(A) instructions for the submission of questions concerning the procurement; and

(B) instructions for the submission of applications.

(4) The LMHA shall publish an RFA Notice in accordance with paragraph (2)(A) - (E) of this section and must continuously and prominently display the RFA Notice at the LMHA's administrative office(s) as long as the LMHA is accepting applications. An RFA Notice must include:

(A) the contract term;

(B) a general description of the service(s) to be purchased;

(C) the geographic area to be served;

(D) the procedures for obtaining the final RFA;

(E) the date and time by which applications must be received by the LMHA; and

(F) a statement that the open enrollment procurement will close when the earliest of the following occurs:

(i) the date and time described in subparagraph (E) of this paragraph; or

(ii) the LMHA has received enough applications to meet the percentage of service capacity described in paragraph (1)(B) of this section and which qualify for award in accordance with paragraph (8)(B) of this section.

(5) The LMHA may not submit an application in response to its own RFA.

(6) The LMHA shall provide a copy of the final RFA to each person who requests one. The LMHA may not restrict competition by unreasonably eliminating or limiting participation in the procurement process.

(7) The LMHA shall require that any application submitted in response to an RFA include a statement that the applicant agrees to provide the specified mental health service(s) at the rate of payment described in the final RFA.

(8) Award.

(A) The LMHA may obtain clarification or confirmation of information submitted in an application.

(B) The LMHA must award a contract to all applicants:

(i) whose applications are complete;

(ii) whose applications were submitted before the procurement was closed as described in the RFA Notice pursuant to paragraph (4)(F) of this section; and

(iii) who meet all requirements specified in the final RFA.

(C) All contracts for the specific mental health services provided through open enrollment must contain the same contract term, conditions, provisions, and requirements.

(9) For every service procured through open enrollment after the effective date of this subchapter, the LMHA must, at least every two years:

(A) procure the service using the same RFA developed in accordance with paragraphs (1) - (3) of this section;

(B) procure the service using another RFA developed in accordance with paragraphs (1) - (3) of this section; or

(C) procure the service using another procurement method.

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 March 5, 2007.

TRD-200700832
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: April 15, 2007
For further information, please call: (512) 458-7111 x6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

28 TAC §7.69

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

The Texas Department of Insurance proposes the repeal of §7.69, concerning the 1999 annual and 2000 quarterly statements, other reporting forms, and diskettes or electronic filing with the National Association of Insurance Commissioners (NAIC) via the internet. The section is proposed for repeal to facilitate the proposal of a new §7.69 concerning 2006 annual and quarterly statement blanks, other reporting forms, electronic data filings with the NAIC via the internet and instructions to be used by insurers and certain other entities regulated by the Department when reporting their 2006 calendar year financial condition and business operations and activities. The Department is proposing the new §7.69 which is also published in this issue of the *Texas Register*.

Betty Patterson, Senior Associate Commissioner, Financial Program, has determined that, for the first five years the repeal will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal, and there will be no effect on local employment or local economy as result of the proposal.

Ms. Patterson also has determined that, for each year of the first five years the repeal will be in effect, the public benefit anticipated as a result of the repeal will be the elimination of obsolete regulations. There will be no economic cost to the general pub-

lic or small or micro business or individuals who are required to comply with the repeal as proposed.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on April 16, 2007, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be simultaneously submitted to Betty Patterson, Senior Associate Commissioner, Financial Program, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, oral and written comments presented at the hearing will be considered.

The repeal of the section is proposed under Insurance Code §§802.001 - 802.003, 802.051 - 802.056, and 36.001. Sections 802.001 - 802.003 and 802.051 - 802.056 authorize the Commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following articles and sections of the Insurance Code will be affected by this proposed repeal: Articles 21.39 (revised as §421.001 effective April 1, 2007) and 21.54 (revised as Chapter 2201 effective April 1, 2007), §§32.041, 802.001 - 802.003, 802.051 - 802.056, 841.255, 842.003, 842.201, 842.202, 843.151, 843.155, 844.001 - 844.005, 844.051 - 844.054, 844.101, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.002, 883.204, 884.256, 885.401, 885.403 - 885.406, 886.107, 887.009, 887.060, 887.401 - 887.407, 911.001, 911.304, 912.002, 912.201 - 912.203, 912.301, 941.252, 942.201, 961.002, 961.003, 961.052, 961.202, 982.001, 982.002, 982.004, 982.052, 982.101, 982.102, 982.103, 982.104, 982.106, 982.108, 982.110 - 982.112, 982.251 - 982.255, 982.302 - 982.306, 984.153, 984.201, 984.202, 1506.057, 2551.001, and 2551.152.

§7.69. Requirements for Filing the 1999 Annual and 2000 Quarterly Statements, Other Reporting Forms, and Diskettes or Electronic Filings with the NAIC Via the Internet.

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 February 26, 2007.

TRD-200700755
Gene Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Earliest possible date of adoption: April 15, 2007
For further information, please call: (512) 463-6327

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28 TAC §7.69

The Texas Department of Insurance proposes new §7.69, concerning the adoption by reference of reporting forms, electronic data filings with the National Association of Insurance Commissioners (NAIC) and instructions to be used by insurers, health maintenance organizations (HMOs), nonprofit legal service corporations, Texas Health Insurance Risk Pool, Texas Fair Plan Association and Texas Windstorm Insurance Association. The reporting forms include the 2006 annual and the 2006 quarterly statement blanks, stockholder information supplement, management discussion and analysis, supplemental compensation exhibit, overhead assessment exemption form for insurance company examination expenses, analysis of surplus, separate accounts, supplemental information for county mutuals and HMOs, release of contributions, reserve summary, inventory of insurance in force, and summary of insurance in force. The insurers and other regulated entities will use these forms to report their 2006 calendar year financial condition and business operations and activities. The information provided by the completion of the forms is necessary to allow the Department to monitor the solvency, business activities, and statutory compliance of the insurers and the other entities regulated by the Department. The proposed new section adopts by reference the NAIC 2006 annual and quarterly statement blanks, related instructions, and other reporting forms and instructions for reporting the financial condition, business operations and activities of insurance companies and other entities regulated by the Department. The proposed new section also requires insurance companies and other entities regulated by the Department to file such annual and quarterly statements and other reporting forms with the Department and/or the NAIC as directed. The proposed new section also defines terms relevant to the statement blanks and reporting forms and provides the dates by which certain reports are to be filed. Proposed subsection (a) explains the purpose of the section and adopts by reference the forms described in the section. Proposed subsection (b) provides that the term "Texas Edition" refers to the blanks and forms promulgated by the Commissioner. Proposed subsection (c) specifies the hierarchy of laws in the event of a conflict between the Insurance Code, this new section, and other Department regulations and the NAIC instructions specified in the new section. Proposed subsections (d) - (l) describe the forms, instructions and filing requirements for the various types of insurers and other regulated entities. Proposed subsection (m) provides that the Department may request financial reports other than those specified in this section. The forms and instructions are available for inspection in the office of the Financial Analysis and Examination Division of the Texas Department of Insurance, William P. Hobby Jr. State Office Building, 333 Guadalupe, Building 3, Third Floor, Austin, Texas. The NAIC forms and instructions may also be reviewed at www.naic.org. The new section will replace the existing §7.69, concerning the adoption of the 1999 annual and 2000 quarterly statements, other reporting forms, and diskettes or alternative electronic method of filing, which is proposed for repeal and also published in this issue of the Texas Register.

Betty Patterson, Senior Associate Commissioner, Financial Program, has determined that, for the first five years the proposed section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There will be no effect on local employment or the local economy as a result of the proposal.

Ms. Patterson also has determined that, for each year of the first five years the proposed section is in effect, the public benefits anticipated as a result of enforcing this section are the ability of the Department to provide financial information to the public and other regulatory bodies as requested, and to

monitor the financial condition of insurers and other regulated entities licensed in Texas to better assure financial solvency. The probable economic cost to persons required to comply with the section depends on several factors. Generally, each insurer or other regulated entity is required by statute to provide the Department with various annual reports on its operations. Insurance Code §802.055 provides that an insurance company shall pay all costs of preparing and furnishing to the NAIC the information required under Insurance Code §802.052, including any related filing fees. The fees associated with each company to file electronically with the NAIC database can range from $247 to $67,000 per company depending on the amount of premium base, with a limit for insurer groups of $201,000. The cost of preparing and filing the annual statement is attributable to statute and not the proposed section. Additionally, the reports and forms generally request information that is already captured or created by the insurer or other regulated entity as necessary to its business operations; therefore, the only cost involved is the transfer of that information from the company's records to the report or form. The cost of software to prepare the financial statements is approximately $2,000 for a single company. The cost of software may be greater or less depending on the amount charged by the vendor and any extra services that are agreed to between the company and the vendor. Such estimated cost may be lower based upon factors such as the type of company (e.g., life, accident and health, or property and casualty); the size of the company (e.g., large or small); and the type of business written by the company. The Department assumes that micro, small and large businesses will utilize employees who are familiar with the records of the insurer or health maintenance organization and accounting practices in general. Such individuals are estimated to be compensated from $17 to $30 per hour based on information obtained by the Department. On the basis of cost per hour of labor, there is no expected difference in cost of compliance between micro, small and larger businesses affected by this section. The Department finds that it is neither legal nor feasible to reduce the effect of the proposed section on micro or small insurers subject to the section because the information required by the forms is necessary for the Department to implement its statutorily required functions to effectively regulate and monitor the activities of insurers and other regulated entities licensed in Texas, regardless of their size.

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

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on April 16, 2007, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted simultaneously to Betty Patterson, Senior Associate Commissioner, Financial Program, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing on the proposal should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, oral and written comments presented at the hearing will be considered.

The new section is proposed under the Insurance Code §§802.001 - 802.003 and 802.051 - 802.056, which authorize the Commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business, and require certain insurers to make filings with the National Association of Insurance Commissioners; Articles 21.49 (revised as Chapter 2210 effective April 1, 2007), 21.49A (revised as Chapter 2211 effective April 1, 2007), and 21.54 (revised as Chapter 2201 effective April 1, 2007) and §§841.255, 842.003, 842.201, 842.202, 843.151, 843.155, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.002, 883.204, 884.256, 885.401, 885.403 - 885.406, 887.009, 887.060, 887.401 - 887.407, 911.001, 911.304, 912.002, 912.201 - 912.203, 912.301, 941.252, 942.201, 961.002, 961.003, 961.052, 961.202, 982.004, 982.251 - 982.254, 982.101, 982.103, 984.101 - 984.103, 984.153, 984.201, 984.202, 1506.057, 2551.001, and 2551.152 which require the filing of financial reports and other information by insurers and other regulated entities and provide specific rulemaking authority to the Commissioner relating to those insurers and other regulated entities; §§982.001, 982.002, 982.004, 982.052, 982.102 - 982.104, 982.106, 982.108, 982.110 - 982.112, 982.201 - 982.204, 982.251 - 982.255, and 982.302 - 982.306 which provide the conditions under which foreign insurers are permitted to do business in this state and require foreign insurers to comply with the provisions of the Insurance Code; §§844.001-844.005, 844.051-844.054, and 844.101 which authorize the Commissioner to adopt rules to implement the regulation of nonprofit health corporations holding a certificate of authority under the Insurance Code, Title 2, Chapter 844; Article 21.39 (revised as §421.001 effective April 1, 2007) which requires insurers to establish adequate reserves and provides for the adoption of each current formula for establishing reserves applicable to each line of insurance; §32.041 which requires the Department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements; and §36.001 which provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following articles and sections of the Insurance Code will be affected by this proposed section: Articles 21.39 (revised as §421.001 effective April 1, 2007) and 21.54 (revised as Chapter 2201 effective April 1, 2007), §§32.041, 802.001 - 802.003, 802.051 - 802.056, 841.255, 842.003, 842.201, 842.202, 843.151, 843.155, 844.001 - 844.005, 844.051 - 844.054, 844.101, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.002, 883.204, 884.256, 885.401, 885.403 - 885.406, 886.107, 887.009, 887.060, 887.401 - 887.407, 911.001, 911.304, 912.002, 912.201 - 912.203, 912.301, 941.252, 942.201, 961.002, 961.003, 961.052, 961.202, 982.001, 982.002, 982.004, 982.052, 982.101, 982.102, 982.103, 982.104, 982.106, 982.108, 982.110 - 982.112, 982.251 - 982.255, 982.302 - 982.306, 984.153, 984.201, 984.202, 1506.057, 2551.001, and 2551.152.

§7.69. Requirements for Filing the 2006 Quarterly and 2006 Annual Statements, Other Reporting Forms, and Electronic Data Filings, with the Texas Department of Insurance and the NAIC.

(a) Scope. This section specifies the requirements for insurers and other regulated entities for filing the 2006 quarterly statements, 2006 annual statement, other reporting forms, and electronic data filings, with the department and the National Association of Insurance Commissioners (NAIC) necessary to report information concerning the

financial condition and business operations and activities of insurers. This section applies to all insurers and certain other regulated entities authorized to do the business of insurance in this state and includes, but is not limited to, life insurers; accident insurers; life and accident insurers; life and health insurers; accident and health insurers; life, accident and health insurers; mutual life insurers; stipulated premium insurers; group hospital service corporations; fire insurers; fire and marine insurers; U.S. branches of alien insurers; Mexican casualty insurers; general casualty insurers; fire and casualty insurers; mutual insurers other than life; statewide mutual assessment companies; local mutual aid associations; mutual burial associations; exempt associations; county mutual insurers; Lloyd's plans; reciprocal and inter-insurance exchanges; domestic risk retention groups; domestic joint underwriting associations; title insurers; fraternal benefit societies; farm mutual insurers; health maintenance organizations; nonprofit health corporations; nonprofit legal services corporations; the Texas Health Insurance Risk Pool; the Texas Mutual Insurance Company; the Texas Windstorm Insurance Association; and the Texas FAIR Plan Association. The commissioner adopts by reference the 2006 quarterly statement blanks, the 2006 annual statement blanks and the related instruction manuals published by the NAIC, and other supplemental reporting forms specified in this section. The forms are available from the Texas Department of Insurance, Financial Analysis and Examination Division, Mail Code 303-1A, P.O. Box 149104, Austin, Texas 78714-9104. The NAIC annual and quarterly statement blanks and other NAIC supplemental reporting forms can be printed or filed electronically using annual statement software available from vendors. Insurers and other regulated entities shall properly report to the department and the NAIC by completing, in accordance with applicable instructions, the appropriate hard copy annual and quarterly statement blanks, other reporting forms, and electronic data filings.

(b) Definition. In this section "Texas Edition" refers to the blanks and forms promulgated by the commissioner.

(c) Conflicts with other laws. In the event of a conflict between the Insurance Code, any currently existing department rule, form, instructions, or any specific requirement of this section and the NAIC instructions listed in this section, the Insurance Code, the department rule, form, instruction, or the specific requirements of subsections of this section shall take precedence and in all respects control.

(d) Filing requirements for life, accident and health insurers. Each life, life and accident, life and health, accident, accident and health, mutual life, or life, accident and health insurance company, stipulated premium insurance company, group hospital service corporation, and the Texas Health Insurance Risk Pool shall complete and file the blanks, forms, or electronic data filings as directed in this subsection. This subsection does not apply to entities licensed as health maintenance organizations under the Insurance Code Chapter 843. Insurers specified in this subsection and engaged in business authorized under the Insurance Code Chapter 843 may have additional reporting requirements under subsection (h) of this section. Insurers described under this subsection may elect to file on the 2006 Health Quarterly Statement for the three quarters of 2006 and the 2006 Health Annual Statement if the insurer passes the Health Statement Test as outlined in the "2006 Annual Statement, Health Instructions." If a reporting entity qualifies under this subsection to use the 2006 Health Annual Statement, it must continue to use that annual statement for a minimum of three years or obtain written approval from the department to change to another type of annual statement. Insurers filing the 2006 Life, Accident and Health Annual Statement and the supplemental forms and reports identified in these subsections shall complete filings in accordance with the "2006 Annual Statement Instructions, Life, Accident and Health." Life insurers meeting the test set forth in this subsection to file the 2006 Health Annual Statement and the supplemental forms and reports identified in these subsections shall complete filings in accordance with the "2006 Annual Statement Instructions, Health." The electronic filings of these forms or reports with the NAIC shall be in accordance with the NAIC data specifications and instructions for electronic filing and shall include PDF format filing. The filings for insurers described in this subsection are as follows:

(1) Domestic insurer reports and forms in paper copy to be filed with the department and the NAIC as follows:

(A) 2006 Life, Accident and Health Annual Statement, including the printed investment schedule detail, due on or before March 1, 2007 (stipulated premium insurance companies, April 1, 2007);

(B) 2006 Life, Accident and Health Annual Statement of the Separate Accounts for the 2006 calendar year (required of companies maintaining separate accounts), due on or before March 1, 2007;

(C) 2006 Life, Accident and Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2006. A Texas stipulated premium insurance company, unless specifically requested to do so by the department, is not required to file quarterly data filings with the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than $1 million; and

(iii) it had a profit from operations in the prior two calendar years;

(D) 2006 Health Annual Statement, including the printed investment schedule detail, due on or before March 1, 2007 if the company qualifies as described in this subsection;

(E) 2006 Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2006 if the company qualifies as described in this subsection;

(F) All the paper copies of the annual and quarterly supplements prepared and filed on dates specified in the forms and instructions. Schedule SIS and the Supplemental Compensation Exhibit are filed only with the department;

(G) Management's Discussion and Analysis, due on or before April 1, 2007; and

(H) Statement of Actuarial Opinion, due on or before March 1, 2007. The actuarial opinion shall be prepared in accordance with paragraph (5) of this subsection.

(2) Domestic insurer reports and forms to be filed in paper copy only with the department:

(A) Schedule SIS and Stockholder Information Supplement, due on or before March 1, 2007. This filing is also required if filing a Health Annual Statement, as applicable;

(B) Supplemental Compensation Exhibit, due on or before March 1, 2007 (stipulated premium companies, April 1, 2007). This filing is also required if filing a Health Annual Statement, as applicable;

(C) The Texas Health Insurance Risk Pool shall file the 2006, Health Annual Statement and 2006 Quarterly Statements as follows:

(i) 2006 Health Annual Statement with only pages 1 - 6, and Schedule E Part 1, Part 2, and Part 3 to be completed and filed on or before March 1, 2007;

(ii) 2006 Health Quarterly Statements, with only pages 1 - 6, Schedule E, Part 1-Cash, and Part 2-Cash Equivalents to be completed and filed on or before May 15, August 15, and November 15, 2006; and

(iii) The Texas Health Insurance Risk Pool is not required to file any reports, diskettes, or electronic data filings with the NAIC.

(D) Texas Overhead Assessment Exemption Form (Texas Edition), due on or before March 1, 2007. (stipulated premium insurance companies, April 1, 2007). This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code Article 1.16(b) (revised as §451.151 effective April 1, 2007); otherwise, this form should not be filed;

(E) Analysis of Surplus (Texas Edition) for life, accident and health insurers, due on or before March 1, 2007 (stipulated premium insurance companies, April 1, 2007).

(3) Foreign companies filing only electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(4) Electronic filings with the NAIC by domestic and foreign insurers:

(A) Annual statement electronic filing and PDF filing, due on or before March 1, 2007 (stipulated premium insurance companies, April 1, 2007);

(B) Separate accounts electronic filing and PDF filing, due on or before March 1, 2007;

(C) Quarterly statement electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2006. A Texas stipulated premium insurance company, unless specifically requested to do so by the department, is not required to file quarterly electronic data filings with the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than $1 million; and

(iii) it had a profit from operations in the prior two calendar years;

(D) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for Schedule SIS and Supplemental Compensation Exhibit which are filed by domestic insurers only with the department in paper copy) due on the dates specified in the forms and instructions.

(5) Statement of Actuarial Opinion required by paragraph (1)(H) of this subsection shall be prepared in accordance with the following:

(A) Unless exempted, the Statement of Actuarial Opinion, attached to either the 2006 Life, Accident and Health Annual Statement or the 2006 Health Annual Statement, should follow the applicable provisions of §§3.1601 - 3.1608 of this title (relating to Actuarial Opinion and Memorandum Regulation).

(B) For those companies exempted from §§3.1601 - 3.1608 of this title, instructions 1 - 12, established by the NAIC, must be followed.

(C) Any company required by §3.4505(b)(3)(I) of this title (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves) to opine on the application of X factors, shall attach this opinion to the 2006 Life, Accident and Health Annual Statement or the 2006 Health Annual Statement, as applicable.

(6) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(7) A foreign insurer that is classified as a commercially domiciled insurer under the Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for life, accident and health insurers with the department, on or before March 1, 2007.

(e) Requirements for property and casualty insurers. Each fire, fire and marine, general casualty, fire and casualty, or U.S. branch of an alien insurer, county mutual insurance company, mutual insurance company other than life, Lloyd's plan, reciprocal or inter insurance exchange, domestic risk retention group, life insurance company that is licensed to write workers' compensation, any farm mutual insurance company that filed a property and casualty annual statement for the 2005 calendar year or had gross written premiums in 2006 in excess of $5 million, any Mexican casualty insurance company licensed under Insurance Code Chapter 984, domestic joint underwriting association, the Texas Mutual Insurance Company, the Texas Windstorm Insurance Association, and the Texas FAIR Plan Association shall complete and file the following blanks, forms, and diskettes or electronic data filings as described in this subsection. The forms and reports identified in this subsection shall be completed in accordance with the "2006 Annual Statement Instructions, Property and Casualty." The electronic filings with the NAIC shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing, as applicable. The filings for insurers described in this subsection are as follows:

(1) Domestic insurer reports and forms in paper copy to be filed with the department and the NAIC as follows:

(A) 2006 Property and Casualty Annual Statement, due on or before March 1, 2007;

(B) 2006 Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2006;

(C) 2006 Combined Property/Casualty Annual Statement, due on or before May 1, 2007. This statement is required only for those affiliated insurers that wrote more than $35 million in direct premiums as a group in calendar year 2006, as disclosed in Schedule T of the Annual Statement(s); and

(D) All the paper copies of the annual and quarterly supplements prepared and filed on dates specified in the forms and instructions. Schedule SIS and the Supplemental Compensation Exhibit are filed only with the department.

(E) The actuarial opinion submitted shall be prepared in accordance with the "2006 Annual Statement Instructions, Property and Casualty."

(2) Domestic insurer reports and forms to be filed in paper copy only with the department:

(A) Schedule SIS and the Stockholder Information Supplement, due on or before March 1, 2007;

(B) Supplemental Compensation Exhibit, due on or before March 1, 2007;

(C) Texas Overhead Assessment Exemption Form (Texas Edition), due on or before March 1, 2007. This form is to be filed only by domestic insurance companies that have qualified

pension contracts under Insurance Code Article 1.16(b) (revised as §401.151 effective April 1, 2007); otherwise, this form should not be filed;

(D) Supplement for County Mutuals (Texas Edition) (required of Texas county mutual companies only), due on or before March 1, 2007;

(E) Texas Supplemental A for county mutuals (Texas Edition) (required of Texas county mutual companies only), due on or before March 1, 2007;

(F) Analysis of Surplus (Texas Edition) for property and casualty insurers except Texas county mutual companies, due on or before March 1, 2007; and

(G) Actuarial Opinion Summary prepared in accordance with §7.9 of this title (relating to Examination of Actuarial Opinion for Property and Casualty Insurers).

(H) The Texas Windstorm Insurance Association shall complete and file the following:

(i) 2006 Property and Casualty Annual Statement, due on or before March 1, 2007;

(ii) 2006 Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2006; and

(iii) Management's Discussion and Analysis, due on or before April 1, 2007.

(iv) The Texas Windstorm Insurance Association is not required to file any reports with the NAIC.

(I) The Texas FAIR Plan Association shall complete and file the following:

(i) 2006 Property and Casualty Annual Statement, due on or before March 1, 2007;

(ii) 2006 Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2006;

(iii) Statement of Actuarial Opinion, due on or before March 1, 2007;

(iv) Actuarial Opinion Summary prepared in accordance with §7.9 of this title; and

(v) Management's Discussion and Analysis, due on or before April 1, 2007.

(vi) The Texas FAIR Plan Association is not required to file any reports with the NAIC.

(3) Foreign property and casualty insurers filing only electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(4) Electronic filings by domestic and foreign insurers to be filed with the NAIC:

(A) Annual statement electronic filing and PDF filing, due on or before March 1, 2007;

(B) Quarterly statement electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2006;

(C) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for electronic Schedule SIS and Supplemental Compensation Exhibit, required of domestic insurers only) due on the dates specified in the forms and instructions;

(D) Electronic combined insurance exhibit, due on or before May 1, 2007; and

(E) Combined annual statement electronic filing and PDF filing, due on or before May 1, 2007.

(5) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(6) A foreign insurer that files an application with the department for approval of a policyholder dividend shall file an Analysis of Surplus (Texas Edition) for property and casualty insurers with the application.

(7) A foreign insurer that is classified as a commercially domiciled insurer under the Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for property and casualty insurers with the department, on or before March 1, 2007.

(f) Requirements for fraternal benefit societies. Each fraternal benefit society shall complete and file the following blanks, forms, and electronic data filings for the 2006 calendar year and the three quarters for the 2006 calendar year. The forms and reports identified in this subsection shall be completed in accordance with the "2006 Annual Statement Instructions, Fraternal." The electronic data filings with the NAIC shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing. The filings for insurers described in this subsection are as follows:

(1) Domestic insurer reports and forms in paper copy to be filed with the department and the NAIC as follows:

(A) 2006 Fraternal Annual Statement, including the printed investment schedule detail, due on or before March 1, 2007;

(B) 2006 Fraternal Annual Statement of the Separate Accounts (required of companies maintaining separate accounts), due on or before March 1, 2007;

(C) 2006 Fraternal Quarterly Statements, due on or before May 15, August 15, and November 15, 2006; and

(D) All the paper copies of the annual and quarterly supplements prepared and filed on dates specified in the forms and instructions. The Supplemental Compensation Exhibit is filed only with the department by domestic insurers.

(2) Domestic insurer paper copy reports and forms to be filed only with the department:

(A) Supplemental Compensation Exhibit, due on or before March 1, 2007;

(B) Texas Assessment Exemption Form (Texas Edition), due on or before March 1, 2007. This form is to be filed only by domestic insurance companies that have qualified pension contracts under Insurance Code Article 1.16(b) (revised as §401.151 effective April 1, 2007); otherwise, this form should not be filed; and

(C) Analysis of Surplus (Texas Edition) for fraternal benefit societies, due on or before March 1, 2007.

(3) Foreign fraternal insurers filing only electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(4) Electronic filings by domestic and foreign insurers to be filed with the NAIC:

(A) Annual statement electronic filing and PDF filing, due on or before March 1, 2007;

(B) Separate accounts electronic filing and PDF filing, due on or before March 1, 2007;

(C) Quarterly statement electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2006; and

(D) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for the Supplemental Compensation Exhibit) due on the dates specified in the forms.

(5) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(6) A foreign insurer that is classified as a commercially domiciled insurer under Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for fraternal benefit societies with the department on or before March 1, 2007.

(g) Requirements for title insurers. Each title insurance company shall complete and file the following blanks and forms for the 2006 calendar year and the three quarters of the 2006 calendar year. The reports and forms identified in this subsection shall be completed in accordance with the "2006 Annual Statement Instructions, Title." The electronic version of the filings with the NAIC identified in this subsection shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing. The filings for insurers described in this subsection are as follows:

(1) Domestic insurer reports and forms in paper copy to be filed with the department and the NAIC as follows:

(A) 2006 Title Annual Statement, including printed investment schedule details, due on or before March 1, 2007;

(B) 2006 Title Quarterly Statements, due on or before May 15, August 15, and November 15, 2006;

(C) All the paper copies of the annual and quarterly supplements prepared and filed on dates described in the forms and instructions. The Schedule SIS and the Supplemental Compensation Exhibit are filed only with the department.

(D) Management's Discussion and Analysis, due on or before April 1, 2007; and

(E) Statement of Actuarial Opinion, due on or before March 1, 2007.

(2) Domestic insurer paper copy filings and reports to be filed only with the department:

(A) Supplemental Compensation Exhibit, due on or before March 1, 2007;

(B) Schedule SIS and Stockholder Information Supplement, due on or before March 1, 2007;

(C) Texas Overhead Assessment Exemption Form (Texas Edition), due on or before March 1, 2007. This form is to be filed only by domestic insurance companies that have qualified pension contracts under Insurance Code Article 1.16(b) (revised as §401.151 effective April 1, 2007); otherwise, this form should not be filed; and

(D) Analysis of Surplus (Texas Edition) for title companies, due on or before March 1, 2007.

(3) Foreign companies filing electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(4) Electronic filings with the NAIC by domestic and foreign insurers:

(A) Annual statement electronic filing and PDF filing, due on or before March 1, 2007;

(B) Quarterly statements electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2006;

(C) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for Schedule SIS and Supplemental Compensation Exhibit which are only filed by domestic insurers with the department in paper copy) due on the dates specified in the forms and instructions;

(D) Management Discussion and Analysis, due on or before April 1, 2007; and

(E) Statement of Actuarial Opinion, due on or before March 1, 2007.

(5) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(6) A foreign insurer that is classified as a commercially domiciled insurer under the Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for title insurers on or before March 1, 2007.

(h) Requirements for health maintenance organizations. Each health maintenance organization licensed pursuant to the Insurance Code Chapter 843 shall complete the 2006 Health Annual Statement and the 2006 Quarterly Statements. Insurers that are subject to life insurance statutes and are permitted or allowed to do the business of health maintenance organizations shall file the Texas HMO supplement form as part of their annual and quarterly statement filings. The forms and reports required in this subsection shall be completed in accordance with the "2006 Annual Statement Instructions, Health." The Texas supplemental forms required in this subsection and provided by the department shall be completed in accordance with the instructions on the forms. The Statement of Actuarial Opinion shall include the additional requirements of the department set forth in paragraph (1)(D) of this subsection. The electronic data filings with the NAIC shall be in accordance with NAIC data specifications and instructions and shall include PDF format filing. The Texas specific electronic filings regarding HMO data requested by the department shall be filed in accordance with the instructions provided by the department. The filings for insurers described in this subsection are as follows:

(1) Domestic and foreign insurer reports and forms in paper copy to be filed with the department and the NAIC:

(A) 2006 Health Annual Statement, including printed investment schedule detail, due on or before March 1, 2007;

(B) 2006 Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2006. With each quarterly filing, include a completed copy of Schedule E-part 3-Special Deposits, from the 2006 Health Annual Statement;

(C) Management's Discussion and Analysis, due on or before April 1, 2007; and

(D) Statement of Actuarial Opinion, due on or before March 1, 2007. In addition to the requirements set forth in the "2006

Annual Statement Instructions, Health," the department requires that the actuarial opinion include the following:

(i) The Statement of Actuarial Opinion must include assurance that an actuarial report and underlying actuarial work papers supporting the actuarial opinion will be maintained at the company and available for examination for seven years. The foregoing must be available by May 1 of the year following the year end for which the opinion was rendered or within two weeks after a request from the commissioner. The suggested wording used will depend on whether the actuary is employed by the company or is a consulting actuary. The wording for an actuary employed by the company should be similar to the following: "An actuarial report and any underlying actuarial work papers supporting the findings expressed in this Statement of Actuarial Opinion will be retained for a period of seven years in the administrative offices of the company and available for regulatory examination." The wording for a consulting actuary retained by the company should be similar to the following: "An actuarial report and any underlying actuarial work papers supporting the findings expressed in this Statement of Actuarial Opinion have been provided to the company to be retained for a period of seven years in the administrative offices of the company and available for regulatory examination."

(ii) Under the scope paragraph requirements of section 5 of the "2006 Annual Statement Instructions, Health," relating to the Actuarial Certification, the department requires that the actuarial opinion specifically list the premium deficiency reserve as an item and disclose the amount of such reserve.

(2) Domestic insurer paper copy and Texas specific filings and reports to be filed with the department:

(A) Supplemental Compensation Exhibit, due on or before March 1, 2007;

(B) Texas HMO Supplement (Texas Edition), due on or before May 15, August 15, and November 15, 2006, and March 1, 2007;

(C) Electronic filings with the department containing annual statement data, to be completed according to the instructions provided by the department, due on or before March 1, 2007;

(D) Electronic filings with the department containing quarterly statement data, to be completed according to the instructions provided by the department, due on or before May 15, August 15, and November 15, 2006; and

(E) Texas Overhead Assessment Exemption Form (Texas Edition), due on or before March 1, 2007. This form is to be filed only by domestic insurance companies that have qualified pension contracts under Insurance Code Article 1.16(b) (revised as §401.151 effective April 1, 2007); otherwise, this form should not be filed.

(3) Electronic filings with the NAIC by domestic and foreign insurers:

(A) Annual statement electronic filing, and PDF filing, due on or before March 1, 2007;

(B) Quarterly statement electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2006;

(C) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for Schedule SIS and Supplemental Compensation Exhibit which are only filed by domestic insurers with the department in paper copy) due on the dates specified in the forms and instructions;

(D) Statement of Actuarial Opinion, due on or before March 1, 2007; and

(E) Management Discussion and Analysis, due on or before April 1, 2007.

(i) Requirements for farm mutual insurers not subject to the provisions of subsection (e) of this section. Farm mutual insurance companies not subject to subsection (e) of this section shall file the following blanks and forms for the 2006 calendar year with the department only, on or before March 1, 2007:

(1) Annual Statement (Texas Edition);

(2) Texas Overhead Assessment Exemption Form (Texas Edition). This form is to be filed only by domestic insurance companies that have qualified pension contracts under Insurance Code Article 1.16(b) (revised as §401.151 effective April 1, 2007); otherwise, this form should not be filed; and

(3) Statement of Actuarial Opinion, unless exempted under §7.31 of this title (relating to Annual Statement Instructions for Farm Mutual Insurance Companies).

(j) Requirements for statewide mutual assessment associations, local mutual aid associations, mutual burial associations and exempt associations. Each statewide mutual assessment association, local mutual aid association, mutual burial association and exempt association shall complete and file the following blanks and forms for the 2006 calendar year with the department only, on or before April 1, 2007:

(1) Annual Statement (Texas Edition) (exempt companies are required to complete all pages except lines 22, 23, 24, 25, and 26 on page 3, the special instructions at the bottom of page 3, and pages 4 - 7);

(2) Texas Overhead Assessment Exemption Form (Texas Edition). This form is to be filed only by domestic insurance companies that have qualified pension contracts under Insurance Code Article 1.16(b) (revised as §401.151 effective April 1, 2007); otherwise, this form should not be filed;

(3) Release of Contributions Form (Texas Edition);

(4) 3 1/2 % Chamberlain Reserve Table (Reserve Valuation) (Texas Edition);

(5) Reserve Summary (1956 Chamberlain Table 3 1/2 %) (Texas Edition);

(6) Inventory of Insurance in Force by Age of Issue or Reserving Year (Texas Edition); and

(7) Summary of Inventory of Insurance in Force by Age and Calculation of Net Premiums (Texas Edition).

(k) Requirements for nonprofit legal service corporations. Each nonprofit legal service corporation doing business as authorized by a certificate of authority issued under the Insurance Code Chapter 961 shall complete and file the following blanks and forms for the 2006 calendar year with the department only. An actuarial opinion is not required. The following forms are to be filed on or before March 1, 2007:

(1) Annual Statement (Texas Edition); and

(2) Texas Overhead Assessment Exemption Form (Texas Edition). This form is to be filed only by domestic insurance companies that have qualified pension contracts under Insurance Code Article 1.16(b) (revised as §401.151 effective April 1, 2007); otherwise, this form should not be filed.

(l) Requirements for Mexican casualty insurance companies. Each Mexican casualty insurance company doing business as autho-

rized by a certificate of authority issued under the Insurance Code Chapter 984, shall complete and file the following blanks and forms for the 2006 calendar year with the department only. All submissions shall be printed or typed in English and all monetary values shall be clearly designated in United States dollars. The form identified in paragraph (1) of this subsection shall be completed to the extent specified in paragraph (1) of this subsection and in accordance with the "2006 Annual Statement Instructions, Property and Casualty." An actuarial opinion is not required. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code. The following blanks or forms are to be filed on or before March 1, 2007:

(1) 2006 Property and Casualty Annual Statement; provided, however, only pages 1 - 4, and 104 (Schedule T) are required to be completed;

(2) A copy of the balance sheet and the statement of profit and loss from the Mexican financial statement (printed or typed in English);

(3) A copy of the official documents issued by the Comision Nacional de Seguros y Fianzas approving the 2006 annual statement; and

(4) A copy of the current license to operate in the Republic of Mexico.

(m) Other financial reports. Nothing in this section prohibits the department from requiring any insurer or other regulated entity from filing other financial reports with 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 February 26, 2007.

TRD-200700756
Gene Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Earliest possible date of adoption: April 15, 2007
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 365. INVESTMENT RULES

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §365.10

The Texas Water Development Board (board) proposes amendments to 31 TAC §365.10 concerning Ethics and Conflicts of Interest. Amendments to this section are proposed to comply with the requirement of Texas Government Code §2263.004 that the board adopt standards of conduct applicable to financial advisors or service providers who are not employees of the state agency, who may reasonably be expected to receive more than $10,000 in compensation during a fiscal year, and who provide financial services to the state agency or advise the state agency or a member of the governing body of the state agency in connection with the management or investment of state funds.

The proposed addition of §365.10(c) incorporates the language of Government Code §2263.005 that financial analysts and service providers described by Government Code §2263.004 should avoid:

(1) any relationship with any party to a transaction with the board or the Texas Water Resources Finance Authority (authority), other than a relationship necessary to the investment or funds management services that the financial advisor or service provider performs for the board or authority, if a reasonable person could expect the relationship to diminish the financial advisor's or service provider's independence of judgment in the performance of the person's responsibilities to the board or authority.

(2) any direct or indirect pecuniary interest in any party to a transaction with the board or authority, if the transaction is connected with any financial advice or service the financial advisor or service provider provides to the board or authority or to a member of the board in connection with the management or investment of state funds.

The proposed addition of §365.13(d) requires that financial analysts or service providers described by Government Code §2263.004 must report any relationship or pecuniary interest described in subsection (c) in writing to the board's executive administrator or designated representative, without regard to whether the relationship is a direct, indirect, personal, private, commercial, or business relationship.

Veronica Hinojosa-Segura, Chief Financial Officer, has determined that for the first five-year period the amendments are in effect, there will not be fiscal implications on state and local government as a result of enforcement and administration of the amended section.

Ms. Hinojosa-Segura also determined that for the first five years the amendments, as proposed, are in effect, the public benefit anticipated as a result of enforcing the proposed amendments will be increased clarity and efficiency in the reporting of conflicts of interest. Ms. Callahan has determined there will not be economic costs to small businesses or individuals required to comply with the amendments as proposed.

Comments on the proposal will be accepted for 30 days following publication and may be submitted to Jim Bateman, Attorney, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, or by e-mail to jim.bateman@twdb.state.tx.us or by fax at (512) 463-5580.

The amendments are proposed under the authority of the Texas Water Code §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and the Texas Government Code §2263.004, which requires the Texas Water Development Board to adopt rules regarding standards of conduct applicable to financial advisors and service providers who are not employees of the Board, who provide financial services to the state agency or advise the state agency or a member of the governing body of the state agency in connection with the management or investment of state funds.

The proposed amendments implement Texas Government Code Chapter 2263.

§365.10. Ethics and Conflicts of Interest.

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

(c) Financial analysts and service providers described by Government Code §2263.004 should avoid:

(1) any relationship with any party to a transaction with the board or authority, other than a relationship necessary to the investment or funds management services that the financial advisor or service provider performs for the board or authority, if a reasonable person could expect the relationship to diminish the financial advisor's or service provider's independence of judgment in the performance of the person's responsibilities to the board or authority; and

(2) any direct or indirect pecuniary interest in any party to a transaction with the board or authority, if the transaction is connected with any financial advice or service the financial advisor or service provider provides to the board or authority or to a member of the board in connection with the management or investment of state funds.

(d) Financial analysts or service providers described by Government Code §2263.004 must report any relationship or pecuniary interest described in subsection (c) of this section in writing to the executive administrator or designated representative, without regard to whether the relationship is a direct, indirect, personal, private, commercial, or business relationship.

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 February 28, 2007.

TRD-200700795
Wendall Corrigan Braniff
General Counsel
Texas Water Development Board
Proposed date of adoption: April 24, 2007
For further information, please call: (512) 475-2052

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 362. DEFINITIONS

40 TAC §362.1

The Texas Board of Occupational Therapy Examiners (TBOTE) proposes amendments to §362.1, concerning Definitions.

The section is being amended to change terms which are no longer current. The proposed new definitions will recognize the current OT practice framework, which includes practice settings that are in the community, schools, business and other non-medical settings.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect, the pubic benefit anticipated as a result of enforcing the rule will be the improved definitions to help practitioners. There will be no effect on small businesses and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendments may be submitted to Augusta Gelfand, OT Coordinator, at (512) 305-6900, 333 Guadalupe St., #2-510, Austin, TX 78701 or augusta.gelfand@mail.capnet.state.tx.us.

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 456, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this proposal.

§362.1. Definitions.

The following words, terms, and phrases, when used in this part shall have the following meaning, unless the context clearly indicates otherwise.

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

(6) Class A Misdemeanor--An individual adjudged guilty of a Class A misdemeanor shall be punished by:

(A) A fine not to exceed $4,000 [~~$3,000~~];

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

(7) Client--The entity that receives occupational therapy. Clients may be individuals (including others involved in the individual's life who may also help or be served indirectly such as caregiver, teacher, parent, employer, spouse), groups, or populations (i.e., organizations, communities).

(8) [~~(7)~~] Complete Application--Notarized application form with photograph, license fee, jurisprudence examination with at least 70% of questions answered correctly and all other required documents.

(9) [~~(8)~~] Complete Renewal--Contains renewal fee, renewal form with signed continuing education affidavit, home/work address(es) and phone number(s), and jurisprudence examination with at least 70% of questions answered correctly.

[~~(9) Consultation--The provision of occupational therapy expertise to an individual or institution. This service may be provided on a one time only basis or on an ongoing basis.~~]

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

(12) Direct Contact--Refers to contact with the client and includes face-to-face in person or via visual telecommunications. [~~Direct Service--Refers to the provision of occupational therapy services to individuals to develop, improve, and/or restore occupational functioning.~~]

(13) Endorsement--The process by which the board issues a license to a person currently licensed in another state, the District of Columbia, or territory of the United States that maintains professional standards considered by the board to be substantially equivalent to those set forth in the Act, and is applying [~~apply~~] for a Texas license for the first time.

(14) Evaluation--The process of planning, obtaining, documenting and interpreting data necessary for intervention. This process is focused on finding out what the client wants and needs to do and on

identifying those factors that act as supports or barriers to performance. [Refers to a process of determining an individual's status for the purpose of determining the need for occupational therapy services or for implementing a treatment program.]

(15) - (17) (No change.)

[(18) Face-to-face, real time--Refers to live interactions either in person or via visual telecommunications.]

(18) [(19)] First Available Examination--Refers to the first scheduled Examination after successful completion of all educational requirements.

(19) [(20)] Health Care Condition--See Medical Condition.

(20) Intervention--The process of planning and implementing specific strategies based on the client's desired outcome, evaluation data and evidence, to effect change in the client's occupational performance leading to engagement in occupation to support participation.

(21) - (27) (No change.)

[(28) Monitored Services--The checking on the status/condition of students, patients, clients, equipment, programs, services, and staff in order to make appropriate adjustments and recommendations. Minimum contact for the purpose of monitoring will be one time a month.]

(28) [(29)] NBCOT [(formerly AOTCB)]--National Board for Certification in Occupational Therapy [(formerly American Occupational Therapy Certification Board)].

(29) [(30)] Non-licensed Personnel--OT Aide or OT Orderly or other person not licensed by this board who provides support services to occupational therapy practitioners and whose activities require on-the-job training and close personal supervision.

(30) [(31)] Non-Medical Condition--A condition where the ability to perform occupational roles is impaired by developmental disabilities, learning disabilities, the aging process, sensory impairment, psychosocial dysfunction, or other such conditions which does not require the routine intervention of a physician.

(31) Occupation--Activities of everyday life, named, organized, and given value and meaning by individuals and a culture. Occupation is everything people do to occupy themselves, including looking after themselves, enjoying life and contributing to the social and economic fabric of their communities.

(32) - (33) (No change.)

(34) Occupational Therapy Practice--includes:

(A) Methods or strategies selected to direct the process of interventions such as:

(i) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired.

(ii) Compensation, modification, or adaptation of activity or environment to enhance performance.

(iii) Maintenance and enhancement of capabilities without which performance in everyday life activities would decline.

(iv) Health promotion and wellness to enable or enhance performance in everyday life activities.

(v) Prevention of barriers to performance, including disability prevention.

(B) Evaluation of factors affecting activities of daily living (ADL) instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(i) Client factors, including body functions (such as neuromuscular, sensory, visual, perceptual, cognitive) and body structures (such as cardiovascular, digestive, integumentary, genitourinaray systems).

(ii) Habits, routines, roles and behavior patterns.

(iii) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance.

(iv) Performance skills, including motor, process, and communication/interaction skills.

(C) Interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including.

(i) Therapeutic use of occupations, exercises, and activities.

(ii) Training in self-care, self-management, home management and community/work reintegration.

(iii) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions and behavioral skills.

(iv) Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process.

(v) Education and training of individuals, including family members, caregivers, and others.

(vi) Care coordination, case management and transition services.

(vii) Consultative services to groups, programs, organizations, or communities.

(viii) Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles.

(ix) Assessment, design, fabrication, application, fitting and training in assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices.

(x) Assessment, recommendation, and training in techniques to enhance functional mobility including wheelchair management.

(xi) Driver rehabilitation and community mobility.

(xii) Management of feeding, eating, and swallowing to enable eating and feeding performance.

(xiii) Application of physical agent modalities, and use of a range of specific therapeutic procedures (such as wound care management; techniques to enhance sensory, perceptual, and cognitive processing; manual therapy techniques) to enhance performance skills.

[(34) Occupational Therapy--The use of purposeful activity or intervention to achieve functional outcomes. Achieving functional outcomes means to develop or facilitate restoration of the highest possible level of independence in interaction with the environment. Occupational Therapy provides services to individuals limited by physical injury or illness, a dysfunctional condition, cognitive impairment, psychosocial dysfunction, mental illness, a developmental or learn-

ing disability or an adverse environmental condition, whether due to trauma, illness or condition present at birth. Occupational therapy services include but are not limited to:]

[(A) The evaluation/assessment, treatment and education of or consultation with the individual, family or other persons;]

[(B) interventions directed toward developing, improving or restoring daily living skills, work readiness or work performance, play skills or leisure capacities;]

[(C) intervention methodologies to develop restore or maintain sensorimotor, oral-motor, perceptual or neuromuscular functioning; joint range of motion; emotional, motivational, cognitive or psychosocial components of performance.]

(35) - (37) (No change.)

(38) Outcome--The focus and targeted end objective of occupational therapy intervention. The overarching outcome of occupational therapy is engagement in occupation to support participation in context(s).

(39) [(38)] Place(s) of Business--Any facility in which a licensee practices.

(40) [(39)] Practice--Providing occupational therapy as a clinician, practitioner, educator, or consultant. Only a person holding a license from TBOTE may practice occupational therapy in Texas.

(41) [(40)] Accredited Educational Program [Recognized Educational Institution]--An educational institution offering a course of study in occupational therapy that has been accredited or approved by the American Occupational Therapy Association.

(42) [(41)] Regular License--A license issued by TBOTE to an applicant who has met the academic requirements and who has passed the Examination.

(43) [(42)] Rules--Refers to the TBOTE Rules.

(44) [(43)] Screening--A process used to determine a potential need for occupational therapy interventions, educational and/or other client needs. Screening information may be compiled using observation, client records, the interview process, self-reporting, and/or other documentation. [A process or tool used to determine a potential need for occupational therapy interventions. This information may be compiled using observation, medical or other records, the interview process, self-reporting, and/or other documentation.]

(45) [(44)] Supervision--See Chapter 373 of this title (relating to Supervision).

(46) [(45)] Temporary License--A license issued by TBOTE to an applicant who meets all the qualifications for a license except taking the first available Examination after completion of all education requirements.

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 March 2, 2007.

TRD-200700826

John Maline

Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: April 15, 2007

For further information, please call: (512) 305-6900

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CHAPTER 364. REQUIREMENTS FOR LICENSURE

40 TAC §364.1

The Texas Board of Occupational Therapy Examiners, (TBOTE) proposes amendments to §364.1, concerning Requirements for Licensure, to be published in the *Texas Register* for public comment.

The section is being amended to change the duration of the first license to at least two years ending at the last day of the licensee's birth month. First time licensees will have the same continuing education requirement as all regular licensees.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, 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 amended section.

Mr. Maline also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amended rule will the consistency of all licenses and continuing education requirements, eliminating the confusion of the exceptions for the first license. There will be no effect on small businesses, and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendments may be submitted to Augusta Gelfand, OT Coordinator, at (512) 305-6900, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701 or augusta.gelfand@mail.capnet.state.tx.us.

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 456, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this amended section.

§364.1. Requirements for Licensure.

(a) All applicants shall:

(1) submit a complete, notarized application form or online application with a recent passport-type color photograph of the applicant;

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

(4) have [Have] completed an accredited OT/OTA program;

(5) have [Have] completed supervised fieldwork experience, a minimum of 6 months for OT and 2 months for OTA.

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

(i) The first regular license is valid from the date of issuance until the last day of the applicant's [next] birth month, with a duration of at least two years. [If the applicant's birth month is within 90 days after the license is issued, the license will be valid until the last day of the birth month in the following year. An initial regular license will be valid no less than 3 months, no longer than 15 months.]

(j) Licensees will follow the rules for continuing education, as described in Chapter 367 of this title (relating to Continuing Education).

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 March 2, 2007.

TRD-200700827
John Maline
Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: April 15, 2007
For further information, please call: (512) 305-6900

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CHAPTER 367. CONTINUING EDUCATION

40 TAC §367.1, §367.2

The Texas Board of Occupational Therapy Examiners (TBOTE) proposes amendments to §367.1, concerning Continuing Education, and §367.2, concerning Categories of Continuing Education, to be published in the *Texas Register* for public comment.

The sections are being amended to change the continuing education requirement for the first regular license to be consistent with all regular licensees' continuing educational requirements.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amendments are in effect there will be no fiscal implication for state or local government as a result of enforcing or administering the amended sections.

Mr. Maline also has determined that for the each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amended rules will be the consistency of continuing educational requirements for all licensees. There will be no effect on small businesses, and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendments may be submitted to Augusta Gelfand, OT Coordinator, at (512) 305-6900, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701 or augusta.gelfand@mail.capnet.state.tx.us.

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 456, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by the amended sections.

§367.1. Continuing Education.

(a) (No change.)

~~[(b) New licensees holding a regular license, issued for a period of less than two years, do not have a continuing education requirement until they receive a regular two-year license.]~~

(b) [~~(c)~~] All licensees[~~, except those addressed in subsection (b) of this section~~] must complete a minimum of 30 hours of continuing education every two years during the period of time the license is current in order to renew the license, and provide this information as requested.

(c) [~~(d)~~] Those renewing a license more than 90 days late must submit proof of continuing education for the renewal.

(d) [~~(e)~~] Types of Continuing Education.

(1) A minimum of 15 hours of continuing education must be in skills specific to occupational therapy practice with patients or clients hereafter referred to as Type 2. (AOTA's Category 1 or 2)

(A) Type 2 courses teach occupational therapy treatment and intervention with patients or clients.

(B) All continuing education hours may be in Type 2, but no less than 15 hours of Type 2 is acceptable.

(2) General information hereafter referred to as Type 1 continuing education is relevant to the profession of occupational therapy. Examples include but are not limited to: supervision, education, documentation, quality improvement, administration, reimbursement and other occupational therapy related subjects. (AOTA's Category 3)

(e) [~~(f)~~] A specific continuing educational activities may be counted only one time in the licensee's career unless content has been updated or revised.

(f) [~~(g)~~] Effective January 1, 2003, Type 1 and Type 2 educational activities approved or offered by the American Occupational Therapy Association or the Texas Occupational Therapy Association are pre-approved by the board. The board will review its approval process and continuation thereof for educational activities by January 2005 and at least once each five-year period thereafter.

§367.2. Categories of Continuing Education.

(a) (No change.)

(b) Unacceptable Continuing Education Activities include but are not limited to:

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

(6) Facility-based annual required courses such as, but not limited to patient abuse, disposal of hazardous waste, patient privacy, HIPAA [~~HIPPA~~] & FERPA, blood borne pathogens, and other annual facility required repetitive courses do not count toward continuing education.

(7) (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 March 2, 2007.

TRD-200700828
John Maline
Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: April 15, 2007
For further information, please call: (512) 305-6900

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CHAPTER 370. LICENSE RENEWAL

40 TAC §370.1, §370.2

The Texas Board of Occupational Therapy Examiners, (TBOTE) proposes amendments to §370.1, concerning License Renewal and proposes new §370.2, concerning Late Renewals.

Section 370.1 is being amended to change the restored license duration to at least two years duration and to include the continuing education requirements. New language was added to recognize the online renewal process. Late renewals are proposed in new §370.2.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Maline also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be consistency in license duration and continuing education requirements. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposed amendments may be submitted to Augusta Gelfand, OT Coordinator, at (512) 305-6900, 333 Guadalupe St. #2-510, Austin, TX 78701 or augusta.gelfand@mail.capnet.state.tx.us.

The amendment and new section are proposed under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 456, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this proposal.

§370.1. License Renewal.

(a) Licensee Renewal: Licensees [~~Except for those renewing their first license, licensees~~] are required to renew their licenses every two years by the end of their birth month. A licensee may not provide occupational therapy services without a current license or renewal certificate in hand. If a license expired after all required items are submitted but before the licensee received the renewal certificate, the licensee may not provide occupational therapy services until the renewal certificate is in hand.

(1) General Requirements. The renewal application is not complete until the board receives all required items. The components required for license renewals are:

(A) signed renewal application form, or online equivalent verifying completion of 30 hours of continuing education, as per [~~see~~] Chapter 367 of this title (relating to Continuing Education);

(B) the renewal fee and any late fees which may be due;

(C) a passing score on the Jurisprudence exam; and [~~.~~]

(D) any additional forms the board may require.

(2) The licensee is responsible for ensuring that the license is renewed, whether receiving a renewal notice or not.

(3) Online Renewal. Licensees may complete their renewal online and continue to practice with their online receipt for up to 30 days or until they receive their renewal certificate.

(A) Licensees who do not have a Social Security Number on file will be unable to renew online.

(B) Licensees who are inactive status, or who wish to change their current status must renew with a paper application before the expiration date.

(C) Licensees who want to change their name on their license must submit a copy of court documents with the new name before the renewal process so that the renewal card reflects the new name. Changing the wall license requires a replacement license fee. Should the change occur out of the renewal process sequence, the licensee must pay for a duplicate renewal card and/or wall license.

[~~(2) Notification of license expiration. The Board will send notification to each licensee at least 30 days prior to the license expiration date. However, the licensee is responsible for ensuring that the license is renewed.~~]

[~~(3) Late Renewals. A renewal application is late if all required materials are not postmarked prior to the expiration date of the license. Licensees who do not complete the renewal process prior to the expiration date are subject to late fees as described.~~]

[~~(A) If the license has been expired for 90 days or less, the late fee is one-half the examination fee for the license.~~]

[~~(B) If the license has been expired for more than 90 days, the late fee is equal to the examination fee for the license. Those renewing a license more than 90 days late must submit the documentation for the required continuing education with the renewal.~~]

[~~(C) If the license has been expired for one year or longer, the person may not renew the license. To obtain a new license, the applicant must retake and pass the national examination and comply with the requirements and procedure for obtaining an original license set by Chapter 364 of this title (relating to Requirements for Licensure).~~]

[~~(D) If a reserve status licensee is called into active military service, and his or her license expires during service, the licensee may follow the requirements for renewal with no penalty if the licensee:~~]

[~~*(i)* submits the renewal within 90 days after return to reserve status; and~~]

[~~*(ii)* submits evidence of active service and its inclusive dates.~~]

[~~(E) A reserve status licensee who is called into active military service will have 6 additional months after release from active military service to submit proof of completion of the 30 required CE hours.~~]

[~~(b) Restoration of a Texas License~~]

[~~(1) Eligibility. A person whose license has been expired for one year or more may restore the license without reexamination if the applicant holds a current license in another state, and has been in practice in the other state for the two years preceding application for restoration.~~]

[~~(2) Duration. When a license is restored, the expiration date will be calculated using the nearest past birth month. The restored license will be valid for no less than one year and no more than two years.~~]

[~~(3) Requirements. The components required for restoration of a license are:~~]

[~~(A) Notarized restoration application;~~]

[~~(B) A passing score on the Jurisprudence exam;~~]

[~~(C) A fee equal to the cost of the examination fee for licensure;~~]

[~~(D) Verification of Licensure from the current licensed state;~~]

[~~(E) History of Employment form for the two years proceeding application; and~~]

[~~(F) Other application information as needed by the board.~~]

(b) [~~(c)~~] Restrictions to Renewal/Restoration

(1) The board will not renew a license if a licensee has defaulted with the Student Loan Corporation (TGSLC). Upon notice from TGSLC that a repayment agreement has been established, the license shall be renewed.

(2) The board will not renew a license if the licensee has defaulted on a court or attorney general's notice of child support. Upon receipt that repayment has been established, the license shall be renewed.

§370.2. Late Renewals.

(a) A renewal application is late if all required materials are not postmarked prior to the expiration date of the license. Licensees who do not complete the renewal process prior to the expiration date are subject to late fees as described.

(1) If the license has been expired for 90 days or less, the person may renew the license by:

(A) submitting the renewal fee and the board approved late fee; and

(B) reporting completion of the required number of contact hours of continuing education.

(2) If the license has been expired for more than 90 days, but less than one year, the person may renew the license by:

(A) submitting the renewal fee and the board approved late fee; and

(B) reporting completion of the required number of contact hours of continuing education.

(b) If the license has been expired for one year or longer, the person may not renew the license. To obtain a new license, the applicant must retake and pass the national examination and comply with the requirements and procedure for obtaining an original license set by Chapter 364 of this title (relating to Requirements for Licensure).

(c) Restoration: Persons holding a license in another state, previously licensed in Texas:

(1) The board may issue a license to a person who was licensed in Texas, moved to another state, is currently licensed in the other state, and has been engaged in the practice of occupational therapy in the other state for the two years preceding the application if the person meets the following requirements:

(A) makes the application for licensure to the board on a form prescribed by the board;

(B) submits to the board verification of the current license in good standing from the other state;

(C) submits the board form documenting continuous employment in occupational therapy in another state for the two years preceding the application;

(D) passes the jurisprudence exam; and

(E) pays the board approved fee.

(2) The license shall expire at the last day of the month of the licensee's birth. The duration shall be at least two years, and licensees shall obtain the continuing education as per Chapter 367 of this title (relating to Continuing Education).

(d) Military Service

(1) If a reserve status licensee is called into active military service, and his or her license expires during service, the licensee may follow the requirements for renewal with no penalty if the licensee:

(A) submits the renewal within 90 days after return to reserve status;

(B) submits evidence of active service and its inclusive dates.

(2) A reserve status licensee who is called into active military service will have 6 additional months after release from active military service to submit proof of completion of the 30 required CE hours as per Chapter 367 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.

Filed with the Office of the Secretary of State on March 2, 2007.

TRD-200700829
John Maline
Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: April 15, 2007
For further information, please call: (512) 305-6900

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 17. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER A. MOTOR VEHICLE CERTIFICATES OF TITLE

43 TAC §17.3

The Texas Department of Transportation (department) proposes amendments to §17.3 concerning motor vehicle certificates of title.

EXPLANATION OF PROPOSED AMENDMENTS

Transportation Code, §520.023, provides that when a vehicle is sold, the seller may submit a vehicle transfer notification form notifying the department of the sale. Upon receipt, the department updates the motor vehicle record to advise users of the record that the vehicle has been sold and the date of sale. Once the record is marked, state law creates a rebuttable presumption that the transferee is the current owner of the vehicle, and is subject to civil and criminal liability arising out of use, operation, or abandonment of the vehicle.

Until a new vehicle title changing ownership is applied for through a county tax office, the department's motor vehicle records remain in the name of the last recorded owner. If the vehicle is sold to a licensed motor vehicle dealer, the dealer is not required to title the vehicle until it is sold to a retail purchaser. In addition, the vehicle may be sold to other dealers through reassignment of the title. In some cases, the vehicle may be operated under the prior owner's name for months or even years. Each of these scenarios creates a problem when the vehicle notification transfer has not been completed because it is the prior owner who is notified when parking tickets or toll violations are issued against the vehicle, if the vehicle is abandoned, or is used in criminal activity, rather than the current owner of the vehicle.

An increasing number of sellers are receiving notification of violations for vehicles they have sold resulting in an increased volume of inquiries and complaints to the department. In part because of the $5 notification fee charged by the department, many sellers of vehicles do not notify the department of the vehicle transfer and therefore are not afforded the protection provided under the law.

Subsection §17.3(f), Department notification of second hand vehicle transfers, is amended to eliminate payment of the $5 fee for submission of a vehicle transfer notification. When the $5 fee was adopted in 1996, the costs associated with implementation of the legislation and processing the notifications was significantly higher than it is today. In 1996, the implementation costs included development, printing, and distribution costs for a new transfer notification form, revisions to the certificate of title record to include a transfer notice, and revision of department publications. Other costs included manual processing, personnel costs and postage for incomplete forms, filing, photocopy, and storage costs, and processing and collection of fees.

Since 1996, the cost to process transfer notifications has significantly decreased. The department contracts with a private vendor for data extraction and validation of transfer forms, data entry, some rejection functions for incomplete or incorrect forms submitted, and scanning or imaging the transfer notifications. The electronic capture of the form eliminates the need to maintain and file hard copies of the forms, storage space, and the time involved to retrieve copies on request.

Elimination of the fee may encourage more sellers to notify the department, and a motor vehicle dealer to provide or submit notifications to the department for their customers, thus improving the integrity of the motor vehicle ownership records. Elimination of the fee will also reduce staff processing times for collection of the fee or rejection of the form when the fee is not submitted.

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 fiscal implications for state government as a result of enforcing or administering the amendments. The additional cost to the state is estimated to be $13,944 in FY 2008, $15,617 in FY 2009, $17,491 in FY 2010, $19,590 in FY 2011, and $21,941 in FY 2012. The loss in state revenue is estimated to be $560,000 in FY 2008, $627,200 in FY 2009, $702,464 in FY 2010, $786,760 in FY 2011, and $881,171 in FY 2012. There will be no fiscal implications for 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.

Rebecca Davio, Director, Vehicle Titles and Registration 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

Ms. Davio 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 amendments will be to allow motor vehicle sellers to notify the department of the sale without requiring payment of a fee, lessen notifications of tickets and fines received by persons who no longer own the vehicle, and improve the integrity of the certificate of title records maintained by the department, providing more accurate ownership information. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §17.3 may be submitted to Rebecca Davio, Director, Vehicle Titles and Registration, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on April 16, 2007.

STATUTORY AUTHORITY

The amendments 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, §501.131, which governs the titling of motor vehicles, and Transportation Code, §520.023 which allows the department to adopt a fee for filing a notice of transfer.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 501, and Transportation Code, Chapter 520.

§17.3. Motor Vehicle Certificates of Title.

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

(f) Department notification of second hand vehicle transfers. A transferor of a motor vehicle may voluntarily make written notification to the department of the sale of the vehicle, in accordance with Transportation Code, Chapter 520, Subchapter C, and this subsection.

(1) Notification form. The department will provide a form for written notice of transfer. The form will include the:

(A) vehicle identification number of the vehicle;

(B) license plate number issued to the vehicle, if any;

(C) full name and address of the transferor;

(D) full name and address of the transferee;

(E) date the transferor delivered possession of the vehicle to the transferee;

(F) signature of the transferor; and

(G) date the transferor signed the form.

(2) Records. On receipt of written notice of transfer [~~and a $5.00 fee~~] from the transferor of a motor vehicle, the department will mark its records to indicate the date of transfer and will maintain a record of the information provided on the written notice of transfer.

(3) Ownership of transferred vehicle. After the date of the transfer of the vehicle as shown in the department records, the transferee of the vehicle is rebuttably presumed to be:

(A) the owner of the vehicle; and

(B) subject to civil and criminal liability arising out of the use, operation, or abandonment of the vehicle, to the extent that ownership of the vehicle subjects the owner of the vehicle to criminal or civil liability under another provision of the law.

(4) Certificate of title issuance. A certificate of title will not be issued in the name of a transferee until the transferee files an application for the certificate of title as described in this section.

(g) - (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 March 1, 2007.

TRD-200700814
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: April 15, 2007
For further information, please call: (512) 463-8683

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.25

The Texas State Board of Pharmacy withdraws the proposed repeal of §291.25 which appeared in the December 15, 2006, issue of the *Texas Register* (31 TexReg 9935).

Filed with the Office of the Secretary of State on March 5, 2007.

TRD-200700834
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: March 5, 2007
For further information, please call: (512) 305-8028

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22 TAC §291.25

The Texas State Board of Pharmacy withdraws the proposed new §291.25 which appeared in the December 15, 2006, issue of the *Texas Register* (31 TexReg 9936).

Filed with the Office of the Secretary of State on March 5, 2007.

TRD-200700833
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: March 5, 2007
For further information, please call: (512) 305-8028

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22 TAC §291.26

The Texas State Board of Pharmacy withdraws the proposed repeal of §291.26 which appeared in the December 15, 2006, issue of the *Texas Register* (31 TexReg 9942).

Filed with the Office of the Secretary of State on March 5, 2007.

TRD-200700835
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: March 5, 2007
For further information, please call: (512) 305-8028

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22 TAC §291.26

The Texas State Board of Pharmacy withdraws the proposed new §291.26 which appeared in the December 15, 2006, issue of the *Texas Register* (31 TexReg 9943).

Filed with the Office of the Secretary of State on March 5, 2007.

TRD-200700836
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: March 5, 2007
For further information, please call: (512) 305-8028

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SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.74

The Texas State Board of Pharmacy withdraws the proposed amendments to §291.74 which appeared in the December 15, 2006, issue of the *Texas Register* (31 TexReg 9960).

Filed with the Office of the Secretary of State on March 5, 2007.

TRD-200700837
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: March 5, 2007
For further information, please call: (512) 305-8028

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 8. MOTOR VEHICLE DISTRIBUTION

SUBCHAPTER C. LICENSES, GENERALLY

43 TAC §8.87

The Texas Department of Transportation withdraws the proposed amendments to §8.87 which appeared in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7298).

Filed with the Office of the Secretary of State on March 1, 2007.

TRD-200700816

Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: March 1, 2007
For further information, please call: (512) 463-8683

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 5. COMMUNITY SERVICES PROGRAM

SUBCHAPTER A. COMMUNITY SERVICES BLOCK GRANT

10 TAC §5.1

The Texas Department of Housing and Community Affairs (the Department) adopts without changes the repeal of §5.1, concerning the Community Services Block Grant, as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7800).

This Section is repealed in order to enact new sections to address and provide clarification on the requirements of the Community Services Block Grant.

No comments were received.

The repeal is adopted pursuant to the authority of the Texas Government Code, Chapter 2306.

No other code, articles or statutes are affected by this 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 March 5, 2007.

TRD-200700856
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: March 25, 2007
Proposal publication date: September 15, 2006
For further information, please call: (512) 475-4595

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CHAPTER 5. COMMUNITY SERVICES PROGRAMS

SUBCHAPTER A. COMMUNITY SERVICES BLOCK GRANT (CSBG)

10 TAC §§5.1 - 5.15

The Texas Department of Housing and Community Affairs (the Department) adopts with changes new §§5.1 - 5.15, concerning Community Services Block Grant (CSBG), as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7808). Sections 5.4, 5.5, 5.8, 5.10, 5.12, and 5.15 had changes, including the addition of §5.15(4) which was added to address public comment. Sections 5.1 - 5.3, 5.6, 5.7, 5.9, 5.11, 5.13, and 5.14 did not have changes and, therefore, will not be republished.

These sections are adopted in response to public comment in order to codify the regulations governing the administration of Community Services Block Grant.

The scope of the public comment concerning the Community Services Block Grant pertains to the following sections:

SUMMARY OF COMMENT RECEIVED UPON PUBLICATION OF THE PROPOSED RULES IN THE *TEXAS REGISTER* AND COMMENTS PROVIDED AT PUBLIC HEARINGS HELD BY THE DEPARTMENT ON ITEMS THAT RELATE DIRECTLY TO COMMUNITY SERVICES BLOCK GRANT.

Comment: §§5.1 - 5.15. Commentator requested clarification on the repeal of §5.1 and the new proposed rules §§5.1 - 5.15. Dallas Urban League

Department Response: The Department, in its proposed rule, is repealing §5.1 from the existing rule and replacing it with the proposed §§5.1 - 5.15.

Comment: §5.4 Eligible Entities. "The Department administers the CSBG program through the existing superefficient organizations referenced in the CSBG Act as "eligible entities." Delete last 's.' in "subrecipients." Texas Association of Community Action Agencies

Department Response: The Department concurs with the recommendation.

Comment: §5.5 Designation and Redesignation of Eligible Entities in Unserved Areas. "In order to serve as the eligible entity for the area, an entity to ensure adequate representation in each of the three required categories." Strike the word "to" and substitute with the word "must." Texas Association of Community Action Agencies

Department Response: The Department concurs with the recommendation.

Comment: §5.8(d) State Application and Plan. "In conjunction with the development of the State plan, the Department is required to hold public hearings in four locations in different areas of the state to solicit public comment on the intended use of CSBG funds." Although it is the common practice of the Department to post the State plan on its website, it is recommended that the rule state that the Department will post on its website the State plan ten (10) days in advance of public hearings. Texas Association of Community Action Agencies

Department Response: The Department, as required in Texas Government Code, Chapter 2105.054, will provide notice of a public hearing regarding the plan for a block grant not later than the 15th day before the date of the hearing. The Department will publish the Draft State Plan on the Department's website at least 10 days before the first public hearing. The Department recommends adding the following statement to §5.8(d) "The Department will provide notice of the public hearings regarding the State Plan not later than the 15th day before the date of the hearing and publish the Draft State Plan on the Department's website at least 10 days before the first public hearing."

Comment: §5.10(c)(3)(A) "Representatives of Private Groups and Interests. Private Nonprofit Entities. The entity shall select persons representing the private sector to serve on the board or it may select private sector organizations from which representatives of the private sector would be chosen to serve on the board. Law enforcement representatives are included in this group." Suggest deleting the word 'private' in 'private groups' and as referenced because as defined in the CSBG Act, groups are not referenced as 'private,' e.g. educational and law enforcement groups. Texas Association of Community Action Agencies

Department Response: The Department recommends the following revision: strike the current language in §5.10(c)(3)(A) and replace it with: "The entity shall select officials or members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served."

Comment: §5.10(c)(5)(A)(i) Selection, Composition and Powers of Boards of Eligible Entities. "The board is responsible for abiding by the terms of contracts and shall determine the policies of the agency to assure accountability for public funding." Replace the word 'agency' with 'organization.' Texas Association of Community Action Agencies

Department Response: The Department concurs with the recommendation.

Comment: §5.10(c)(5)(A)(iii) "Powers of the Board. Private Nonprofit Entities. In the event of a conflict between the powers and responsibilities required of all nonprofit corporations and those required by the CSBG Act, this rule, and the contract, the latter shall control." Revise rule to state that conflicts will be resolved in accordance with the CSBG Act. A state contract cannot supersede federal law. When a State accepts a grant governed by federal statute, the State may not impose restrictions inconsistent with federal law. Texas Association of Community Action Agencies

Department Response: The Department does not recommend any revisions to the referenced rule. All terms and conditions of the CSBG Contract are consistent with the CSBG Act, 42 U.S.C. §9901 et. seq, OMB Circulars, Uniform Grant Management Standards, and all other applicable Federal and State rules and regulations. The CSBG contract serves as the legal obligation authority between the Department and the CSBG subrecipient organization.

Comment: §5.10(c)(5)(B)(i) "Selection, Composition and Powers of Boards of Eligible Entities Public Organizations. The powers, duties, and responsibilities of the board shall be determined by the governing officials of the political subdivision." Add at the end of the sentence "in accordance with the CSBG Act." Clarification ensures governing officials must act in accordance with the CSBG Act. Texas Association of Community Action Agencies

Department Response: The Department recommends the following revision: strike the current language in §5.10(a)(5)(B)(i) and replace with "The powers, duties, and responsibilities of the board shall be determined by the governing officials of the political subdivision in accordance with the CSBG Act §676B."

Comment: §5.10(c)(5)(B)(ii) Selection, Composition and Powers of Boards of Eligible Entities. "The governing officials (of a public organization) may establish: (1) an advisory board, in which case the authority given to the advisory board depends on the powers delegated to it by the governing officials of the political subdivision; or (2) a governing board, empowering the board of directors with substantive decision-making authority and delegating the powers, duties, and responsibilities to carry out its CSBG-supported contract and functions." Replace 'advisory' board with 'administering' board, which is consistent with language in the CSBG Act and promotes a more active role. Texas Association of Community Action Agencies

Department Response: §676B.(b) of the CSBG Act does not reference the term administering board. The Act states that private nonprofit entities shall administer CSBG through a tripartite board and that public organizations shall administer the grant through a tripartite board or another mechanism specified by the State. Section 5.10(B)(ii) of the proposed CSBG rule prescribes the mechanism specified by the State. The Department recommends that the language to the referenced rule remain as published.

Comment: §5.12 Monitoring of Eligible Entities. This section makes reference to monitoring reviews, follow-up reviews, and training and technical assistance the Department may request from the Secretary; however no mention is made about the training and technical assistance the Department will provide to the superefficient, in accordance with the CSBG Act. It is recommended that this section be revised to include training and technical assistance the Department will provide to the CSBG entities. Texas Association of Community Action Agencies

Department Response: The Department recommends that the language to the referenced rule remain as published. The CSBG Act only requires that the State provide technical assistance to an eligible entity that has failed to comply with the terms of an agreement, or the State plan, or to provide services under the subtitle or to meet appropriate standards, goals, and other requirements established by the State. Additionally, the CSBG contract states that "The Department will provide technical assistance to Subrecipient and will require or suggest changes in the subrecipient's program implementation or in Subrecipient's accounting, personnel, procurement, management procedures in order to correct any deficiencies noted." The Department also provides training and technical assistance to tri-partite boards of eligible entities.

Comment: §5.12 (b) and (c) apply to the State and should be deleted from rules which apply to superefficient. Staff Recommendation

Department Response: Department staff recommends deletion of the referenced sections.

Comment: §5.15 Program Administration. "Upon Executive approval, CSBG superefficient shall enter into and execute an agreement for the receipt of CSBG funds. (1) Amendments. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver modifications and/or amendments to the CSBG contract." Revise rule to state that both parties will agree to contracts, agreements and/or

amendments, as is the common practice of the Department. Texas Association of Community Action Agencies

Department Response: The Department recommends that the language to the referenced rule remain as published. While amendments to budgets and performance statements may be requested by the subrecipient and are subject to the Department's approval, the Department will modify and/or amend the contract without agreement of the subrecipient.

Comment: §5.15 (2) Program Administration. "The Department reserves the right to deobligate funds." Move to a new 'termination' section and state in accordance with the CSBG Act what will constitute deobligation of funds. Texas Association of Community Action Agencies

Department Response: Department concurs with the recommendation and will publish the proposed §5.16 in the *Texas Register*. The new §5.16 on Termination and Reduction of Funding will read as follows: "If the State determines, on the basis of a final decision in a review pursuant to §678B of the CSBG Act, that an eligible entity fails to comply with the terms of an agreement, or the State plan, to provide services under this subtitle or to meet appropriate standards, goals, and other requirements established by the State (including performance objectives), the State shall- (1) inform the entity of the deficiency to be corrected (2) require the entity to correct the deficiency; (3)(A) Offer training and technical assistance, if appropriate, to help correct the deficiency, and prepare and submit to the Secretary a report describing the training and technical assistance offered; or (B) if the State determines that such training and technical assistance are not appropriate, prepare and submit to the Secretary a report stating the reasons for the determination; (4)(A) at the discretion of the State (taking into account the seriousness of the deficiency and the time reasonably required to correct the deficiency), allow the entity to develop and implement, within 60 days after being informed of the deficiency, a quality improvement plan to correct such deficiency within a reasonable period of time, as determined by the State, and (B) not later than 30 days after receiving from an eligible entity a proposed quality improvement plan pursuant to subparagraph (A) of this paragraph, either approve such proposed plan or specify the reasons why the proposed plan cannot be approved; and (5) after providing adequate notice and an opportunity for a hearing, initiate proceedings to terminate the designation of or reduce CSBG funding of the eligible entity unless the entity corrects the deficiency."

Comment: Throughout the rule, many references are made regarding termination of the CSBG contract, deobligation of funds and/or sanctions. However, reference is vague in several instances. It is recommended that all references to these topics be consolidated into one section and that the section address at a minimum and consistent with definitions in the CSBG Act, the causes for termination, training and technical assistance the Department will provide, sanctions the Department may impose, and the appeal process available to a CSBG entity. Texas Association of Community Action Agencies

Department Response: Department staff recommends the addition of a new §5.16 Termination and Reduction of Funding which addresses the basis and procedures related to the termination and reduction in funding.

Comment: Change the word "subrecipient" to "subcontractor." The CSBG entities subcontract with the Department and must provide a service, meet performance standards, and comply with contractual obligations. The clients of the agencies are recipients. Texas Association of Community Action Agencies

Department Response: The Department recommends that the language to the referenced rule remain as published. Community Affairs contracts and documents utilize the word subrecipient. For consistency, Department recommends continuing the use of "subrecipient."

Comment: Commenter spoke in favor of draft rules but was concerned that implementing the rules process could cause delays in getting funding to the agencies. The delays would negatively affect nonprofit organizations' cash flow and could slow or impede services to clients. As an example, the commenter spoke of the Department's quick response to Hurricanes Katrina and Rita. The commentator urged the Board to retain practices which allow timely response, such as the continued use of the policy issuance system. Combined Community Action, Inc.

Department Response: The Department appreciates the comments and will continue to operate CSBG in a manner that is responsive to the needs of the subrecipient and the persons in need while at the same time allowing public comment for rules which outline the administration and eligibility of the grant.

Comment: Commentator spoke in favor of the draft rules but cautioned the board not to implement anything that could potentially interrupt a subrecipient's ability to operate any programs for any length of time. Commenter stated that in times of crisis, such as Hurricanes Katrina and Rita, when timely responses are needed it is very important that the Department be able to respond in a timely manner. She appreciated the opportunity to provide public comment. Commenter stated that she believes the wisdom of the Board will find a balance between the two, the need for public comment and the need to meet the urgent needs of low-income persons in a timely manner. Greater East Texas Community Action Program

Department Response: The Department appreciates the comments and will continue to operate CSBG in a manner that is responsive to the needs of the subrecipient and the persons in need while at the same time allowing public comment for rules which outline the administration and eligibility of the grant.

The new sections are adopted pursuant to the authority of the Texas Government Code, Chapter 2306.

§5.4. Eligible Entities.

The Department administers the CSBG program through the existing subrecipient organizations referenced in the CSBG Act as "eligible entities."

§5.5. Designation and Redesignation of Eligible Entities in Unserved Areas.

(a) If any geographic area of the State ceases to be served by an eligible entity, the Governor may solicit applications from, and designate as an eligible entity:

(1) A private nonprofit organization (which may include an eligible entity) that is geographically located in the unserved area, that is capable of providing a broad range of services designed to eliminate poverty and foster self-sufficiency, and that meets the requirements of this subtitle;

(2) A private nonprofit eligible entity that is geographically located in an area contiguous to or within reasonable proximity of the unserved area and that is already providing related services in the unserved area; and

(3) In order to serve as the eligible entity for the area, an entity must ensure adequate representation in each of the three required categories.

(b) In designating an eligible entity, the Governor shall grant the designation to an organization of demonstrated effectiveness in meeting the goals and purposes of the CSBG Act and may give priority, in granting the designation, to eligible entities that are providing related services in the unserved area, consistent with the needs identified by a community needs assessment.

(c) If no private, nonprofit organization is identified or determined to be qualified to serve the unserved area as an eligible entity, the Governor may designate an appropriate political subdivision of the State to serve as an eligible entity for the area. In order to serve as the eligible entity for that area, the political subdivision shall have a board or other mechanism as required by the Department.

§5.8. State Application and Plan.

(a) The Department submits an application and State plan to the Secretary.

(b) The Department will submit a State plan every two years.

(c) The State plan will be submitted not later than 30 days prior to the beginning of the first fiscal year covered by the plan.

(d) In conjunction with the development of the State plan, the Department is required to hold public hearings in four locations in different areas of the state to solicit public comment on the intended use of CSBG funds. The Department will provide notice of the public hearings regarding the State Plan not later than the 15th day before the date of the hearing and publish the Draft State Plan on the Department's website at least 10 days before the first public hearing.

(e) In order to be eligible to received CSBG funds, the Department must hold at least one legislative hearing every three (3) years in conjunction with the development of the State plan. The Department submits the CSBG budget to the Texas State Legislature every two (2) years as part of the Legislative Appropriations Request (LAR), which meets the legislative hearing requirement.

§5.10. Selection, Composition and Powers of Boards of Eligible Entities.

(a) Private Nonprofit Entities.

(1) Board. In order for a private, nonprofit entity to be considered to be an eligible entity, the entity shall administer the community services block grant program through a tripartite board that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities.

(2) Selection and composition of board. The members of the board shall be selected by the entity and the board shall be composed so as to assure that

(A) One-third of the members of the board are elected public officials, holding office on the date of selection, or their representatives, except that if the number of such elected officials reasonably available and willing to serve on the board is less than one-third of the membership on the board of appointive public officials or their representatives may be counted in meeting such one-third requirement;

(B) Not fewer than one-third of the members are persons chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhood served. Each representative of low-income individuals and families selected to represent a specific neighborhood within a community must reside in the neighborhood represented by the member; and

(C) The remainder of the members are officials or members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.

(b) Public Organizations. In order for a public organization to be considered to be an eligible entity, the entity shall administer the community services block grant program through:

(1) A tripartite board, which shall have members selected by the organization and shall be composed so as to assure that not fewer than one-third of the members are persons chosen in accordance with democratic selection procedures adequate to assure that these members:

(A) Are representative of low-income individuals and families in the neighborhood served;

(B) Reside in the neighborhood served; and

(C) Are able to participate actively in the development, planning, implementation, and evaluation of programs funded with CSBG funds; or

(2) A mechanism specified by the Department to assure decision-making and participation by low-income individuals in the development, planning, implementation, and evaluation of programs funded under this subtitle.

(c) Board Membership Requirements.

(1) Public Officials.

(A) Private Nonprofit Entities.

(i) The CSBG eligible entity may select elected public officials or their representatives to serve on the board. In the event that there are not enough elected public officials reasonably available and willing to serve on the board, the entity may select appointed public officials to serve on the board.

(ii) The entity may allow governing officials of the political jurisdiction to select and/or recommend an elected or appointed official to serve on the board.

(B) Public Organizations. The public organization may select elected public officials to serve on the board. If there are not enough elected public officials reasonably available and willing to serve on the board, the public organization may select appointed public officials to serve on the board.

(C) Elected public officials or appointed public officials selected to serve on the board of either a private nonprofit entity or a public organization shall have either general governmental responsibilities, or responsibilities which require them to deal with poverty-related issues. They may not be officials with only limited, specialized, or administrative responsibilities.

(2) Low Income Representatives.

(A) An essential objective of community action is participation by low-income individuals in the programs which affect their lives; therefore, the CSBG Act and its amendments require representation of low-income individuals on boards or state-specified governing bodies. Low-income representatives need not themselves be poor, but they must be selected in a manner that ensures that they truly represent low-income individuals.

(B) The procedure used to select the low-income representatives must be documented to demonstrate that a democratic selection process was used.

(C) Among the selection processes that may be utilized, either alone or in combination, are:

(i) Nominations and elections, either within neighborhoods or within the community as a whole.

(ii) Selection at a meeting or conference to which all neighborhood residents, and especially those who are poor, are openly invited.

(iii) Selection of representatives to a community-wide board by members of neighborhood or sub-area boards who are themselves selected by neighborhood or area residents.

(iv) Selection, on a small area basis (such as a city block), of representatives who in turn select members for a community-wide board.

(v) Selection of representatives by existing organizations whose membership is predominately composed of poor persons.

(3) Representatives of Private Groups and Interests.

(A) Private Nonprofit Entities. The entity shall select officials or members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.

(B) Public Organizations.

(i) The public organization may select persons representing the private sector to serve on the board or it may select private sector organizations from which representatives of the private sector would be chosen to serve on the board.

(ii) The individuals and/or organizations representing the private sector shall be selected in such a manner as to assure that the board will benefit from broad community involvement.

(iii) The board composition for the private sector shall draw from officials or members of business, industry, labor, religious, education, law enforcement, and other major groups and interests in the community served.

(4) Permanent Representatives and Alternates.

(A) Private Nonprofit Entities.

(i) The public officials selected by a private non profit entity to serve on the board may each choose one permanent representative to serve on the board in either a full-time capacity or in place of a public official whenever the public official is unable to attend a meeting.

(ii) The representative need not be a public official but shall have full authority to act for the public official at meetings of the board.

(iii) Permanent representatives may hold an officer position on the board.

(iv) If a permanent representative is not chosen, then an alternate may be designated by the public official selected to serve on the board.

(v) Alternates may not hold an officer position on the board.

(B) Public Organizations.

(i) The public officials selected by a public organization to serve on the board may each choose one permanent representative to serve on the board (or other governing body) in either a full-time capacity or in place of a public official whenever the public official is unable to attend a meeting.

(ii) The representative need not be a public official but shall have full authority to act for the public official at meetings of the board.

(iii) Permanent representatives may hold an officer position on the board.

(iv) If a permanent representative is not chosen, then an alternate may be designated by the public official selected to serve on the board or by the public organization.

(v) Alternates may not hold an officer position on the board. If the entity or board chooses to allow alternates, alternates for low-income representatives shall be elected at the same time and in the same manner as the board representative is elected to serve on the board.

(vi) Alternates for representatives of private sector organizations may be designated to serve on the board and should be selected at the same time the board representative is selected.

(vii) In the event that the board member or alternate ceases to be a member of the organization represented, he/she shall no longer be eligible to serve on the board.

(viii) Alternates may not hold an officer position on the board.

(5) Powers of the Board.

(A) Private Nonprofit Entities.

(i) The board is responsible for abiding by the terms of contracts and shall determine the policies of the organization to assure accountability for public funding.

(ii) The board shall function as the organization's governing body with the same legal powers and responsibilities as the board of directors of any nonprofit corporation.

(iii) In the event of a conflict between the powers and responsibilities required of all nonprofit corporations and those required by the CSBG Act, this rule, and the contract, the latter shall control.

(B) Public Organizations.

(i) The powers, duties, and responsibilities of the board shall be determined by the governing officials of the political subdivision in accordance with the CSBG Act §676B.

(ii) The governing officials may establish: (1) an advisory board, in which case the authority given to the advisory board depends on the powers delegated to it by the governing officials of the political subdivision; or (2) a governing board, empowering the board of directors with substantive decision-making authority and delegating the powers, duties, and responsibilities to carry out its CSBG-supported contract and functions.

(6) Residence Requirement.

(A) All board members shall reside within the contractor's CSBG service area designated by the CSBG contract.

(B) Board members should be selected so as to provide representation for all geographic areas within the designated service area; however, greater representation may be given on the board to areas with greater poverty population. Low-income representatives must reside in the area that they represent.

(7) Limitations of Board Service.

(A) Private Nonprofit Entities.

(i) Public officials, or their representatives, serve at the pleasure of the board as long as the public official remains in office.

(ii) Low-income representatives and representatives of private organizations also serve at the pleasure of the board.

(B) Public Organizations.

(i) Board members serve at the pleasure of the public organization, or at the pleasure of the board if the board is so empowered by the public organization.

(ii) Public officials, or their representatives, may not serve on the board as a public official representative after relinquishing their elective or appointive office.

(iii) The board may petition the designating governmental body for removal of a board member.

(C) Low-income representatives and representatives of private organizations may serve up to five consecutive years but not more than a total of ten years. After five consecutive years, these representatives may not serve on the board in any capacity for one full year, after which they may serve another five consecutive years, for a total of ten years.

(8) Board Size. The board shall consist of at least fifteen (15) but not more than fifty-one (51) members.

(9) Quorum.

(A) A quorum shall consist of at least fifty (50%) percent of the non-vacant board positions. A motion may be adopted only if it receives the votes of at least a majority of the members present at a properly called meeting where there is a quorum present.

(B) Members represented by proxy (if the articles of incorporation or by-laws allow proxies) may not be counted toward a quorum.

(10) Vacancies.

(A) All board vacancies shall be filled as soon as reasonably possible.

(B) In no event shall the board allow 25% or more of either the public or poverty sector board positions to remain vacant for more than 90 days.

(C) CSBG superefficient shall report to the Department, on their monthly performance reports, the number of board vacancies by sector.

(D) Compliance with the CSBG Act requirements for board membership is a condition for eligible entities to receive CSBG funding, and there is no provision in the Act for a waiver or exception to these requirements.

(11) Removal of Board Members.

(A) Private Nonprofit Entities.

(i) Public officials, or their representatives, may be removed from the board by the board or by the entity that appointed them to serve on the board.

(ii) Other members of the board may be removed by the board or pursuant to any procedure provided in the entity's articles of incorporation or by-laws.

(B) Public Organizations.

(i) Board members may be removed from the board by the public organization, or by the board if the board is so empowered by the public organization.

(ii) The board may petition the public organization to remove a board member or the public organization may delegate the power of removal to the board.

(12) Compensation. Board members are not entitled to compensation for their service on the board. Reimbursement of reasonable and necessary expenses incurred by a board member in carrying out his/her duties is allowed.

(13) Conflict of Interest.

(A) No board member may participate in the selection, award, or administration of a subcontract supported by CSBG funds if:

(i) the board member,

(ii) any member of his/her immediate family (as defined in the CSBG contract),

(iii) the board member's partner, or

(iv) any organization which employs or is about to employ any of the above, has a financial interest in the firm or person selected to perform a subcontract.

(B) No employee of the local CSBG subrecipient nor of the Department may serve on the board.

(14) Improperly Constituted Board. If the Department determines that a board of an eligible entity is improperly constituted, the Department shall prescribe the necessary remedial action which many include termination of funding.

§5.12. Monitoring of Eligible Entities.

(a) The Department will conduct monitoring reviews to determine whether eligible entities meet the performance goals, administrative standards, financial management requirements, and other requirements of the CSBG program. The Department will conduct the following reviews of eligible entities:

(1) A full onsite review of each such entity at least once during each 3-year period.

(2) An onsite review of each newly designated entity immediately after the completion of the first year in which such entity receives funds through the community services block grant program.

(3) Follow-up reviews including prompt return visits to eligible entities, and their programs, that fail to meet the goals, standards, and requirements established by the Department.

(4) Other reviews as appropriate, including reviews of entities with programs that have had other Federal, State, or local grants (other than assistance provided under the CSBG Act) terminated for cause.

(b) The Department may place an eligible entity on a reimbursement method of payment, terminate the contract, or invoke other remedies in the event monitoring or other reliable sources reveal material deficiencies in performance or if the entity fails to correct any deficiency within the time allowed by federal or state law.

§5.15. Program Administration.

Upon Executive approval, CSBG superefficient shall enter into and execute an agreement for the receipt of CSBG funds.

(1) Amendments. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver modifications and/or amendments to the CSBG contract.

(2) The Department reserves the right to deobligate funds.

(3) Accounting Requirements. Within 60 days following the conclusion of a contract issued by the Department, the recipient

shall provide a full accounting of funds expended under the terms of the contract. Failure of a recipient to provide a full accounting of funds expended under the terms of the contract shall be sufficient reason to terminate the contract and for the Department to deny any future contract to the subrecipient.

(4) Termination and Reduction of Funding. If the State determines, on the basis of a final decision in a review pursuant to §678B of the CSBG Act, that an eligible entity fails to comply with the terms of an agreement, or the State plan, to provide services under this subtitle or to meet appropriate standards, goals, and other requirements established by the State (including performance objectives), the State shall

(A) inform the entity of the deficiency to be corrected;

(B) require the entity to correct the deficiency;

(C) Training and technical assistance.

(i) Offer training and technical assistance, if appropriate, to help correct the deficiency, and prepare and submit to the Secretary a report describing the training and technical assistance offered; or

(ii) if the State determines that such training and technical assistance are not appropriate, prepare and submit to the Secretary a report stating the reasons for the determination;

(D) Quality Improvement Plan.

(i) at the discretion of the State (taking into account the seriousness of the deficiency and the time reasonably required to correct the deficiency), allow the entity to develop and implement, within 60 days after being informed of the deficiency, a quality improvement plan to correct such deficiency within a reasonable period of time, as determined by the State, and

(ii) not later than 30 days after receiving from an eligible entity a proposed quality improvement plan, either approve such proposed plan or specify the reasons why the proposed plan cannot be approved; and

(E) after providing adequate notice and an opportunity for a hearing, initiate proceedings to terminate the designation of or reduce CSBG funding of the eligible entity unless the entity corrects the deficiency.

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 March 5, 2007.

TRD-200700855
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: March 25, 2007
Proposal publication date: September 15, 2006
For further information, please call: (512) 475-4595

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CHAPTER 51. HOUSING TRUST FUND RULES

10 TAC §§51.1 - 51.11

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of §§51.1 - 51.11, concerning the Housing Trust Fund, without changes to the proposal as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7896).

No comments were received regarding adoption of the repeals.

The repeals are adopted pursuant to the authority of the Texas Government Code, Chapter 2306.

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

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 March 5, 2007.

TRD-200700850
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: March 25, 2007
Proposal publication date: September 15, 2006
For further information, please call: (512) 475-4595

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10 TAC §§51.1 - 51.11

The Texas Department of Housing and Community Affairs (the Department) adopts new §§51.1 - 51.11, concerning the Housing Trust Fund Rules. Sections 51.3 - 51.8 and 51.10 are adopted with administrative changes as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7897). Sections 51.1, 51.2, 51.9 and 51.11 are adopted without changes and will not be republished.

These sections are adopted in order to improve the operation of the program, respond to public input, and improve consistency with other Department rules.

The scope of the public comment concerning the Housing Trust Fund pertains to the following section:

SUMMARY OF COMMENT RECEIVED UPON PUBLICATION OF THE PROPOSED RULES IN THE *TEXAS REGISTER* AND COMMENTS PROVIDED AT PUBLIC HEARINGS HELD BY THE DEPARTMENT ON ITEMS THAT RELATE DIRECTLY TO THE HOUSING TRUST FUND.

§51.4. Basic Eligible Activities.

Comment: United Cerebral Palsy of Texas: Speaker at the Austin hearing recommended the Department undertake a capacity building program to provide technical assistance to nonprofits for the development of consumer-driven barrier removal programs. The speaker further requested the use of Housing Trust funds to support consumer-driven barrier removal programs.

Board Response: The Department is committed to ensuring that Housing Trust Funds are utilized to maximize the benefit to the citizens of Texas. No change is recommended since the proposed activity would be permissible under the current rule, to the extent funds are available.

The new sections are adopted pursuant to the authority of the Texas Government Code, Chapter 2306.

§51.3. Allocation of Housing Trust Funds.

(a) Pursuant to §2306.201 of the Texas Government Code, the Housing Trust Fund is a fund administered by the Department, and placed with the Texas Treasury Safekeeping Trust Company.

(b) The fund consists of:

(1) appropriations or transfers made to the fund;

(2) unencumbered fund balances;

(3) public or private gifts or grants;

(4) investment income, including all interest, dividends, capital gains, or other income from the investment of any portion of the fund;

(5) repayments received on loans made from the fund; and

(6) funds from any other source.

(c) Each biennium the first $2.6 million available through the housing trust fund for loans, grants, or other comparable forms of assistance shall be set aside and made available exclusively for local units of government, public housing authorities, and nonprofit organizations. Any additional funds may also be made available to for-profit organizations so long as at least 45 percent of available funds in excess of the first $2.6 million shall be made available to nonprofit organizations. The remaining portion shall be competed for by nonprofit organizations, for-profit organizations, and other eligible entities, pursuant to §2306.202 of the Texas Government Code.

(d) Funds shall be allocated to achieve broad geographic dispersion by awarding funds in accordance with §2306.111(d) and (g), Texas Government Code.

(e) The Department shall require that applicants target at least 50% of those units served by housing trust funds to individuals and families earning less than 60% of median family income.

(f) Bond indenture requirements governing expenditure of bond proceeds deposited in the housing trust fund shall govern and prevail over all other allocation requirements established in this section. However, the Department shall distribute these funds in accordance with the requirements of this section to the extent possible.

(g) Housing Trust Funds may also be allocated to the Texas Bootstrap Loan Program and will be awarded in accordance with §2306.753 of the Texas Government Code.

§51.4. Basic Eligible Activities.

(a) The Department, through the housing finance division, shall use the housing trust fund to provide loans, grants, or other comparable forms of assistance to local units of government, public housing authorities, for profit entities, nonprofit organizations, and income-eligible individuals, families, and households to finance, acquire, rehabilitate, and develop decent, safe, and sanitary housing. In each biennium the first $2.6 million available through the housing trust fund for loans, grants, or other comparable forms of assistance shall be set aside and made available exclusively for local units of government, public housing authorities, and nonprofit organizations. Any additional funds may also be made available to for-profit organizations so long as at least 45 percent of available funds in excess of the first $2.6 million shall be made available to nonprofit organizations for the purpose of acquiring, rehabilitating, and developing decent, safe, and sanitary housing. The remaining portion shall be competed for by nonprofit organizations, for-profit organizations, and other eligible entities. Notwithstanding any other section of this chapter, but subject to the limitations in §2306.251(c) of the Texas Government Code, the Department may also use the fund to acquire property to endow the fund.

(b) Use of the fund is limited to providing:

(1) assistance for individuals and families of low and very low income;

(2) technical assistance and capacity building to nonprofit organizations engaged in developing housing for individuals and families of low and very low income; and

(3) security for repayment of revenue bonds issued to finance housing for individuals and families of low and very low income.

§51.5. Ineligible Activities and Restrictions.

(a) Ineligible Applicants: The following violations will cause an Applicant, and any applications they have submitted, to be ineligible:

(1) Previously funded recipient(s) whose Housing Trust Funds have been partially or fully deobligated due to failure to meet contractual obligations during the 12 months prior to the current funding cycle;

(2) Applicants, or persons affiliated with the Applicant that have been barred, suspended, or terminated from procurement in a state or federal program and listed in the List of Parties Excluded from Federal Procurement of Non-procurement Programs;

(3) Applicants or persons affiliated with the Applicant that are subject of enforcement action under state or federal securities law, or are the subject of an enforcement proceeding with a state or federal agency or another governmental entity;

(4) Applicants or persons affiliated with the Applicant that have unresolved audit findings related to previous or current funding agreements with the Department;

(5) Applicants or persons affiliated with the Applicant that have delinquent loans, fees or other commitments with the Department, until payment is made;

(6) Applicants who have not satisfied all threshold requirements described in this title, and the NOFA to which they are responding, and for which Administrative Deficiencies were unresolved;

(7) Refinancing or rehabilitation of properties constructed within the past 5 years and previously funded by the Department are not eligible;

(8) Applicants who have submitted incomplete Applications;

(9) Applicants or persons affiliated with the Applicant that have been otherwise barred by the Department;

(10) Applicants are subject to §1.13 of this title;

(11) Applicants or persons affiliated with the Applicant that have breached a contract with a public agency; or

(12) The acquisition, rehabilitation, reconstruction or refinancing of affordable rental housing constructed within the past 5 years or previously funded by the Department.

(b) Displacement of Existing Affordable Housing. Pursuant to §2306.203(a)(4) of the Texas Government Code, Housing Trust Funds shall not be utilized on a development that has the effect of permanently displacing low, very low, and extremely low income persons and families. Low-Income persons who may be temporarily displaced by the rehabilitation of affordable housing may be eligible for compensation of moving and relocation expenses. If a Housing Trust Fund recipient violates the permanent dislocation provision of this subsection, that recipient risks loss of Housing Trust Funds and the landlord/developer must pay the affected tenant's costs and all moving expenses.

(c) Communication with Department Employees. Communication with Department staff by Applicants that submit a Pre-Application or Application must follow the following requirements. During the period beginning on the date a Development Pre-Application or Application is filed and ending on the date the Board makes a final decision with respect to any approval of that Application, the Applicant or a Related Party, and any Person that is active in the construction, rehabilitation, ownership or Control of the proposed Development including a General Partner or contractor and a Principal or Affiliate of a General Partner or contractor, or individual employed as a lobbyist by the Applicant or a Related Party, may communicate with an employee of the Department about the Application orally or in written form, which includes electronic communications through the Internet, so long as that communication satisfies the conditions established under paragraphs (1) - (3) of this subsection. Section 49.5(b)(6) of this title applies to all communication with Board members. Communications with Department employees is unrestricted during any board meeting or public hearing held with respect to that Application.

(1) The communication must be restricted to technical or administrative matters directly affecting the Application;

(2) The communication must occur or be received on the premises of the Department during established business hours (emails may be sent and received after business hours);

(3) A record of the communication must be maintained by the Department and included with the Application for purposes of board review and must contain the date, time, and means of communication; the names and position titles of the persons involved in the communication and, if applicable, the person's relationship to the Applicant; the subject matter of the communication; and a summary of any action taken as a result of the communication. (2306.1113)

(d) Material Noncompliance. Each Application will be reviewed for its compliance history by the Department, consistent with Chapter 60 of this title. Applicants, or persons affiliated with an Application, found to have a Development or Contract in Material Noncompliance with the Department, will have their Applications terminated.

(e) Rental Housing Development Site and Development Restrictions. Restrictions include all those items referred to in Chapter 2306 of the Texas Government Code and any additional items included in the NOFA for rental housing developments.

(f) Limitations on the Size of Developments. Developments involving new construction will be limited to 252 units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum unit restrictions. The minimum number of units shall be 4 units.

§51.6. Application Procedure and Requirements.

(a) In distributing funds, the Department will release a NOFA and/or request for proposals that identifies the uses of the available funds and the specific criteria that will be utilized in evaluating applicants.

(b) Applicants must submit a complete application to be considered for funding, along with an application fee determined by the Department and outlined in the NOFA. Applications containing false information will be disqualified. Applications submitted under a Competitive Application Cycle must be received by the application deadline or they will be disqualified. Disqualified Applicants will be notified in writing. All applications must be received by the Department by 5:00 p.m. regardless of method of delivery.

(c) Applications received by the Department in response to a Competitive Application Cycle NOFA for housing development activities will be handled in the following manner:

(1) Threshold Evaluation. Applications submitted for Rental Housing Developments will be required to meet the Threshold Criteria defined by the NOFA and any Threshold Criteria that may be applicable to the Housing Trust Fund as defined by this rule and Chapter 2306 of the Texas Government Code.

(2) Scoring Evaluation. For an Application to be scored, the Application must demonstrate that the Development meets all of the Threshold Criteria requirements. Applications that satisfy the Threshold Criteria will then be scored and ranked according to the Scoring Criteria identified in the NOFA.

(3) Financial Feasibility Evaluation. After the Application is scored, the Department will assign, as herein described, Developments for review for financial feasibility by the Department's Real Estate Analysis Division. The Department shall underwrite an Application to determine the financial feasibility of the Development and an appropriate funding amount and terms. In making this determination, the Department will use the Underwriting Rules and Guidelines, §1.32 of this title.

(d) Applications received by the Department in response to an Open Application Cycle NOFA for housing development activities will be handled in the following manner:

(1) The Department will accept applications on an ongoing basis, until such date when the Department makes notice to the public that the Open Application Cycle has been closed. All applications must be received during business hours and no later than 5:00 p.m. on any business day. The Department may limit the eligibility of applications in the NOFA.

(2) Each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a "received date" based on the date and time it is physically received by the Department. Then each application will be reviewed on its own merits in three review phases. Applications will continue to be prioritized for funding based on their "received date" unless they do not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over applications that may have an earlier "received date" but that did not timely complete a phase of review.

(A) Phase One will begin as of the received date. Applications not being considered as CHDOs will be passed through to Phase Two upon receipt. Phase One will only entail the review of the CHDO Certification package. The Department will ensure review of these materials and issue notice of any deficiencies on the CHDO Certification package within 30 days of the received date. Applicants who are able to resolve their deficiencies within seven business days will be forwarded into Phase Two and will continue to be prioritized by their received date. Applications that do not resolve all deficiencies seven business days will be retained in Phase One until all deficiencies have been addressed or resolved by the Applicant to the Department's satisfaction. Only upon satisfaction of all deficiencies will the Application be forwarded to Phase Two. Applications that have not proceeded out of Phase One within 50 days of the received date will be terminated and must reapply for consideration of funds.

(B) Phase Two will include a review of all application requirements. The Department will ensure review of all application materials required under the NOFA and issue notice of any deficiencies on the application's satisfaction of threshold and eligibility within 45 days of the date it enters Phase Two. Applicants who are able to

resolve their deficiencies within seven business days will be forwarded into Phase Three and will continue to be prioritized by their received date. Applications which do not resolve all deficiencies within seven business days, will be retained in Phase Two until all deficiencies have been addressed or resolved by the Applicant to the Department's satisfaction. Only upon resolution of all deficiencies will the Application be forwarded to Phase Three. Applications that have not left Phase Two within 65 days of the date it entered Phase Two will be terminated and must reapply for consideration of funds.

(C) Phase Three will include a comprehensive review for material noncompliance and financial feasibility by the Department. Financial feasibility reviews will be conducted by the Department's Real Estate Analysis (REA) Division consistent with 10 TAC §1.32, Underwriting Rules and Guidelines. REA will draft an underwriting report that will identify staff's recommended loan terms, the loan or grant amount and any conditions to be placed on the development. The Department will ensure financial feasibility review and issue notice of any required deficiencies for that feasibility review within 45 days of the date it enters Phase Three. Applicants who are able to resolve their deficiencies within seven business days will be forwarded into "Recommended Status" and will continue to be prioritized by their received date. Applications with deficiencies not satisfied within seven business days, will be retained in Phase Three until Applicant resolves all deficiencies to the Department's satisfaction. Only upon satisfaction of all deficiencies will the Application be forwarded to the Department's Executive Award Review and Advisory Committee for final approval before recommendation to the Board. Any application that has not left Phase Three after 65 days of the date it entered Phase Three will be terminated and must reapply for consideration of funds.

(D) Upon completion of Phase Three, applications will be presented to the Executive Awards Review and Advisory Committee (the Committee). If satisfactory, the Committee will then recommend the award of funds to the Board, as long as funds are still available for this activity under the applicable NOFA. If Phase Three is completed at least 21 days prior to the next Board meeting, it will be placed on the next Board meeting's agenda. If Phase Three is completed with less than 21 days before the next Board meeting, the recommendation will be placed on the following month's Board meeting agenda.

(E) Because applications are prioritized by "received date," it is possible that the Department will expend all available funds before an application has been completely reviewed. If all funds are committed before an application has completed all phases of the review process, the Department will notify the applicant that their application will remain active for 90 days in its current phase. If new funds become available applications already under review will continue with their review without losing their received date status. If new funds do not become available within 90 days of the notification, the applicant will be notified that their application is no longer under consideration and in the event of future funding, they would be required to reapply. If on the date an application is received by the Department, no funds are available under the NOFA, the applicant will be notified that no funds remain under the NOFA and that the application will not be processed.

(F) The Department may decline to consider any application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. Beyond the use of the "received date", staff will make selections based upon the need for housing in the community where the development is located, the effectiveness with which the proposed use of funds would aid in continuing to provide affordable housing, the general feasibility of the proposed transaction, and the credibility of the applicant. The Department is not obligated to proceed with any action pertaining to any applications which are received, and may decide it is in the Department's best interest to refrain from funding any application. The Department strives, through its terms, to maximize the return on its funds while ensuring the financial feasibility of a development. The Department reserves the right to negotiate individual elements of any application.

(e) Layered Applications. If an Application is submitted to the Department for a Development that requests funds from two separate housing finance programs, and only one of the housing finance programs is operated as a competitive cycle, then the Application will be handled in accordance with the competitive cycle guidelines for that program. If an Application is submitted for two separate housing finance programs where both programs are either open cycle, or competitive, the Application will be handled in accordance with the most restrictive program rules with the approval of the Department's Executive Director.

(f) Administrative Deficiencies. If an application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the application, the Department staff may request clarification or correction of such Administrative Deficiencies including both threshold and/or scoring documentation. The Department staff may request clarification or correction in a deficiency notice in the form of a facsimile and a telephone call to the Applicant advising that such a request has been transmitted. Administrative Deficiencies given to Applications submitted under an Open Application Cycle NOFA will be handled in the manner described under Part B of this subsection (d)(2)(B). Applications submitted under a Competitive Application Cycle NOFA will be treated in the following manner. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department within five business days of the deficiency notice date, then five points shall be deducted from the application score for each additional day the deficiency remains unresolved. If deficiencies are not clarified or corrected within seven business days from the deficiency notice date, then the application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. An Applicant may not change or supplement an application in any manner after the filing deadline, except in response to a direct request from the Department.

(g) All applications for housing development activities will be reviewed in the following manner:

(1) A site visit will be conducted. Applicants must receive recommendation for approval from the Department to be considered for funding by the Board.

(2) Board approval for the award of Development activity funds is conditioned upon a completed loan closing and any other conditions deemed necessary by the Department.

(h) Applications other than Rental Housing Developments will be reviewed and evaluated in accordance with the NOFA for that activity.

(i) Applicants may appeal staff's decisions regarding their applications consistent with §1.7 of this title.

(j) Alternative Dispute Resolution Policy. Applicant's may utilize the Department's Alternative Dispute Resolution process as defined by §1.17 of this title.

(k) Public Notification. Applicants for Rental Development activities will be required to provide written notification to each of the following persons or entities 14 days prior to the submission of any application package. Failure to provide written notifications 14 days prior to the submission of an application package at a minimum will

cause an application to lose its "received by date" under open application cycles, or be terminated under competitive application cycles. Applicants must provide notifications to:

(1) the executive officer and elected members of the governing board of the community where the development will be located. This includes municipal governing boards, city councils, and County governing boards;

(2) all neighborhood organizations whose defined boundaries include the location of the Development;

(3) executive officer and Board President of the school district that covers the location of the Development;

(4) residents of occupied housing units that may be rehabilitated, reconstructed or demolished; and

(5) the State Representative and State Senator whose district covers the location of the Development.

(6) The notification letter must include, but not be limited to, the address of the development site, the number of units to be built or rehabilitated, the proposed rent and income levels to be served, and all other details required of the NOFA and Application Manual.

§51.7. Criteria for Funding.

(a) In considering applications for funding, the Department considers the following requirements under §2306.203, Texas Government Code, and such others as may be enumerated during the funding cycle:

(1) Minimum Eligibility Criteria. To be considered for funding, an Applicant must first demonstrate that it meets each of the following threshold criteria:

(A) the application is consistent with the requirements established in this rule and the NOFA;

(B) the applicant provides evidence of its ability to carry out the proposal in the areas of financing, acquiring, rehabilitating, developing or managing an affordable housing development;

(C) the proposal addresses and identifies a housing need. This assessment will be based on statistical data, surveys and other indicators of need as appropriate; and

(D) any outstanding Housing Trust Fund Pre-Development loans for the same proposed Development site must be paid in full at the time of loan closing for the current requested funds.

(2) Evaluation Factors. Pursuant to §2306.203(c) of the Texas Government Code, the criteria used to evaluate applications, as more fully reflected in the NOFA, will include at a minimum the:

(A) leveraging of federal funds including the extent to which the project will leverage State funds with other resources, including federal resources, and private sector funds;

(B) cost-effectiveness of a proposed development; and

(C) extent to which individuals and families of very low income and extremely low income are served by the development.

(b) The Board has final approval on all recommendations for funding.

(c) Eligible Applicants that have been approved for funding and that require a material change in the project description must provide a written request for the material change to the Department prior to implementing the change.

(1) A material change may include, but is not limited to, the following:

(A) Change in project site;

(B) Change in the number of units or set asides; and

(C) An increase in funding that is not permitted under subsection (d) of this section.

(2) Failure to comply with this subsection may result in the termination of funding to Applicant.

(d) The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver modifications and/or amendments to any Housing Trust Fund development proposal or written agreement provided that:

(1) in the case of a modification or amendment to the dollar amount of the request or award, such modification or amendment does not increase the dollar amount by more than 25% of the original request or award, or $50,000, whichever is greater;

(2) in the case of all other modifications or amendments, such modification or amendment does not, in the estimation of the Executive Director, significantly decrease the benefits to be received by the Department as a result of the award; and

(3) Modifications and/or amendments that increase the dollar amount by more than 25% of the original award or $50,000, whichever is greater; or significantly decrease the benefits to be received by the Department, in the estimation of the Executive Director, will be presented to the Board for approval.

§51.8. Other Program Requirements.

(a) Employment opportunities. In connection with the planning and carrying out of any project assisted under the Act, to the greatest extent feasible, opportunities for training and employment shall be given to low, very low, and extremely low-income persons who meet position requirements residing within the area in which the project is located.

(b) Conflict of Interest.

(1) Conflict Prohibited. No person described in paragraph (2) of this subsection who exercises or has exercised any functions or responsibilities with respect to Housing Trust Fund activities under the Statute or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from a Housing Trust Fund assisted activity, or have an interest in any Housing Trust Fund contract, subcontract or agreement or the proceeds hereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(2) Persons Covered. The conflict of interest provisions of paragraph (1) of this subsection apply to any person who is an employee, agent, consultant, officer, elected official or appointed official of the Recipient.

(c) Right to Inspect and Monitor.

(1) The Department may, at any time, inspect and monitor the records and the work of the project so as to ascertain the level of project completion, quality of work performed, inventory levels of stored material, compliance with the approval plans and specifications, property standards, and program rules and requirements.

(2) Any unsatisfactory findings in the inspection may result in a reduction in the amount of funds requested or termination of funding.

(3) Within 45 days of completion of any construction, and before the release of any retainage funds, Recipients are required to notify the Department of the completion by submitting a certificate of

completion and any other documents required by program guidelines, including, but not limited to, the following:

(A) Architect's Certification of Substantial Compliance;

(B) Recipient's Certificate of Substantial Completion; and

(C) Recipient's and Supplier's Release of Lien and warrantee.

(4) The Department performs a final close-out visit and assists owners in preparing for long-term compliance requirements upon completion of project development.

(d) Compliance.

(1) Recipient must maintain compliance with each of its written agreements with the Department.

(2) Restrictions are stated and enforced through a regulatory agreement.

(3) These restrictions include, but are not limited to the following:

(A) Rent restrictions;

(B) Record keeping and reporting; and

(C) Income targeting of tenants.

(4) The Department monitors compliance with project restrictions and any other covenants by Recipient in any Housing Trust Fund agreement. An annual per unit compliance fee of $25.00 may be charged for this review.

(e) For funds being used for multifamily rental properties, the Recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in §1.37 of this title.

(f) Accounting Requirements. Within 60 days following the conclusion of a contract issued by the Department the Recipient shall provide a full accounting of funds expended under the terms of the contract. Failure of a recipient to provide full accounting of funds expended under the terms of a contract shall be sufficient reason to terminate the contract and for the Department to deny any future contract to the recipient.

§51.10. Records to be Maintained.

(a) Recipients are required, at least on an annual basis, to submit to the Department information required under Chapter 1 of this title, which may include, but is not limited to:

(1) such information as may be necessary to determine whether a project is benefiting low, very low, and extremely low-income persons and families;

(2) the monthly rent or mortgage payment for each dwelling unit in each structure assisted;

(3) such information as may be necessary to determine whether Recipients have carried out their housing activities in accordance with the requirements and primary objectives of the Housing Trust Fund and implementing regulations;

(4) the size and income of the household for each unit occupied by a low, very low, or extremely low-income person or family;

(5) data on the extent to which each racial and ethnic group and households have applied for and benefited from any project or activity funded in whole or in part with funds made available under the Statute. This data shall be updated annually; and

(6) A final statement of accounting upon completion of the project.

(b) Recipients shall maintain records pertinent to the tenant's files for a period of at least three years.

(c) Recipients shall maintain records pertinent to funding awards including but not limited to project costs and certification work papers for a period of at least five years.

(d) Recipient shall maintain records in an accessible location.

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 March 5, 2007.

TRD-200700851
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: March 25, 2007
Proposal publication date: September 15, 2006
For further information, please call: (512) 475-4595

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 172. TEMPORARY AND LIMITED LICENSES

SUBCHAPTER C. LIMITED LICENSES

22 TAC §172.15

The Texas Medical Board (Board) adopts new §172.15, relating to a limited license for the practice of Public Health Medicine, without changes to the proposed text as published in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10510) and will not be republished.

Prior to publishing the proposed new rule, the Board sought stakeholder input through a Licensure Stakeholder Group, which made comments on the suggested changes to the rules at a meeting held on November 15, 2006. The comments were incorporated into the published proposed rules.

The Board received no public written comments prior to the public hearing held on February 16, 2007, regarding the proposed new §172.15. Two representatives of the Texas Department of State Health Services ("TDSHS") appeared to testify regarding §172.15. They commented that the proposed rule, as published, was necessary so that the TDSHS and public health agencies in this state would be able to recruit physicians from out of state to serve as Public Health Officers on behalf of counties and other governmental entities in this state.

The Board determined that there is a need for a new license for the practice of Public Medicine in this state. A problem exists because physicians licensed in other states, who have been in the practice of Public Health Medicine cannot meet the Board's requirement that an applicant demonstrate that the applicant has been in the active practice of medicine, as required by 22 TAC §163.11. A new license should be available that does not require that the applicant have been engaged in the active practice of

medicine because the duties of a public health officer are primarily administrative in nature. The new license should be limited to physicians who are employees or independent contractors of governmental entities that are serving as a public health agency or institution.

The new rule is adopted under the authority of Texas Occupations Code, §153.001 and Texas Occupations Code, §155.009, which provides that the Board may issue a limited license for the practice of administrative medicine.

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 February 26, 2007.

TRD-200700762
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Effective date: March 18, 2007
Proposal publication date: December 29, 2006
For further information, please call: (512) 305-7016

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PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 280. THERAPEUTIC OPTOMETRY

22 TAC §280.7

The Texas Optometry Board adopts the repeal of §280.7 without changes to the proposed text published in the December 1, 2006, issue of the *Texas Register* (31 TexReg 9677).

The rule concerns the Optometric Health Care Advisory Committee, which was abolished by §351.165 of the Optometry Act on September 1, 2005.

No comments were received.

The repeal of §280.7 is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.165.

No other sections are affected by this repeal.

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 §351.165 as creating the Optometric Health Care Advisory Committee, and setting a date of September 1, 2005, to abolish the Committee.

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 February 28, 2007.

TRD-200700792
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: March 20, 2007
Proposal publication date: December 1, 2006
For further information, please call: (512) 305-8502

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PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

The Texas State Board of Pharmacy adopts amendments to Chapter 281, Subchapter A, §§281.1, 281.2, 281.4 - 281.10, and 281.17; and the repeal of §§281.12, 281.14, and 281.16 concerning General Provisions. The amendments are adopted without changes to the proposed text as published in the December 15, 2006, issue of the *Texas Register* (31 TexReg 9926).

The amendments and repeal restructure Chapter 281 to update and amend definitions and delete unnecessary rules in accordance with governing statutes and rules.

Written comments were received from the Texas Pharmacy Association (TPA) with regard to §281.8 which outlines the grounds for discipline for a pharmacy license. The amendment is not limited in scope either by the type of previous discipline or time frame of the previous discipline with regard to a pharmacy owner. TPA recommended that the time frame be limited to the previous five years. The Board disagrees with this comment in order to protect the public and ensure that only qualified individuals are allowed to own pharmacies.

22 TAC §§281.1, 281.2, 281.4 - 281.10, 281.17

The amendments are adopted under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551-566 and 568-569, Texas Occupations 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 March 5, 2007.

TRD-200700838
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: March 25, 2007
Proposal publication date: December 15, 2006
For further information, please call: (512) 305-8028

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22 TAC §§281.12, 281.14, 281.16

The repeal is adopted under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551-566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations 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 March 5, 2007.

TRD-200700839
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: March 25, 2007
Proposal publication date: December 15, 2006
For further information, please call: (512) 305-8028

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SUBCHAPTER B. GENERAL PROCEDURES IN A CONTESTED CASE

The Texas State Board of Pharmacy adopts new §281.20, amendments to §281.22 and the repeal of §§281.23 - 281.56, and simultaneously proposed new §§281.30 - 281.34 in Subchapter B, concerning General Procedures in a Contested Case. The amendments, repeal and new sections are adopted without changes to the proposed text as published in the December 15, 2006, issue of the *Texas Register* (31 TexReg 9930).

The amendments, repeal, and new sections restructure Chapter 281, Subchapter B to update and amend definitions and delete unnecessary rules in accordance with governing statutes and rules.

No comments were received regarding the proposal.

22 TAC §§281.20, 281.22, 281.30 - 281.34

The amendments and new sections are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations 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.

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Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8028

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22 TAC §§281.23 - 281.56

The repeal is adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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SUBCHAPTER C. DISCIPLINARY GUIDELINES

22 TAC §§281.62 - 281.64, 281.66

The Texas State Board of Pharmacy adopts amendments to Chapter 281, Subchapter C, §§281.62 - 281.64 and new §281.66 concerning Disciplinary Guidelines. The amendments to §§281.62, 281.63 and new rule §281.66 are adopted without changes to the proposed text as published in the December 15, 2006, issue of the *Texas Register* (31 TexReg 9932). Section 281.64 is being adopted with changes and will be republished. A typographical error was corrected in §281.64.

The amendments and new rule restructure Chapter 281 to update and amend definitions and delete unnecessary rules in accordance with governing statutes and rules.

Written comments were received from the Texas Pharmacy Association (TPA) regarding §281.62 which outlines the aggravating factors that may be considered as a basis for a more severe or more restrictive action. The aggravating factors included "circumstances indicating intoxication due to ingestion of alcohol and/or drugs." TPA recommends that the language should be more clearly defined. The Board disagrees with this comment in order to ensure that only qualified individuals are allowed to practice pharmacy.

The amendments and new rule are adopted under sections 551.002, and 554.051 of the Texas Pharmacy Act (Chapters

551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets section 551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets section 554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§281.64. Sanctions for Applicants with Criminal Offenses.

(a) The guidelines for disciplinary sanctions apply to criminal convictions and to deferred adjudication community supervisions or deferred dispositions, as authorized by the Act, for applicants for all types of licenses and registrations issued by the board. The board considers criminal behavior to be highly relevant to an individual's fitness to engage in pharmacy practice.

(b) The sanctions imposed by the guidelines can be used in conjunction with other types of disciplinary actions, including administrative penalties, as outlined in this section.

(c) The board has determined that the nature and seriousness of certain crimes outweigh other factors to be considered in Section 281.63)(g) and necessitate the disciplinary action listed below. The following sanctions apply to applicants with the criminal offenses as described below:

(1) Criminal offenses which require the individual to register with the Department of Public Safety as a sex offender under Chapter 62, Code of Criminal Procedure - denial;

(2) Felony offenses:

(A) Drug-related offenses, such as those listed in Chapter 481 or 483, Health and Safety Code:

(i) Offenses involving manufacture, delivery, or possession with intent to deliver, fraud, or theft of drugs:

(I) Currently on probation - denial;

(II) 0-5 years since conviction - denial;

(III) 6-10 years since conviction - denial;

(IV) 11-20 years since conviction - denial;

(V) Over 20 years since conviction - 5 years probation;

(ii) Offenses involving possession:

(I) Currently on probation - denial;

(II) 0-5 years since conviction - evaluation by a mental health professional indicating the individual is safe to engage in pharmacy practice and 5 years probation;

(III) 6-10 years since conviction - evaluation by a mental health professional indicating the individual is safe to engage in pharmacy practice and 3 years probation;

(IV) 11-20 years since conviction - 2 years probation;

(V) Over 20 years since conviction - 1 year probation;

(B) Offenses involving sexual contact or violent acts, or offenses considered to be felonies of the first degree under the Texas Penal Code:

(i) Currently on probation - denial;

(ii) 0-5 years since conviction - denial;

(iii) 6-10 years since conviction - denial;

(iv) 11-20 years since conviction - 5 years probation;

(v) Over 20 years since conviction - 1 year probation;

(C) Other felony offenses:

(i) Currently on probation - denial;

(ii) 0-5 years since conviction - 5 years probation;

(iii) 6-10 years since conviction - 3 years probation;

(iv) 11-20 years since conviction - 2 years probation;

(v) Over 20 years since conviction - 1 year probation;

(3) Misdemeanor offenses:

(A) Drug-related offenses, such as those listed in Chapter 481 or 483, Health and Safety Code:

(i) Offenses involving manufacture, delivery, or possession with intent to deliver, fraud, or theft of drugs:

(I) Currently on probation - denial;

(II) 0-10 years since conviction - 5 years probation;

(III) Over 10 years since conviction - 3 years probation;

(ii) Offenses involving possession:

(I) 0-5 years since conviction - evaluation by a mental health professional indicating the individual is safe to engage in pharmacy practice and 5 years probation;

(II) 6-10 years since conviction - evaluation by a mental health professional indicating the individual is safe to engage in pharmacy practice and 3 years probation;

(B) Intoxication and alcoholic beverage offenses as defined in the Texas Penal Code, if two such offenses occurred in the previous ten years

(i) 0-5 years since conviction - evaluation by a mental health professional indicating the individual is safe to engage in pharmacy practice and 5 years probation;

(ii) 6-10 years since conviction - evaluation by a mental health professional indicating the individual is safe to engage in pharmacy practice and 3 years probation;

(C) Other misdemeanor offenses involving moral turpitude:

(i) 0-5 years since conviction - 2 years probation;

(ii) 6-10 years since conviction - reprimand;

(d) When an applicant has multiple criminal offenses or other violations, the board shall consider imposing additional more severe types of disciplinary sanctions, as deemed necessary.

(e) An applicant who suffers from an impairment as described by Section 565.001(a)(4) or (7) or Section 568.003(a)(5), may provide mitigating information including treatment, counseling, and monitoring in order to mitigate the sanctions imposed.

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

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SUBCHAPTER D. RULEMAKING

22 TAC §§281.71 - 281.76

The Texas State Board of Pharmacy adopts the repeal of §§281.71 - 281.76 concerning Rulemaking. The repeal is adopted without changes as published in the December 15, 2006, issue of the *Texas Register* (31 TexReg 9934).

The repeal restructures Chapter 281 to update and amend definitions and delete unnecessary rules in accordance with governing statutes and rules.

No comments were received.

The repeal is adopted under sections 551.002, and 554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets section 551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets section 554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.5

The Texas State Board of Pharmacy adopts amendments to §291.5 concerning Closing a Pharmacy. The amendments are adopted without changes to the proposed text as published in the December 15, 2006, issue of the *Texas Register* (31 TexReg 9935).

The amendments prohibit closed pharmacies from renewing the license of the pharmacy.

No comments were received.

The amendments are adopted under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations 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.

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SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.34

The Texas State Board of Pharmacy adopts amendments to §291.34 concerning Records. The amendments are adopted with changes to the proposed text based on comments received. The proposed amendments were published in the December 15, 2006, issue of the *Texas Register* (31 TexReg 9958).

The amendments allow pharmacies to document information regarding the dispensing of a prescription either on the hard-copy or electronically in the pharmacy's data processing system; require pharmacies to document the initials of a pharmacy technician if the pharmacy technician is involved in the preparation of a prescription label or in the data entry of a prescription record; and require pharmacies to record and document anytime a change is made to a prescription record.

Written comments were received from HEB and CVS. HEB comments support the rule as proposed. CVS suggested that its pharmacy system is not able to track changes to a patient profile and does not capture the identity of technicians assisting in the filling of prescriptions. CVS commented that manually documenting the information would be onerous. The Board disagrees with this comment, and the rules only require the identity of pharmacy technicians to be documented when directly involved in the preparation of prescription labels. However, in order to give pharmacies adequate time to comply with the requirements, the Board amended the rule to become effective January 1, 2009.

The amendments are adopted under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569,

Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.34. Records.

(a) Maintenance of records.

(1) Every inventory or other record required to be kept under the provisions of §291.31 of this title (relating to Definitions), §291.32 of this title (relating to Personnel), §291.33 of this title (relating to Operational Standards), §291.34 of this title (relating to Records), and §291.35 of this title (relating to Official Prescription Requirements), contained in Community Pharmacy (Class A) shall be:

(A) kept by the pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Records of controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy.

(3) Records of controlled substances, other than prescription drug orders, listed in Schedules III - V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subsection, readily retrievable means that the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable apart from all other items appearing on the record.

(4) Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(A) the records maintained in the alternative system contain all of the information required on the manual record; and

(B) the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(b) Prescriptions.

(1) Professional responsibility.

(A) Pharmacists shall exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order they dispense. If the pharmacist questions the accuracy or authenticity of a prescription drug order, he/she shall verify the order with the practitioner prior to dispensing.

(B) Prior to dispensing a prescription, pharmacists shall determine, in the exercise of sound professional judgment, that the prescription is a valid prescription. A pharmacist may not dispense a prescription drug if the pharmacist knows or should have known that the prescription was issued on the basis of an Internet-based or telephonic consultation without a valid patient-practitioner relationship.

(C) Subparagraph (B) of this paragraph does not prohibit a pharmacist from dispensing a prescription when a valid patient-practitioner relationship is not present in an emergency situation (e.g. a practitioner taking calls for the patient's regular practitioner).

(2) Written prescription drug orders.

(A) Practitioner's signature.

(i) Except as noted in clause (ii) of this subparagraph, written prescription drug orders shall be:

(I) manually signed by the practitioner; or

(II) electronically signed by the practitioner using a system which electronically replicates the practitioner's manual signature on the written prescription, provided:

(-a-) that security features of the system require the practitioner to authorize each use; and

(-b-) the prescription is printed on paper that is designed to prevent unauthorized copying of a completed prescription and to prevent the erasure or modification of information written on the prescription by the prescribing practitioner. (For example, the paper contains security provisions against copying that results in some indication on the copy that it is a copy and therefore render the prescription null and void.)

(ii) Prescription drug orders for Schedule II controlled substances shall be issued on an official prescription form as required by the Texas Controlled Substances Act, §481.075, and be manually signed by the practitioner.

(iii) A practitioner may sign a prescription drug order in the same manner as he would sign a check or legal document, e.g. J.H. Smith or John H. Smith.

(iv) Rubber stamped or otherwise reproduced signatures may not be used except as authorized in clause (i) of this subparagraph.

(v) The prescription drug order may not be signed by a practitioner's agent but may be prepared by an agent for the signature of a practitioner. However, the prescribing practitioner is responsible in case the prescription drug order does not conform in all essential respects to the law and regulations.

(B) Prescription drug orders written by practitioners in another state.

(i) Dangerous drug prescription orders. A pharmacist may dispense a prescription drug order for dangerous drugs issued by practitioners in a state other than Texas in the same manner as prescription drug orders for dangerous drugs issued by practitioners in Texas are dispensed.

(ii) Controlled substance prescription drug orders.

(I) A pharmacist may dispense prescription drug order for controlled substances in Schedule II issued by a practitioner in another state provided:

(-a-) the prescription is filled in compliance with a written plan approved by the Director of the Texas Department of Public Safety in consultation with the Board, which provides the manner in which the dispensing pharmacy may fill a prescription for a Schedule II controlled substance;

(-b-) the prescription drug order is an original written prescription issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration (DEA) registration number, and who may legally prescribe Schedule II controlled substances in such other state; and

(-c-) the prescription drug order is not dispensed after the end of the seventh day after the date on which the prescription is issued.

(II) A pharmacist may dispense prescription drug orders for controlled substances in Schedule III, IV, or V issued by a practitioner in another state provided:

(-a-) the prescription drug order is an original written prescription issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration (DEA) registration number, and who may legally prescribe Schedule III, IV, or V controlled substances in such other state;

(-b-) the prescription drug order is not dispensed or refilled more than six months from the initial date of issuance and may not be refilled more than five times; and

(-c-) if there are no refill instructions on the original written prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original written prescription drug order have been dispensed, a new written prescription drug order is obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(C) Prescription drug orders written by practitioners in the United Mexican States or the Dominion of Canada.

(i) Controlled substance prescription drug orders. A pharmacist may not dispense a prescription drug order for a Schedule II, III, IV, or V controlled substance issued by a practitioner in the Dominion of Canada or the United Mexican States.

(ii) Dangerous drug prescription drug orders. A pharmacist may dispense a dangerous drug prescription issued by a person licensed in the Dominion of Canada or the United Mexican States as a physician, dentist, veterinarian, or podiatrist provided:

(I) the prescription drug order is an original written prescription; and

(II) if there are no refill instructions on the original written prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original written prescription drug order have been dispensed, a new written prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of dangerous drugs.

(D) Prescription drug orders carried out or signed by an advanced practice nurse or physician assistant.

(i) A pharmacist may dispense a prescription drug order which is carried out or signed by an advanced practice nurse or physician assistant provided the advanced practice nurse or physician assistant is practicing in accordance with Subtitle B, Chapter 157, Occupations Code.

(ii) Each practitioner shall designate in writing the name of each advanced practice nurse or physician assistant authorized to carry out or sign a prescription drug order pursuant to Subtitle B, Chapter 157, Occupations Code. A list of the advanced practice nurses or physician assistants designated by the practitioner must be maintained in the practitioner's usual place of business. On request by a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization for a specific advanced practice nurse or physician assistant.

(E) Prescription drug orders for Schedule II controlled substances. No Schedule II controlled substance may be dispensed without a written prescription drug order of a practitioner on an official prescription form as required by the Texas Controlled Substances Act, §481.075.

(3) Verbal prescription drug orders.

(A) A verbal prescription drug order from a practitioner or a practitioner's designated agent may only be received by a pharmacist or a pharmacist-intern under the direct supervision of a pharmacist.

(B) A practitioner shall designate in writing the name of each agent authorized by the practitioner to communicate prescriptions verbally for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(C) A pharmacist may not dispense a verbal prescription drug order for a Schedule III, IV, or V controlled substance issued by a practitioner licensed in another state unless the practitioner is also registered under the Texas Controlled Substances Act.

(D) A pharmacist may not dispense a verbal prescription drug order for a dangerous drug or a controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(4) Electronic prescription drug orders. For the purpose of this subsection, prescription drug orders shall be considered the same as verbal prescription drug orders.

(A) An electronic prescription drug order may be transmitted by a practitioner or a practitioner's designated agent:

(i) directly to a pharmacy; or

(ii) through the use of a data communication device provided:

(I) the confidential prescription information is not altered during transmission; and

(II) confidential patient information is not accessed or maintained by the operator of the data communication device other than for legal purposes under federal and state law.

(B) A practitioner shall designate in writing the name of each agent authorized by the practitioner to electronically transmit prescriptions for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(C) A pharmacist may not dispense an electronic prescription drug order for a:

(i) Schedule II controlled substance, except as authorized for faxed prescriptions in §481.074, Health and Safety Code;

(ii) Schedule III, IV, or V controlled substance issued by a practitioner licensed in another state unless the practitioner is also registered under the Texas Controlled Substances Act; or

(iii) dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(5) Original prescription drug order records.

(A) Original prescriptions shall be maintained by the pharmacy in numerical order and remain legible for a period of two years from the date of filling or the date of the last refill dispensed.

(B) If an original prescription drug order is changed, such prescription order shall be invalid and of no further force and effect; if additional drugs are to be dispensed, a new prescription drug order with a new and separate number is required.

(C) Original prescriptions shall be maintained in three separate files as follows:

(i) prescriptions for controlled substances listed in Schedule II;

(ii) prescriptions for controlled substances listed in Schedules III - V; and

(iii) prescriptions for dangerous drugs and nonprescription drugs.

(D) Original prescription records other than prescriptions for Schedule II controlled substances may be stored on microfilm, microfiche, or other system which is capable of producing a direct image of the original prescription record, e.g., digitalized imaging system. If original prescription records are stored in a direct imaging system, the following is applicable:

(i) the record of refills recorded on the original prescription must also be stored in this system;

(ii) the original prescription records must be maintained in numerical order and separated in three files as specified in subparagraph (C) of this paragraph; and

(iii) the pharmacy must provide immediate access to equipment necessary to render the records easily readable.

(6) Prescription drug order information.

(A) All original prescriptions shall bear:

(i) name of the patient, or if such drug is for an animal, the species of such animal and the name of the owner;

(ii) address of the patient, provided, however, a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as medication records;

(iii) name, and if for a controlled substance, the address and DEA registration number of the practitioner;

(iv) name and strength of the drug prescribed;

(v) quantity prescribed;

(vi) directions for use;

(vii) intended use for the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient; and

(viii) date of issuance.

(B) All original electronic prescription drug orders shall bear:

(i) name of the patient, if such drug is for an animal, the species of such animal, and the name of the owner;

(ii) address of the patient, provided, however, a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as medication records;

(iii) name, and if for a controlled substance, the address and DEA registration number of the practitioner;

(iv) name and strength of the drug prescribed;

(v) quantity prescribed;

(vi) directions for use;

(vii) indications for use, unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

(viii) date of issuance;

(ix) a statement which indicates that the prescription has been electronically transmitted, (e.g., Faxed to or electronically transmitted to:);

(x) name, address, and electronic access number of the pharmacy to which the prescription was transmitted;

(xi) telephone number of the prescribing practitioner;

(xii) date the prescription drug order was electronically transmitted to the pharmacy, if different from the date of issuance of the prescription; and

(xiii) if transmitted by a designated agent, the full name of the designated agent.

(C) All original written prescriptions carried out or signed by an advanced practice nurse or physician assistant in accordance with Subtitle B, Chapter 157, Occupations Code, shall bear:

(i) name and address of the patient;

(ii) name, address, telephone number, and if the prescription is for a controlled substance, the DEA number of the supervising practitioner;

(iii) name, identification number, original signature and if the prescription is for a controlled substance, the DEA number of the advanced practice nurse or physician assistant;

(iv) address and telephone number of the clinic at which the prescription drug order was carried out or signed;

(v) name, strength, and quantity of the drug;

(vi) directions for use;

(vii) indications for use, if appropriate;

(viii) date of issuance; and

(ix) number of refills authorized.

(D) At the time of dispensing, a pharmacist is responsible for documenting the following information on either the original hard-copy prescription or in the pharmacy's data processing system:

(i) unique identification number of the prescription drug order;

(ii) initials or identification code of the dispensing pharmacist;

(iii) effective January 1, 2009, initials or identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(iv) quantity dispensed, if different from the quantity prescribed;

(v) date of dispensing, if different from the date of issuance; and

(vi) brand name or manufacturer of the drug product actually dispensed, if the drug was prescribed by generic name or if a

drug product other than the one prescribed was dispensed pursuant to the provisions of the Act, Chapters 562 and 563.

(7) Refills.

(A) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order.

(B) If there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills.

(C) Refills of prescription drug orders for dangerous drugs or nonprescription drugs.

(i) Prescription drug orders for dangerous drugs or nonprescription drugs may not be refilled after one year from the date of issuance of the original prescription drug order.

(ii) If one year has expired from the date of issuance of an original prescription drug order for a dangerous drug or nonprescription drug, authorization shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(D) Refills of prescription drug orders for Schedules III - V controlled substances.

(i) Prescription drug orders for Schedules III - V controlled substances may not be refilled more than five times or after six months from the date of issuance of the original prescription drug order, whichever occurs first.

(ii) If a prescription drug order for a Schedule III, IV, or V controlled substance has been refilled a total of five times or if six months have expired from the date of issuance of the original prescription drug order, whichever occurs first, a new and separate prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(E) A pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) either:

(I) a natural or manmade disaster has occurred which prohibits the pharmacist from being able to contact the practitioner; or

(II) the pharmacist is unable to contact the practitioner after a reasonable effort;

(iii) the quantity of prescription drug dispensed does not exceed a 72-hour supply;

(iv) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(v) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(vi) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(vii) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(6) of this title; and

(viii) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy which contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clauses (i) and (ii) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (iii) - (v) of this subparagraph.

(c) Patient medication records.

(1) A patient medication record system shall be maintained by the pharmacy for patients to whom prescription drug orders are dispensed.

(2) The patient medication record system shall provide for the immediate retrieval of information for the previous 12 months which is necessary for the dispensing pharmacist to conduct a prospective drug regimen review at the time a prescription drug order is presented for dispensing.

(3) The pharmacist-in-charge shall assure that a reasonable effort is made to obtain and record in the patient medication record at least the following information:

(A) full name of the patient for whom the drug is prescribed;

(B) address and telephone number of the patient;

(C) patient's age or date of birth;

(D) patient's gender;

(E) any known allergies, drug reactions, idiosyncrasies, and chronic conditions or disease states of the patient and the identity of any other drugs currently being used by the patient which may relate to prospective drug regimen review;

(F) pharmacist's comments relevant to the individual's drug therapy, including any other information unique to the specific patient or drug; and

(G) a list of all prescription drug orders dispensed (new and refill) to the patient by the pharmacy during the last two years. Such list shall contain the following information:

(i) date dispensed;

(ii) name, strength, and quantity of the drug dispensed;

(iii) prescribing practitioner's name;

(iv) unique identification number of the prescription; and

(v) name or initials of the dispensing pharmacists.

(4) A patient medication record shall be maintained in the pharmacy for two years. If patient medication records are maintained

in a data processing system, all of the information specified in this subsection shall be maintained in a retrievable form for two years and information for the previous 12 months shall be maintained on-line. Effective January 1, 2009, a patient medication record must contain documentation of any modification, change, or manipulation to a patient profile.

(5) Nothing in this paragraph shall be construed as requiring a pharmacist to obtain, record, and maintain patient information other than prescription drug order information when a patient or patient's agent refuses to provide the necessary information for such patient medication records.

(d) Prescription drug order records maintained in a manual system.

(1) Original prescriptions shall be maintained in three files as specified in subsection (b)(5)(C) of this section.

(2) Refills.

(A) Each time a prescription drug order is refilled, a record of such refill shall be made:

(i) on the back of the prescription by recording the date of dispensing, the written initials or identification code of the dispensing pharmacist, effective January 1, 2009, the initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable, and the amount dispensed. (If the pharmacist merely initials and dates the back of the prescription drug order, he or she shall be deemed to have dispensed a refill for the full face amount of the prescription drug order); or

(ii) on another appropriate, uniformly maintained, readily retrievable record, such as medication records, which indicates by patient name the following information:

(I) unique identification number of the prescription;

(II) name and strength of the drug dispensed;

(III) date of each dispensing;

(IV) quantity dispensed at each dispensing;

(V) initials or identification code of the dispensing pharmacist;

(VI) effective January 1, 2009, initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable; and

(VII) total number of refills for the prescription.

(B) If refill records are maintained in accordance with subparagraph (A)(ii) of this paragraph, refill records for controlled substances in Schedules III - V shall be maintained separately from refill records of dangerous drugs and nonprescription drugs.

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted on the original prescription, in addition to the documentation of dispensing the refill.

(4) Transfer of prescription drug order information. For the purpose of refill or initial dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements:

(A) the transfer of original prescription drug order information for controlled substances listed in Schedule III, IV, or V is permissible between pharmacies on a one-time basis;

(B) the transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills;

(C) the transfer is communicated directly between pharmacists and/or pharmacist interns;

(D) both the original and the transferred prescription drug order are maintained for a period of two years from the date of last refill;

(E) the pharmacist or pharmacist intern transferring the prescription drug order information shall:

(i) write the word "void" on the face of the invalidated prescription drug order; and

(ii) record on the reverse of the invalidated prescription drug order the following information:

(I) the name, address, and if a controlled substance, the DEA registration number of the pharmacy to which such prescription drug order is transferred;

(II) the name of the pharmacist or pharmacist intern receiving the prescription drug order information;

(III) the name of the pharmacist or pharmacist intern transferring the prescription drug order information; and

(IV) the date of the transfer;

(F) the pharmacist or pharmacist intern receiving the transferred prescription drug order information shall:

(i) write the word "transfer" on the face of the transferred prescription drug order; and

(ii) record on the transferred prescription drug order the following information:

(I) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(II) original prescription number and the number of refills authorized on the original prescription drug order;

(III) number of valid refills remaining and the date of last refill, if applicable;

(IV) name, address, and if a controlled substance, the DEA registration number of the pharmacy from which such prescription information is transferred; and

(V) name of the pharmacist or pharmacist intern transferring the prescription drug order information.

(5) A pharmacist or pharmacist intern may not refuse to transfer original prescription information to another pharmacist or pharmacist intern who is acting on behalf of a patient and who is making a request for this information as specified in paragraph (4) of this subsection.

(6) Effective January 1, 2009, each time a modification, change, or manipulation is made to a record of dispensing, documentation of such change shall be recorded on the back of the prescription or on another appropriate, uniformly maintained, readily retrievable record, such a medication records. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration.

(e) Prescription drug order records maintained in a data processing system.

(1) General requirements for records maintained in a data processing system.

(A) Compliance with data processing system requirements. If a Class A (community) pharmacy's data processing system is not in compliance with this subsection, the pharmacy must maintain a manual recordkeeping system as specified in subsection (d) of this section.

(B) Original prescriptions. Original prescriptions shall be maintained in three files as specified in subsection (b)(5)(C) of this section.

(C) Requirements for backup systems.

(i) The pharmacy shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and update this backup copy on a regular basis, at least monthly, to assure that data is not lost due to system failure.

(ii) Data processing systems shall have a workable (electronic) data retention system which can produce an audit trail of drug usage for the preceding two years as specified in paragraph (2)(G) of this subsection.

(D) Change or discontinuance of a data processing system.

(i) Records of dispensing. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records of dispensing to the new data processing system; or

(II) purge the records of dispensing to a printout which contains the same information required on the daily printout as specified in paragraph (2)(B) of this subsection. The information on this hard-copy printout shall be sorted and printed by prescription number and list each dispensing for this prescription chronologically.

(ii) Other records. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records to the new data processing system; or

(II) purge the records to a printout which contains all of the information required on the original document.

(iii) Maintenance of purged records. Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(E) Loss of data. The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(2) Records of dispensing.

(A) Each time a prescription drug order is filled or refilled, a record of such dispensing shall be entered into the data processing system.

(B) Effective January 1, 2009, each time a modification, change or manipulation is made to a record of dispensing, documentation of such change shall be recorded in the data processing system. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration. Should the data processing system not be able to record a modification, change, or manipulation to a record of dispensing, the information should be clearly documented on the hard-copy prescription.

(C) The data processing system shall have the capacity to produce a daily hard-copy printout of all original prescriptions dispensed and refilled. This hard-copy printout shall contain the following information:

(i) unique identification number of the prescription;

(ii) date of dispensing;

(iii) patient name;

(iv) prescribing practitioner's name;

(v) name and strength of the drug product actually dispensed; if generic name, the brand name or manufacturer of drug dispensed;

(vi) quantity dispensed;

(vii) initials or an identification code of the dispensing pharmacist;

(viii) effective January 1, 2009, initials or an identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(ix) if not immediately retrievable via CRT display, the following shall also be included on the hard-copy printout:

(I) patient's address;

(II) prescribing practitioner's address;

(III) practitioner's DEA registration number, if the prescription drug order is for a controlled substance;

(IV) quantity prescribed, if different from the quantity dispensed;

(V) date of issuance of the prescription drug order, if different from the date of dispensing; and

(VI) total number of refills dispensed to date for that prescription drug order; and

(x) effective January 1, 2009, any changes made to a record of dispensing.

(D) The daily hard-copy printout shall be produced within 72 hours of the date on which the prescription drug orders were dispensed and shall be maintained in a separate file at the pharmacy. Records of controlled substances shall be readily retrievable from records of noncontrolled substances.

(E) Each individual pharmacist who dispenses or refills a prescription drug order shall verify that the data indicated on the daily hard-copy printout is correct, by dating and signing such document in the same manner as signing a check or legal document (e.g., J.H. Smith, or John H. Smith) within seven days from the date of dispensing.

(F) In lieu of the printout described in subparagraph (C) of this paragraph, the pharmacy shall maintain a log book in which each individual pharmacist using the data processing system shall sign a statement each day, attesting to the fact that the information entered into the data processing system that day has been reviewed by him or her and is correct as entered. Such log book shall be maintained at the pharmacy employing such a system for a period of two years after the date of dispensing; provided, however, that the data processing system can produce the hard-copy printout on demand by an authorized agent of the Texas State Board of Pharmacy. If no printer is available on site, the hard-copy printout shall be available within 72 hours with

a certification by the individual providing the printout, which states that the printout is true and correct as of the date of entry and such information has not been altered, amended, or modified.

(G) The pharmacist-in-charge is responsible for the proper maintenance of such records and responsible that such data processing system can produce the records outlined in this section and that such system is in compliance with this subsection.

(H) The data processing system shall be capable of producing a hard-copy printout of an audit trail for all dispensings (original and refill) of any specified strength and dosage form of a drug (by either brand or generic name or both) during a specified time period.

(i) Such audit trail shall contain all of the information required on the daily printout as set out in subparagraph (C) of this paragraph.

(ii) The audit trail required in this subparagraph shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy.

(I) Failure to provide the records set out in this subsection, either on site or within 72 hours constitutes prima facie evidence of failure to keep and maintain records in violation of the Act .

(J) The data processing system shall provide on-line retrieval (via CRT display or hard-copy printout) of the information set out in subparagraph (C) of this paragraph of:

(i) the original controlled substance prescription drug orders currently authorized for refilling; and

(ii) the current refill history for Schedules III, IV, and V controlled substances for the immediately preceding six-month period.

(K) In the event that a pharmacy which uses a data processing system experiences system downtime, the following is applicable:

(i) an auxiliary procedure shall ensure that refills are authorized by the original prescription drug order and that the maximum number of refills has not been exceeded or authorization from the prescribing practitioner shall be obtained prior to dispensing a refill; and

(ii) all of the appropriate data shall be retained for on-line data entry as soon as the system is available for use again.

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted as follows:

(A) on the hard-copy prescription drug order;

(B) on the daily hard-copy printout; or

(C) via the CRT display.

(4) Transfer of prescription drug order information. For the purpose of refill or initial dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements.

(A) The transfer of original prescription drug order information for controlled substances listed in Schedule III, IV, or V is permissible between pharmacies on a one-time basis only. However, pharmacies electronically sharing a real-time, on-line database may transfer up to the maximum refills permitted by law and the prescriber's authorization.

(B) The transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills.

(C) The transfer is communicated directly between pharmacists and/or pharmacist interns orally by telephone or via facsimile or as authorized in paragraph (5) of this subsection. A transfer completed as authorized in paragraph (5) of this subsection may be initiated by a pharmacy technician acting under the direct supervision of a pharmacist.

(D) Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last refill.

(E) The pharmacist or pharmacist intern transferring the prescription drug order information shall:

(i) write the word "void" on the face of the invalidated prescription drug order; and

(ii) record on the reverse of the invalidated prescription drug order the following information:

(I) the name, address, and if a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred;

(II) the name of the pharmacist or pharmacist intern receiving the prescription drug order information;

(III) the name of the pharmacist or pharmacist intern transferring the prescription drug order information; and

(IV) the date of the transfer.

(F) The pharmacist or pharmacist intern receiving the transferred prescription drug order information shall:

(i) write the word "transfer" on the face of the transferred prescription drug order; and

(ii) record on the transferred prescription drug order the following information:

(I) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(II) original prescription number and the number of refills authorized on the original prescription drug order;

(III) number of valid refills remaining and the date of last refill, if applicable;

(IV) name, address, and if a controlled substance, the DEA registration number of the pharmacy from which such prescription drug order information is transferred; and

(V) name of the pharmacist or pharmacist intern transferring the prescription drug order information.

(G) Prescription drug orders may not be transferred by non-electronic means during periods of downtime except on consultation with and authorization by a prescribing practitioner; provided however, during downtime, a hard copy of a prescription drug order may be made available for informational purposes only, to the patient, a pharmacist or pharmacist intern, and the prescription may be read to a pharmacist or pharmacist intern by telephone.

(H) The original prescription drug order shall be invalidated in the data processing system for purposes of filling or refilling, but shall be maintained in the data processing system for refill history purposes.

(I) If the data processing system has the capacity to store all the information required in subparagraphs (E) and (F) of this paragraph, the pharmacist is not required to record this information on the original or transferred prescription drug order.

(J) The data processing system shall have a mechanism to prohibit the transfer or refilling of controlled substance prescription drug orders which have been previously transferred.

(5) Electronic transfer of prescription drug order information between pharmacies. Pharmacies electronically accessing the same prescription drug order records may electronically transfer prescription information if the following requirements are met.

(A) The original prescription is voided and the following information is documented in the records of the transferring pharmacy:

(i) the name, address, and if a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred;

(ii) the name of the pharmacist or pharmacist intern receiving the prescription drug order information; and

(iii) the date of the transfer.

(B) Pharmacies not owned by the same person may electronically access the same prescription drug order records, provided the owner or chief executive officer of each pharmacy signs an agreement allowing access to such prescription drug order records.

(C) An electronic transfer between pharmacies may be initiated by a pharmacy technician acting under the direct supervision of a pharmacist.

(6) A pharmacist or pharmacist intern may not refuse to transfer original prescription information to another pharmacist or pharmacist intern who is acting on behalf of a patient and who is making a request for this information as specified in paragraphs (4) and (5) of this subsection.

(f) Limitation to one type of recordkeeping system. When filing prescription drug order information a pharmacy may use only one of the two systems described in subsection (d) or (e) of this section.

(g) Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy, or other registrant, without being registered to distribute, under the following conditions.

(1) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to dispense that controlled substance.

(2) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed and distributed by the pharmacy during the 12-month period in which the pharmacy is registered; if at any time it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(3) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained which indicates:

(A) the actual date of distribution;

(B) the name, strength, and quantity of controlled substances distributed;

(C) the name, address, and DEA registration number of the distributing pharmacy; and

(D) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(4) If the distribution is for a Schedule I or II controlled substance, the following is applicable.

(A) The pharmacy, practitioner, or other registrant who is receiving the controlled substances shall issue Copy 1 and Copy 2 of a DEA order form (DEA 222C) to the distributing pharmacy.

(B) The distributing pharmacy shall:

(i) complete the area on the DEA order form (DEA 222C) titled "To Be Filled in by Supplier";

(ii) maintain Copy 1 of the DEA order form (DEA 222C) at the pharmacy for two years; and

(iii) forward Copy 2 of the DEA order form (DEA 222C) to the Divisional Office of the Drug Enforcement Administration.

(h) Other records. Other records to be maintained by a pharmacy:

(1) a permanent log of the initials or identification codes which will identify each dispensing pharmacist by name (the initials or identification code shall be unique to ensure that each pharmacist can be identified, i.e., identical initials or identification codes shall not be used);

(2) Copy 3 of DEA order form (DEA 222C) which has been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents;

(3) a hard copy of the power of attorney to sign DEA 222C order forms (if applicable);

(4) suppliers' invoices of dangerous drugs and controlled substances; a pharmacist shall verify that the controlled drugs listed on the invoices were actually received by clearly recording his/her initials and the actual date of receipt of the controlled substances;

(5) suppliers' credit memos for controlled substances and dangerous drugs;

(6) a hard copy of inventories required by §291.17 of this title (relating to Inventory Requirements);

(7) hard-copy reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(8) a hard copy of the Schedule V nonprescription register book;

(9) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(10) a hard copy of any notification required by the Texas Pharmacy Act or the sections in this chapter, including, but not limited to, the following:

(A) reports of theft or significant loss of controlled substances to DEA, Department of Public Safety, and the board;

(B) notifications of a change in pharmacist-in-charge of a pharmacy; and

(C) reports of a fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(i) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(1) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met.

(A) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of the Drug Enforcement Administration as required by Title 21, Code of Federal Regulations, §1304.04(a), and submits a copy of this written notification to the Texas State Board of Pharmacy. Unless the registrant is informed by the divisional director of the Drug Enforcement Administration that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director.

(B) The pharmacy maintains a copy of the notification required in subparagraph (A) of this paragraph.

(C) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories, which shall be maintained at the pharmacy.

(2) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location.

(3) Access to records. If the records are kept on microfilm, computer media, or in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records.

(4) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of a board agent or any other authorized official.

(j) Ownership of pharmacy records. For the purposes of these sections, a pharmacy licensed under the Act is the only entity which may legally own and maintain prescription drug records.

(k) Confidentiality.

(1) A pharmacist shall provide adequate security of prescription drug orders, and patient medication records to prevent indiscriminate or unauthorized access to confidential health information. If prescription drug orders, requests for refill authorization, or other confidential health information are not transmitted directly between a pharmacy and a physician but are transmitted through a data communication device, confidential health information may not be accessed or maintained by the operator of the data communication device unless specifically authorized to obtain the confidential information by this subsection.

(2) Confidential records are privileged and may be released only to:

(A) the patient or the patient's agent;

(B) a practitioner or another pharmacist if, in the pharmacist's professional judgement, the release is necessary to protect the patient's health and well being;

(C) the board or to a person or another state or federal agency authorized by law to receive the confidential record;

(D) a law enforcement agency engaged in investigation of a suspected violation of Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);

(E) a person employed by a state agency that licenses a practitioner, if the person is performing the person's official duties; or

(F) an insurance carrier or other third party payor authorized by a patient to receive such information.

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 March 5, 2007.

TRD-200700847
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8028

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.223

The Texas Real Estate Commission (TREC) adopts an amendment to §535.223, concerning standard inspection report forms without changes to the proposed text as published in the December 22, 2006, issue of the *Texas Register* (31 TexReg 10240) and will not be republished. The amendment deletes a provision that exempts home inspectors from the requirement to use the promulgated Inspection Report Form for inspections for which a relocation company or a seller's employer requires use of a different form. Thus licensed home inspectors must use the promulgated Inspection Report Form for such inspections. Nothing in the rule would prohibit an inspector from attaching a form required by a relocation company or seller's employer to the promulgated Inspection Report Form.

The amendment was recommended by the Texas Real Estate Inspector Committee, an advisory committee of nine professional inspectors appointed by TREC.

TREC received three comments on the amendment, including a comment from the Worldwide ERC. One comment was in favor of the amendment.

One commenter opposed the amendment because of alleged misconduct and conflict of interest by one of the Texas Real Estate Inspector Committee (TREIC) members for filing "frivolous" complaints in 2004 against the commenter apparently related to alleged violations of current §535.223.

The commission believes that any alleged misconduct on the part of one TREIC member related to a closed complaint is not a sufficient reason to delay taking action on the amendment.

One commenter opposed the amendment because the ERC Relocation Home Inspector Report form is widely used for reloca-

tion inspections and the uniformity of forms is critical in the relocation industry. The commenter also suggests as an alternative that stronger disclosures could be required when the ERC form is utilized.

The commission respectfully disagrees with the commenter and believes that uniformity and consistency of inspection report forms promulgated by TREC for use in all home inspections for buyers and sellers in Texas provides neutral, across the board consumer protection. As stated above, the ERC form may be attached to the promulgated Inspection Report Form if required by the parties.

The reasoned justification for the amendment is to provide consistency for home inspectors that are required to use the standard inspection report form.

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

The statutes affected by this adoption are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the adopted amendment.

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 February 27, 2007.

TRD-200700780
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: March 19, 2007
Proposal publication date: December 22, 2006
For further information, please call: (512) 465-3900

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER G. WORKERS' COMPENSATION INSURANCE

DIVISION 2. GROUP SELF-INSURANCE COVERAGE

28 TAC §5.6405

The Commissioner of Insurance adopts amendments to §5.6405(b), concerning the excess insurance requirements for self-insurance groups providing workers' compensation coverage. Section 5.6405(b) is adopted with changes to the proposed text published in the October 6, 2006, issue of the *Texas Register* (31 TexReg 8335).

The amendments are necessary to prescribe the requirements for a workers' compensation self-insurance group to obtain excess insurance coverage from an eligible surplus lines insurer. The Department of Insurance received a petition from Montlake Holdings LLC proposing to amend 28 TAC §5.6405(b). In the petition, the petitioner states that the proposed rule amendment would allow self-insurance groups in Texas to purchase excess insurance coverage from an accredited and trusteed reinsurer that posts letters of credit to secure the self-insurance groups for excess losses recoverable. The petitioner further states that the proposed rule amendment would significantly increase market availability of excess insurance for self-insurance groups in Texas.

The amendments to §5.6405(b) as adopted modify the petitioner's proposed rule amendment by clarifying and augmenting the requirements necessary for obtaining excess insurance from eligible surplus lines insurers. Labor Code §407A.054 requires each self-insurance group to obtain specific excess insurance coverage for losses that exceed the self-insurance group's retention. The amendments are necessary to provide greater availability of the excess insurance coverage required for self-insurance groups so that more Texas employers would be able to participate in the workers' compensation system. The amendments to §5.6405(b) provide an option for obtaining the required excess insurance from an eligible surplus lines insurer in compliance with Chapter 981 of the Texas Insurance Code and related provisions of the Texas Administrative Code, provided certain requirements are met. The Department has added these requirements so that when a self-insurance group accesses the surplus lines market, a similar level of protection is in place to ensure that the financial objectives of the act are met. The Department does not contemplate or expect that the adoption of these rules will benefit any self-insurance group that is in hazardous financial condition. To exercise the option of surplus lines excess insurance required by the Labor Code, the self-insurance group must comply with the provisions of Chapter 981 of the Insurance Code. These requirements will provide security that the Department believes is reasonable to fulfill the requirements of Chapter 407A.

Following publication of the proposed amendments in the *Texas Register,* the Department held a hearing on October 23, 2006, to invite public input. In response to written comments received from interested parties both prior to and after the hearing as well as comments made at the hearing, the Department has changed some of the proposed language in the text of the rule amendments as adopted. The Department also changed some of the text in the amendments, as adopted, to correct or clarify the language in the text. The changes, however, do not introduce new subject matter or affect persons in addition to those subject to the proposal as published. The Department has revised subsection (b) as adopted to add the phrase "and maintain" to clarify that the self-insurance group shall obtain and maintain the required excess insurance in a manner that complies with the requirements specified in this section. In response to comments requesting clarification of the holder of the letter of credit, the Department has changed the proposed text in subsection (b)(3) as adopted by substituting the word "maintains" with "provides" to make it clear that the surplus lines insurer provides the letter or credit. One commenter inquired whether under proposed subsection (b)(3) the surplus lines insurer would be required to pay for losses and provide a letter of credit under the attachment

point in the event the self-insurance group was unable to pay the losses under the attachment point. Labor Code §407A.054(b) requires only specific excess insurance for losses that exceed the self-insurance group's retention. However, for clarification purposes, the Department has revised subsection (b)(3) by inserting the phrase "the terms and conditions of" before "the excess insurance" and replacing the term "coverage" with the term "policy." The adopted subsection (b)(3) requirement reads: "the surplus lines insurer provides a clean, irrevocable, and unconditional letter of credit in favor of the group as beneficiary and held by the group, subject to withdrawal solely by and under the exclusive control of the group, to secure the payment of losses, including losses, loss adjustment expenses, incurred but not reported losses, and any other obligation of the surplus lines insurer under the terms and conditions of the excess insurance policy, whether paid or unpaid by the group: . . . ." One commenter suggests deleting subsection (b)(4) in its entirety because, according to the commenter, the word "timely" is so vague that enforcement would be difficult; it is unclear what receivables and recoverables are subject to the proposed subsection; and the proposed subsection (b)(4) is an unreasonable requirement on surplus lines insurers. Although the Department disagrees with the comment and declines to delete subsection (b)(4), the Department agrees that some clarification would be helpful and thus has added the phrase "from the surplus lines insurer, in no event, later than 90 days." The adopted subsection (b)(4) requirement reads: "the group timely collects recoverables and receivables from the surplus lines insurer, but in no event, later than 90 days, including, if needed, drawing down on the letter of credit; . . . ." In response to several comments that the Department require all agreements between the self-insurance group and the surplus lines insurer be submitted to the Department prior to use and require that the policy contain any and all agreements, the Department has modified proposed subsection (b)(5) to state that "the group submits all surplus lines policy forms, renewal forms, certificates, endorsements and amendments applicable thereto, and any agreements between the surplus lines insurer and the group to the Texas Department of Insurance for review prior to use and the group may not accept or enter into any agreement or arrangement with the surplus lines insurer that has not been reviewed by the Texas Department of Insurance." In response to comments and as part of its review of the surplus lines policy forms, the Department has added subsection (b)(7) to the proposed text, which requires the group to notify "the Commissioner in writing no less than five calendar days after receiving notice of cancellation or nonrenewal of the excess insurance policy and no less than 30 days prior to the effective date of any proposed change in the excess insurance policy, by endorsement or otherwise."

Additionally, for clarification, proposed §5.6405(b)(3)(C) is revised to add the phrase "is in a form acceptable to the Texas Department of Insurance and". The adopted subsection (b)(3)(C) requirement reads: "provided the letter of credit is in a form acceptable to the Texas Department of Insurance and meets the requirements in 28 TAC §7.610, except for those requirements that apply solely to reinsurance agreements; . . . ." The Department also added the phrase "and in order to maintain" to proposed subsection (b)(6) to make it clear that the Department expects the group to comply fully with all the requirements in subsection (b) in order to maintain its excess insurance coverage with a surplus lines insurer. The Department also has made minor changes to correct grammatical and typographical errors.

Adopted §5.6405(b) provides that in order for a self-insurance group providing workers' compensation coverage to obtain and to maintain excess insurance from an eligible surplus lines insurer, it must be procured in compliance with Chapter 981 of the Insurance Code. Adopted §5.6405(b)(1) establishes the requirement that the surplus lines insurer must be certified as a trusteed reinsurer by the Texas Department of Insurance. Adopted §5.6405(b)(2) prescribes the financial strength rating the eligible surplus lines insurer must maintain. Adopted §5.6405(b)(3) requires the eligible surplus lines insurer to provide a letter of credit to secure the payment of losses under the terms and conditions of the excess insurance policy and describes the letter of credit requirements. Adopted §5.6405(b)(4) specifies that a self-insurance group must timely collect recoverables and receivables from the surplus lines insurer, in no event, later than 90 days, including, if needed, drawing down on the letter of credit. Adopted §5.6405(b)(5) requires a self-insurance group to submit the surplus lines policy form, renewal forms, certificates, endorsements and any amendments thereto, and any agreements between the self-insurance group and the surplus lines insurer to the Department for review prior to use and prohibits a self-insurance group from accepting or entering into a policy or agreement with a surplus lines insurer without prior Department review. Adopted §5.6405(b)(6) provides that a self-insurance group must demonstrate to the satisfaction of the Department that it meets all the requirements in adopted §5.6405(b) before it can obtain and in order to maintain the excess insurance from an eligible surplus lines insurer. Adopted §5.6405(b)(7) requires the self-insurance group to notify the Commissioner in writing no later than five calendar days from receiving notice of any cancellation or notice of nonrenewal, or no later than 30 calendar days prior to the effective date of any proposed change in the excess insurance policy.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

§5.6405(b)

Comment: A few commenters object to the adoption of the proposed amendments to subsection (b) because they state that the admitted market affords more security and provides a greater level of comfort to the self-insurance groups. Several commenters state that surplus lines carriers have no guaranty fund coverage and are not as heavily regulated as admitted carriers, resulting in increased financial exposure for injured workers, employer members, the Texas Self-Insurance Group Guaranty Fund (TSIGGF), and other certified self-insurance groups due to their participation in TSIGGF, which is currently un-financed. One commenter states that requiring the purchase of excess insurance in the admitted marketplace provides a more "level playing field" for self-insurance groups and that to remove the protection of this requirement increases the exposure of participating self-insurance groups, their members and covered employees to the financial impact of potential insolvency of another self-insurance group. Several commenters assert that only a few states allow self-insurance groups to obtain excess insurance coverage outside the admitted market, with some of these markets having dramatic failures, and they suggest that the Department inquire of other states regarding those states' experience with excess insurance and specifically whether these states have allowed surplus lines insurers to provide the excess insurance, and if not, why not. One commenter notes that admitted insurers specializing in excess insurance provide additional oversight on the operations, underwriting, risk and member selection of certified self-insurance groups, helping to ensure self-insurance groups operate in a financially sound and

responsible manner. One commenter states that participation in the surplus lines market assumes a more sophisticated insured than most self-insurance groups are in a position to be. One commenter states the proposed amendments could allow an offer of "cheaper" coverage due to less regulation of the surplus lines market in order to allow a self-insurance group to compete on price with the commercial insurers and that this reason is not a sound basis for a self-insurance group to seek excess insurance in the surplus lines market.

Agency Response: The Department disagrees that the proposed amendments should not be adopted. Under current regulations, there is no ability for a self-insurance group to access the surplus lines market. Under the adoption, access to the surplus lines market is acceptable conditioned upon strict compliance by the self-insurance group with the requirements specified in subsection (b). The ability to provide excess insurance coverage is not open to the majority of eligible surplus lines insurers but rather only to a select few eligible alien surplus lines insurers that possess very high financial wherewithal, as exhibited by their status as trusteed reinsurers and by their financial strength rating of A- or better, as determined by A.M. Best Company. Applying the criteria in subsection (b)(1) and (2), as adopted, currently 59 out of a total of 103 eligible alien surplus lines insurers meet these requirements. Pursuant to subsection (b)(3) as adopted, the arrangement between the self-insurance group and the surplus lines insurer must be secured by a letter of credit to protect against the credit risk of the insurer. The trust accounts of these certified trusteed reinsurers are subject to examination pursuant to the Insurance Code Article 5.75-1(b)(3), which is usually handled by the New York State Insurance Department because that is where the trust funds are typically located. Other states' laws generally differ significantly from the laws in Texas with regard to group self-insurance regulation, including allowing reinsurance by admitted and non-admitted insurers, and the commenters have not provided evidence that problems arose in other states based upon allowing self-insurer groups to obtain excess insurance from non-admitted insurers. In 2003, the Legislature specifically amended the definition of a "covered claim" in the Insurance Code Article 21.28-C §5(8) to add "self-insurers" to the list of excluded claims. TPCIGA is responsible for determining whether a claim is covered, including a claim submitted by a self-insurance group under an excess insurance policy issued by an admitted insurer. As previously noted, the arrangement between a self-insurance group and an eligible surplus lines insurer must be secured by a letter of credit. Prudent business practices in both the admitted and surplus lines excess insurance market will address the operations, underwriting risk and member selection of self-insurance groups. The Legislature, in enacting Chapter 407A of the Labor Code, authorized a board of trustees composed of member employers to operate a self-insurance group and required the board of trustees to engage an administrator to implement the policies established by the board of trustees and to provide day-to-day management of the self-insurance group. The amendments, as adopted, require a self-insurance group to file any surplus lines policy forms and other agreements for review prior to use to address the concern of side agreements. Additionally, pursuant to the Insurance Code §981.004, an eligible surplus lines insurer may provide surplus lines insurance only if the full amount of required insurance cannot be obtained, after a diligent effort, from an insurer authorized to write and actually writing that kind and class of insurance in this state, and an eligible surplus lines insurer may provide surplus lines insurance only in the amount that exceeds the amount of insurance obtainable from authorized insurers.

Comment: One commenter states that if the security of payment is decreased by use of a non-admitted insurer that is not covered by the TPCIGA, then the self-insurance group using the non-admitted insurer should provide additional security to the Department. The commenter requests the following language be added to proposed subsection (b): "(7) the group shall post security, in addition to that required under Section 407A.053(c), Texas Labor Code, in the form and amount required by the commissioner." Another commenter recommends adding similar language to require any self-insurance group that purchases excess insurance with a surplus lines insurer to post additional security, beyond that required by the Texas Labor Code, if it is deemed necessary by the Commissioner.

Agency Response: The Department declines to make the changes. The requirements in the amendments place reasonable safeguards on obtaining the required excess insurance from an eligible surplus lines insurer, including requiring the surplus lines insurer to provide a clean, irrevocable, and unconditional letter of credit. Self-insurance groups must post the security required under Chapter 407A of the Labor Code before the Department can grant a certificate of approval. If through an examination or other review of a self-insurance group's financial condition, the Department determines that a self-insurance group needs additional oversight or an increase in the security required under Chapter 407A based upon a change in membership or other factors that affect the self-insurance group's ability to pay its workers' compensation obligations, the Commissioner may take any regulatory action authorized by law, including increasing the amount of required specific excess insurance under §407A.054(b) and ultimately determining whether a self-insurance group can continue to operate.

Comment: Several commenters state that the excess insurance market for self-insurance groups has not undergone any significant underwriting or economic change to diminish capacity in the admitted market. Several commenters state that self-insurance groups currently holding certificates of approval have obtained excess insurance in the admitted market from three admitted insurers since the Department first granted a self-insurance group a certificate of approval and that currently eight admitted insurers provide excess insurance generally in Texas. These commenters state that excess insurance coverage for certified self-insurers (large individual private employers) has been available continuously in the admitted market since 1991, with periods of constricted availability and relatively higher pricing in "hard markets." One commenter states that there will be advanced indications if the excess market is narrowing to allow the Department to change the rule if necessary before an availability issue is present. One commenter opposes the proposed amendments arguing there is no apparent need at this time for access to the non-admitted marketplace since all self-insurance groups currently have excess insurance from admitted insurers, and there appears to be an adequate number of participants in the admitted marketplace to meet the needs of self-insurance groups. Another commenter argues that the need of one self-insurance group to access the surplus lines market does not justify the rule change, given the fund-to-fund crossover liability and a self-insurance group guaranty fund which remains un-financed. Instead, the commenter suggests a rule change should be considered if there is a market-wide problem with obtaining excess insurance in the admitted market. Several commenters add that if the admitted market is not comfortable insuring a potential

self-insurance group (e.g., due to particular risks of a self-insurance group or certain members of a self-insurance group, such as federal exposure to United States Longshore and Harbor Worker Act type claims), the self-insurance group may not be a good candidate for certification as a self-insurance group or may signal problems the regulator should consider.

Agency Response: The Department disagrees that the proposed amendments should not be adopted. The Department has received two requests from an interested party who asserts that there are availability problems currently in the workers' compensation excess insurance market, and that there are only three admitted insurers in Texas that specialize in providing excess coverage for self-insurance groups. The Department is taking steps to provide for increased participation of self-insurance groups in the workers' compensation market. Several commenters state that the proposed amendment is needed to improve the availability of excess insurance for self-insurance groups in Texas. Based upon information filed with the Department and representations made to the Department, all of the self-insurance groups holding certificates of approval from the Department have obtained excess insurance coverage from a limited group of four admitted insurers. In general, shallow markets are believed to be more susceptible to potential market swings and resulting capacity issues. The Department is taking a proactive stance in the event of future problems for self-insurance groups in satisfying the excess insurance requirements. The alternative is to adopt requirements in a reactive fashion in response to market capacity problems, which would be complicated by the length of time necessary for the administrative rule-making process. Under Texas law, coverage must not be available from the admitted market before it is eligible for placement to the surplus lines market. Additionally, there is an overriding public policy to encourage the means by which employers and employees can participate in the workers' compensation system. As noted by several commenters, allowing a self-insurance group to obtain excess insurance in the non-admitted market is designed to facilitate greater involvement of employers and their employees in the system, by allowing more self-insurance groups to be certified and allowing more options to employers for workers' compensation insurance. Additionally, the amendments as adopted limit significantly the pool of eligible surplus lines insurers to those insurers with substantial financial resources that collateralize their obligations with letters of credit.

Comment: One commenter applauds the Department for taking action that will allow authorized group self-insurers that are not able to find excess insurance coverage from an admitted insurer to seek coverage from a trusteed reinsurer on a surplus lines basis.

Agency Response. The Department appreciates the comment.

Comment: One commenter states that some of the reasons set forth by the Legislature in passing HB 2095, which added Labor Code Chapter 407A in 2003, was to give small and mid-sized employers the same option as large employers to self-insure for workers' compensation, to provide a stable market in terms of availability and rates, and to bring more employers into the workers' compensation system by self-insurance groups providing an affordable option to an industry as a whole during a tight market. The commenter recognizes the Department has to balance between affordable options for workers' compensation coverage and the security of payment of workers' compensation benefits and commends Department staff for doing an excellent job in proposing additional requirements if a self-insurance group is to be allowed to use a surplus lines insurer for its excess insurance. The commenter commends the Commissioner and Department staff for their diligent efforts in ensuring that group self-insurance remains an affordable but reliable source of workers' compensation insurance.

Agency Response: The Department appreciates the comment.

Comment: One commenter states that the modifications made by the Department with respect to a prior request by Montlake Holdings, LLC appear to have comfortably allayed the concerns previously contemplated by the commenter. The commenter states that the proposed amendments create a new, reasonably safe way for workers' compensation self-insurance groups in Texas to protect themselves from catastrophic claims and unusually bad claims years and commends those participating in producing the proposed amendments since it is clear a great deal of time and effort has been expended to produce the proposal. The commenter states that its opinion is that the proposed amendments would not place the workers' compensation self-insurance groups in Texas in any greater jeopardy, and will in fact provide another market for self-insurance groups under the rigorous standards delineated in the proposed amendments

Agency Response: The Department appreciates the comment.

Comment: One commenter recommends that the Department adopt a formal acknowledgement form to be completed by each member of a self-insurance group that obtains its excess insurance from a surplus lines insurer. The commenter recommends the form state that the surplus lines insurer is not protected by the TPCIGA or the TSIGGF and that the self-insurance group members can be held responsible for the ultimate losses of the entire self-insurance group and not solely the retained portion of their particular self-insurance group. Another commenter recommends adding the following subsection to the proposal to require self-insurance groups that purchase excess insurance from a surplus lines insurer to notify their members: "Each member of the group shall annually be notified in writing that the group has purchased excess insurance from an eligible surplus lines insurer and not an insurer that has a certificate of authority from the Texas Department of Insurance and that surplus lines insurers are not regulated by the Texas Department of Insurance or covered by the Texas Property and Casualty Insurance Guaranty Association."

Agency Response: The Department declines to make these changes at this time. It appears that the purpose of the commenter's recommendation is to make sure employers are aware of the risks of joining a self-insurance group that obtains excess insurance from a surplus lines insurer. However, each self-insurance group is governed by a board of trustees, which can provide its current members and future members with proper disclosures. Section 5.6405(b)(5) as adopted requires the self-insurance group to prefile the proposed arrangement between the self-insurance group and the surplus lines insurer with the Department for the Department to conduct a due diligence review. As part of its consideration to certify a self-insurance group and to allow it to obtain excess insurance from an eligible surplus lines insurer, the Department will review the notice and acknowledgement forms that the self-insurance group intends to use, and encourage the self-insurance group to notify all members of regulations affecting the purchase of excess insurance coverage from surplus lines insurers. Surplus lines documents are required to have the disclosure specified in Insurance Code §981.101, which includes a disclosure of non-participation in the guaranty fund.

§5.6405(b)(1) - (3)

Comment: One commenter contends that to impose the three additional requirements in proposed subsections (b)(1) - (3) on a "Texas approved" surplus lines insurer seems unreasonably stringent, redundant, unwarranted, and unreasonable and recommends that §5.6405(b) be revised so that meeting any one of the three requirements in subsections (b)(1) - (3) would be sufficient. The commenter argues that the proposed amendments require losses to be secured twice--once by the letter of credit requirement and second by the trusteed reinsurer requirement. The commenter contends that it is redundant to require a surplus lines insurer to be a certified trusteed reinsurer and to maintain an A- rating or better because each is an indicator of financial strength.

Agency Response: The Department disagrees that the requirements are unreasonably stringent, redundant, unwarranted, and unreasonable, and therefore, disagrees with the need for the suggested text revisions. Under current regulations, there is no ability for a self-insurance group to access the surplus lines market. Under the adopted amendments, access to the surplus lines market is acceptable conditioned upon compliance by the self-insurance group with certain financial security requirements. The goal of the amendments is not to hold the surplus lines insurer to a higher standard but to place parameters on how a self-insurance group engages the non-admitted market for the required excess insurance, considering the joint and several liability of self-insurance group members. The Department disagrees that the losses would be secured twice. The trust related to the reinsurance obligations secures reinsurance exposures, not surplus lines obligations. The letter of credit is specific to the losses of that self-insurance group and is a requirement for the self-insurance group to hold a certificate of approval from the Department. The Department also disagrees that the requirements are redundant. In the administration of the Department's solvency regulation functions, it is the Department's practice to utilize multiple ways to determine the financial strength and sufficiency of a regulated entity and its arrangements with other entities.

§5.6405(b)(3)

Comment: Several commenters state that it is unclear if the self-insurance group is intended to hold the letter or credit and recommend that language be added to clarify explicitly that the self-insurance group is the holder of the letter of credit.

Agency Response: The Department agrees with the comment and has clarified subsection (b)(3) as adopted to indicate explicitly that the self-insurance group is the holder of the letter of credit.

Comment: A commenter recommends that each self-insurance group provide an annual report that includes the recoverables, receivables and draw downs issued on the letter of credit to both the Department and relevant group members. Also, the commenter states that a self-insurance group should review annually the letter of credit amount, as loss development and membership in the group may change from year to year.

Agency Response: The Department agrees that appropriate monitoring of these arrangements is warranted, but disagrees that the recommended change is necessary at this time because the Department can monitor the recoverables, receivables and draw downs procedurally as part of its annual solvency monitoring and examinations of self-insurance groups. Self-insurance groups are required to submit an annual audit report to the Department every year. The Department expects the self-insurance group's certified public accountant to evaluate the letter of credit in relation to changes in the loss development and membership structure as part of the annual audit report.

Comment: One commenter asks if the self-insurance group is unable to pay the losses would the surplus lines insurer pay for losses and provide a letter of credit under the attachment point.

Agency Response: The surplus lines insurer's liabilities are limited to the contractual obligations pursuant to the terms and conditions of the excess insurance policy that has been submitted to the Department for review prior to use. The Labor Code §407A.054(b) requires specific excess insurance for losses that exceed the self-insurance group's retention. In order to address the comment, the Department has made minor clarifications to subsection (b)(3) as adopted.

Comment: One commenter recommends that the actuarial analysis for the amount of the letter of credit include a Probable Maximum Loss analysis for the self-insurance group and that the annual report and actuarial opinion include a Probable Maximum Loss analysis.

Agency Response: The Department agrees that an actuarial analysis including a Probable Maximum Loss analysis is an important component in establishing the amount of excess insurance coverage needed and the attachment points for that coverage. Section 5.6405(d) requires an actuarial recommendation of the appropriate level of specific excess insurance for the self-insurance group as a prerequisite for obtaining a certificate of approval. Pursuant to Labor Code §407A.051(d), the self-insurance group is required to notify the Department if any information filed under the Labor Code §407A.051(c) has changed or a self-insurance group's manner of compliance with the Labor Code §407A.051(c) or any regulations adopted thereunder has changed, such as a change in the amount of excess insurance coverage needed. The Department plans to develop administrative procedures to ensure that the actuarial opinion that accompanies the annual financial statements filed by each self-insurance group includes a Probable Maximum Loss analysis.

§5.6405(b)(4)

Comment: A commenter states that the standard of "timely" in proposed §5.6405(b)(4) is so vague that enforcement will be difficult, that it is not clear what recoverables and receivables are subject to the proposed regulation, and that it is not possible to demonstrate "timely collected" before obtaining the policy from the surplus lines insurer. The commenter contends that it is an unreasonable requirement since the Department and the self-insurance group already have many options at their disposal should a surplus lines insurer fail to pay losses. The commenter recommends that §5.6405(b)(4) be deleted in its entirety.

Agency Response: The Department disagrees with the recommendation to delete this subsection in its entirety. The Department, however, has modified subsection (b)(4) for clarification to require that the group timely collect recoverables and receivables "from the surplus lines insurer, but in no event, later than 90 days, including, if needed, drawing down on the letter of credit." The purpose of this provision is to inform all parties involved in the excess insurance transaction that the Department expects that any receivables or recoverables related to the arrangement do not accumulate to a point that they may or do become hazardous to the financial condition of the self-insurance group.

§5.6405(b)(5)

Comment: Several commenters state that the Department needs to require full disclosure of all policy terms, limitations, endorsements, and exclusions to ensure the transfer of risk to the surplus lines insurer and to ensure no side agreements exist that would limit the surplus lines insurer's liability under the policy. Several commenters recommend that the proposed amendments be changed so that the self-insurance group is required to file with the Department and TSIGGF any and all agreements not disclosed in the policy for review prior to use. One commenter requests requiring the policy to contain any and all agreements between the self-insurance group and the surplus lines insurer prior to its use and that the policy state that it contains any and all agreements between the self-insurance group and the surplus lines insurer.

Agency Response: The Department agrees that filing all side and other agreements with the Department is necessary for the proper administration of Chapter 407A of the Labor Code. Labor Code §407.054 directs the Commissioner to prescribe the form of the specific excess insurance which is to cover losses that exceed the self-insurance group's retention up to limits required by the Commissioner. The Department has clarified the requirement by revising proposed subsection (b)(5) to require the self-insurance group to submit the policy forms, renewal forms, certificates, endorsements and any amendments thereto, and any agreements between the self-insurance group and the excess insurance insurer for the Department's review prior to use. The Department also has clarified the requirement by revising proposed subsection (b)(5) to state that "the group may not accept or enter into any agreement or arrangement with the surplus lines insurer that has not been reviewed by the Texas Department of Insurance." To further address the concerns raised in the comments, the Department has changed the amendments as proposed by adding a new paragraph (7) requirement: "(7) the group notifies the Commissioner in writing no less than five calendar days after receiving notice of cancellation or nonrenewal of the excess insurance policy and no less than 30 calendar days prior to the effective date of any proposed change in the excess insurance policy, by endorsement or otherwise." The Department declines to make the change to require that the policy contain any and all agreements between the self-insurance group and the surplus lines insurer since the amendment, as adopted, will require the self-insurance group to file any and all agreements, and the Department can require the policy to contain this provision as part of its review of the policy form submission. The Department will not recognize any excess insurance policy or agreements in fulfilling a self-insurance group's financial obligations unless the policy and agreements have been reviewed by the Department prior to use. The Department declines to make the change to add "and to the Texas Self-Insurance Group Guaranty Fund" to proposed subsection (b)(5). The review and approval of a self-insurance group's specific excess insurance is a regulatory function of the Department. While the Department appreciates the commenter's concerns, the Department notes that pursuant to Labor Code §407A.055(a), TSIGGF currently receives reports and other relevant information from the Department, can access certain information provided by or filed with the Department, and can provide advisory recommendations to the Commissioner as necessary regarding an applicant's compliance with Subchapter B relating to application requirements for certification. The Department will endeavor to provide the proposed policy information it receives with TSIGGF while the submission is under review.

Comment: A commenter states that approval of an excess insurance form encroaches into form regulation and is contradictory to the ability to tailor insurance solutions to the needs of a particular customer. The commenter suggests deleting subsection (b)(5) in its entirety.

Agency Response: The Department declines to delete proposed subsection (b)(5) because it imposes a requirement on the self-insurance group that is necessary for the Department's proper administration of Chapter 407A. Subsection (b)(5) is one of the necessary requirements for the self-insurance group to engage the surplus lines market as provided under Chapter 407A of the Labor Code. Specifically, this requirement enables the Department to evaluate the arrangement in terms of a self-insurance group's compliance with the requirements in the Labor Code Chapter 407A, including §407A.051(e) which requires the Commissioner to evaluate the financial information provided with the application as necessary to ensure that the funding is sufficient to cover expected losses and expenses and that the funds necessary to pay workers' compensation benefits will be available on a timely basis and §407A.054 which explicitly requires a self-insurance group to obtain specific excess insurance for losses that exceed the self-insurance group's retention in a form prescribed by the Commissioner.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For: Texas Alliance of Energy Producers Self-Insured Group Trust; Montlake Holdings LLC; BMS Group Limited; C&S Service and Supply Company; Boley-Featherston Insurance; Cedar Springs Drilling Company, LLC; Burk Royalty Co., LTD; Safety Services International, Inc.; Sun Coast Resources, Inc.; and ICT Insurance Agency, Inc.

For with changes: National Association of Professional Surplus Lines Office Ltd.

Against: Texas Cotton Ginners' Trust and RMS Texas, LLC.

Neither for nor against: Attenta and Texas Auto Dealers Self Insurers Group.

Neither for nor against, with changes: Texas Self-Insurance Group Guaranty Fund, Office of Public Insurance Counsel, and Texas Mutual Insurance Company.

The amendments are adopted pursuant to the Labor Code §§407A.008, 407A.051(c)(3) and (10), 407A.051(e), and 407A.054, and the Insurance Code §36.001. Labor Code §407A.051(c)(3) requires an application for a certificate of approval to include proof of compliance with the excess insurance requirements under Labor Code §407A.054. Labor Code §407A.051(c)(10) requires that an application include a pro forma financial statement, in a form acceptable to the Commissioner, that shows the financial ability of the group to pay the workers' compensation obligations of the employers who are members of the group. Labor Code §407A.051(e) requires the Commissioner to evaluate the financial information provided with the application as necessary to ensure that the funding is sufficient to cover expected losses and expenses and that the funds necessary to pay workers' compensation benefits will be available on a timely basis. Labor Code §407A.054(b) states that each group shall obtain specific excess insurance for losses that exceed the group's retention in a form prescribed by the Commissioner. Labor Code §407A.054(b) also states that the Commissioner may establish minimum requirements for the amount of specific excess insurance based on differences

among groups in size, types of employment, and years in existence, and other relevant factors. Labor Code §407A.054(a) directs that each group must comply with the excess insurance requirements adopted under this section. Labor Code §407A.008 provides that the Commissioner shall adopt rules as necessary to implement Labor Code Chapter 407A, Group Self-Insurance Coverage. Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§5.6405. Excess Insurance.

(a) The group shall obtain excess insurance in an amount acceptable to the Commissioner but in no event shall the excess insurance coverage be less than $5 million per occurrence.

(b) The group shall obtain and maintain excess insurance coverage from an insurer that has a certificate of authority from the Texas Department of Insurance or from an eligible surplus lines insurer in compliance with Chapter 981 of the Texas Insurance Code and related provisions of the Texas Administrative Code, provided that:

(1) the surplus lines insurer is also certified as a trusteed reinsurer by the Texas Department of Insurance, in accordance with Insurance Code, Article 5.75-1(b)(3) (effective April 1, 2007, Article 5.75-1(b)(3) is repealed and re-adopted as Insurance Code §§493.102, 493.152 - 493.155, and 495 157);

(2) the surplus lines insurer maintains a financial strength rating of "A-" or better, as determined by A.M. Best Company;

(3) the surplus lines insurer provides a clean, irrevocable, and unconditional letter of credit in favor of the group as beneficiary and held by the group, subject to withdrawal solely by and under the exclusive control of the group, to secure the payment of losses, including losses, loss adjustment expenses, incurred but not reported losses, and any other obligation of the surplus lines insurer under the terms and conditions of the excess insurance policy, whether paid or unpaid by the group:

(A) in no less than the greater of:

(i) the amount of actuarially projected losses to ultimate; or

(ii) the amount of actual losses to ultimate;

(B) issued by a qualified United States financial institution as defined in Insurance Code, Article 5.75-1(e) (effective April 1, 2007, Article 5.75-1(e) is repealed and re-adopted as Insurance Code §§493.002, 493.102, and 493.104); and

(C) provided the letter of credit is in a form acceptable to the Texas Department of Insurance and meets the requirements in 28 TAC §7.610, except for those requirements that apply solely to reinsurance agreements;

(4) the group timely collects recoverables and receivables from the surplus lines insurer, but in no event, later than 90 days, including, if needed, drawing down on the letter of credit;

(5) the group submits the surplus lines policy forms, renewal forms, certificates, endorsements and amendments applicable thereto, and any agreements between the surplus lines insurer and the group to the Texas Department of Insurance for review prior to use and the group may not accept or enter into any agreement or arrangement with the surplus lines insurer that has not been reviewed by the Texas Department of Insurance;

(6) the group demonstrates to the satisfaction of the Texas Department of Insurance that the group meets the requirements of subsection (b) of this section before obtaining and in order to maintain excess insurance coverage from an eligible surplus lines insurer; and

(7) the group notifies the Commissioner in writing no less than five calendar days after receiving notice of cancellation or nonrenewal of the excess insurance policy and no less than 30 calendar days prior to the effective date of any proposed change in the excess insurance policy, by endorsement or otherwise.

(c) In determining the group's excess insurance, the Commissioner shall consider a group's size, types of employment, years in existence and other relevant factors.

(d) To assist the Commissioner in making the determination under subsection (c) of this section, the group shall submit an analysis prepared by an actuary of the appropriate level of specific excess insurance for the group.

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

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 350. TEXAS RISK REDUCTION PROGRAM

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§350.2 - 350.4, 350.33, 350.34, 350.37, 350.51, 350.54, 350.71, 350.73 - 350.77, 350.79, 350.91 - 350.96, 350.111, and 350.134, and adopts new §350.90. Sections 350.2, 350.4, 350.33, 350.34, 350.37, 350.51, 350.73 - 350.77, 350.90, and 350.95 are adopted *with changes* to the proposed text as published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7257). Sections 350.3, 350.54, 350.71, 350.79, 350.91 - 350.94, 350.96, 350.111, and 350.134 are adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The initial rulemaking of Chapter 350 was originally adopted on September 2, 1999, and became effective September 24, 1999. The purpose of the original rulemaking was to create a unified performance-based remediation program that is risk-based, consistent, streamlined, and that expedites site remediations. Subsequent to the initial adoption, the rulemaking has been readopted under the Quadrennial Review requirements. In August 2003, §350.1 was modified to include a provision to

confirm that engineering, geoscience, and surveying information submitted to the agency must comply with the applicable professional licensing and registration acts. Other than the August, 2003 amendment, the rule has remained unchanged since its original adoption. Throughout this preamble, the Texas Risk Reduction Program (TRRP) rule in existence prior to these adopted amendments will be referred to as the "prior rule" or the "prior TRRP rule."

The agency has gained much experience over the last seven years through intensive implementation of the rule at thousands of contamination sites located throughout Texas. The agency has noticed errors (misspellings, typographical, mathematical) in the rule that need to be corrected, as well as provisions that either need clarification or modification to facilitate consistent and effective rule application. Some rule provisions required updating to reflect the latest scientific information. Additionally, the agency has reevaluated some policy positions and has developed new positions and procedures in guidance that were previously unaddressed by the rules.

Finally, the agency is adopting new rule provisions in support of a new electronic data management system initiative and expanded use of geographical information system technology to increase agency effectiveness and institutional memory as well as to improve the public availability of technical information stored at the agency. For all of these reasons, these amendments are adopted.

SECTION BY SECTION DISCUSSION

Administrative and grammatical changes are adopted throughout the sections to bring the rule language into agreement with Texas Register requirements, agency guidelines, and guidance provided in the *Texas Legislative Council Drafting Manual*, August 2006.

The name of the agency has changed from Texas Natural Resource Conservation Commission (TNRCC) to Texas Commission on Environmental Quality (TCEQ) since the original adoption of the rule. Therefore, changes are adopted to §§350.4(a)(58) and (b), 350.73(a)(4) and (c), and 350.111(a)(7) and (8) and (c), as well as to Figures 30 TAC §§350.73(f), 350.74(a), and 350.77(b) to reflect this agency name change.

Section 350.2(g), Applicability, was changed in response to public comment on the rule, which is explained in the RESPONSE TO COMMENTS section of the preamble. The change provides the agency the latitude to grant a variance that will foster regulatory consistency between leaking petroleum storage tank (LPST) sites that have comparable conditions and are located within 0.25 miles from each other. As explained in the March 26, 1999, issue of the *Texas Register* (24 TexReg 2208) preamble to the original adoption rulemaking, one reason this chapter was adopted was to create greater uniformity between regulatory programs, and thus between remediation sites. However, because of the large number of LPST sites that have been remediated under the 30 TAC Chapter 334 regulations, the application of this chapter to an LPST site has sometimes had the opposite effect, resulting in regulatory inconsistency with comparable LPST sites located within 0.25 miles that have been regulated under Chapter 334. The variance provides remediation flexibility to the landowner under appropriate and qualified circumstances, while maintaining protection of human health and the environment.

Therefore, these provisions are adopted in order to provide the executive director with the discretion to grant a site-specific variance to use the Chapter 334 regulations in lieu of this chapter in certain instances. These adopted amendments provide criteria that must be met to be eligible to request the variance. Most importantly, there must be an LPST site within 0.25 miles that is regulated under the Chapter 334 risk-based corrective action regulations, and the regulatory requirements for the site must be substantially different from what is required by Chapter 350, even though the site conditions, release conditions, and receptor conditions are comparable.

If the person can demonstrate that Chapter 334 requirements apply to comparable LPST sites, located within 0.25 miles from the property seeking the variance, and that to comply with Chapter 350 unjustifiably imposes greater requirements, the person will be able to formally submit a request for a variance as set forth in these amendments. The person is responsible for initiating the variance request, providing all information required under these amendments, and supplying any additionally requested information that is reasonable and appropriate. The requested variance will be granted if the executive director agrees with the person that the sites are comparable, and an unjustifiable difference in requirements will result if this chapter is applied to the LPST site. With the variance, the person will then apply the Chapter 334 risk-based corrective regulations in lieu of those set forth in Chapter 350.

However, the agency has chosen to allow this variance only for LPST sites that ceased aboveground or underground storage tank use and removed the tanks before September 1, 2003, the effective date of Chapter 350 for LPST sites. Further, the variance is only for those properties and future subdivisions of those properties where the landowner voluntarily commits to impose a permanent prohibition against any future aboveground or underground storage tank use at that property by means of a restrictive covenant enforceable by the State of Texas. In the opinion of the agency, these criteria ensure any LPST releases that will qualify for this variance are constrained to those releases that occurred prior to the date Chapter 350 became effective for LPST sites. This ensures that the application of Chapter 334 will be allowed only for legacy or historical releases that occurred prior to the effective date of Chapter 350. Any release occurring or potentially occurring as a consequence of storage tank system operation after that date, should be regulated under Chapter 350. Further, the agency believes if compliance with Chapter 350 does not create regulatory inconsistency with obligations under Chapter 334, then the variance is not warranted and compliance with Chapter 350 is fully appropriate.

If in the future the landowner of the property or subdivision of the property desires to resume storage tank use at the property or at a subdivision of the property, then the LPST release for which the variance was granted must be brought into full compliance with Chapter 350 at that time.

Adopted §350.2(m), concerning the use of this chapter on or after May 1, 2000, clarifies provisions regarding switching rules once the person established grandfather status under the previously applicable rules contained in 30 TAC Chapter 335, Subchapters A and S (Industrial Solid Waste and Municipal Hazardous Waste in General; Risk Reduction Standards, respectively). These provisions specify that, first, a person who desires to remain subject to Chapter 335 risk reduction standards may not use any provisions of Chapter 350 and that, second, a person who switches to Chapter 350 to complete a response action may not revert back to Chapter 335. As originally structured, the second provision appeared to apply only to risk reduction stan-

dard number 3. By deleting these two provisions from subsection (m)(1) and (2) and adding them to subsection (m), the provisions will apply uniformly to all three risk reduction standards set forth in Chapter 335.

Adopted §350.3, Process, modifies flowcharts that describe the sequence and timing for reporting to the agency. The adopted changes to the flowcharts correct typographical errors and more accurately summarize the rule. The amendment clarifies that documentation of any required institutional controls related to Remedy Standard A must be submitted within 90 days of agency approval of a Response Action Completion Report. The amendment also clarifies that proof of compliance with institutional control requirements must be submitted within 120 days of agency approval of a Response Action Plan, if a waste control unit, technical impracticability demonstration, and/or plume management zone (PMZ) is used. The adopted changes neither alter nor add requirements to the institutional control and reporting requirements of the prior rule.

Adopted §350.4, Definitions and Acronyms, includes revisions to correct typographical errors, revisions to the definitions for "Commercial/industrial land use," "Implementation Procedures," and "Person," changing the term "Sample quantitation limit" to "Sample detection limit," and adding the acronym "TPDES" (Texas Pollutant Discharge Elimination System).

Section 350.4(a)(6) concerning the definition of anthropogenic background for surface water and sediment is not being adopted as proposed. The change from the proposed rule was effected based upon public comments received.

Adopted §350.4(a)(13), concerning the definition of "Commercial/industrial land use," clarifies that the hiring of domestic household help at a property does not result in the land use of that property being considered commercial/industrial under the TRRP rule. The definition of the prior TRRP rule indicated that land use activities consistent with commercial/industrial land use include North American Industrial Classification System (NAICS) Code 814, which relates to the use of domestic help in a private household. The adopted change excludes NAICS Code 814.

Adopted §350.4(a)(45), concerning the definition of "Implementation Procedures," corrects a reference to an agency document. The prior rule defined "Implementation Procedures" when used in the TRRP rule, as referring to the agency document, "Implementation of the Texas Natural Resource Conservation Commission Standards via Permitting." This document has been renamed. The correct document to use when "Implementation Procedures" is referenced in the prior TRRP rule is now entitled "Procedures to Implement the Texas Surface Water Quality Standards."

Changes are adopted to §350.4(a)(62), relating to the definition of "Person." The definition of "Person" contained in the prior version of the TRRP rule excluded "a governmental entity that is not a responsible party performing a remedial action." The agency has determined that the prior definition was too broad with regard to governmental entities, in that it unintentionally implied that remediation projects conducted by governmental entities that were not responsible parties were not regulated by the TRRP rule. The definition of the prior rule was intended, in part, to provide relief for the situation where a governmental entity which is performing a remedial action but is not a responsible party, such as governmental entities remediating brownfields properties, or performing State Lead Petroleum Storage Tank (PST) or Superfund remediation, from being required to obtain: a) a restrictive covenant in the situation where the landowner refuses to execute the covenant; or b) the written consent from a landowner prior to filing a deed notice or Voluntary Cleanup Program certificate of completion on that landowner's property. Given the potential for overbroad application of the definition of "Person" in the prior TRRP rule, the definition is narrowed. The related adopted changes to §350.111(c) specifically address this institutional controls requirement more suitably.

Adopted §350.4(a)(78), concerning the definition of "Sample quantitation limit," replaces the word "quantitation" with "detection" in order to better fit the definition provided in the rule. Conforming changes are also adopted for §§350.51(d)(1) and (n), 350.54(h)(2), 350.71(k)(1), and 350.79.

Section 350.4(a)(88), concerning the definition of "Surface soil," is not being adopted as proposed. The change from the proposed rule was modified based upon unsupportive public comments received and the lack of new information to compel such a change.

Section 350.33(f)(4)(E), Remedy Standard B, is not being adopted as proposed. After further consideration, the amendment was determined to be unnecessary and offers no further clarification of the rule.

Section 350.34(1) and (2), No Further Action, was changed in response to public comment on the rule, which is explained in the RESPONSE TO COMMENTS section of the preamble. The change provides additional cross-references for rule requirements that may trigger the need for an institutional control.

Adopted §350.37(i) and (k), Human Health Points of Exposure, corrects and clarifies the rule. The amendment factors in potential impacts to downgradient reaches of the surface water body, and establishes the point of exposure (POE) for sediment or surface soil in intermittent streams.

Adopted §350.51(d), Affected Property Assessment, corrects and clarifies the rule so that it is fully consistent with the intent behind the rule provision. The goal of the provision is to ensure that the key question of whether groundwater has been affected by a chemical of concern (COC) release is specifically answered. Both the prior rule and the adopted rule require that the vertical extent of the release be investigated to the greater of the method quantitation limit or to the background concentration, or until groundwater is encountered, in which case the groundwater will be sampled. When groundwater has already been investigated, the prior rule softened the vertical assessment required by allowing the vertical assessment to terminate at the ^{GW}Soil protective concentration level (PCL). That reference to ^{GW}Soil in §350.51(d)(1) contained in the prior TRRP rule was incorrectly too specific, and should have instead more generally stated "the residential assessment level."

Also, adopted §350.51(d)(1) is split into additional paragraphs (2) and (3) to enhance readability, and paragraph (2) of the prior TRRP rule is renumbered as paragraph (4). In paragraph (2), an amendment is adopted to clarify that in the context of using §350.75(i)(7)(C) to limit the vertical assessment under §350.51(d), an adequate groundwater assessment must be conducted, unless the executive director approves the omission or modification of the groundwater assessment on a site-specific determination. Information to be considered in the site-specific determination should include, but not necessarily be limited to, depth to the groundwater-bearing unit, characteristics of the geology that prohibit or impede vertical migration of COCs, and

the physical and chemical properties of the COCs. An example of when such a determination may be made is the situation of a release over the Eagle Ford Shale. In this situation, the case may be made that the shale will prohibit migration of COCs to the groundwater-bearing unit below the shale. The lines of evidence that include the depth to that groundwater-bearing unit, the geology and hydrogeology of the site, and the chemical/physical properties of the COCs may, in combination, provide sufficient justification to not require sampling of groundwater to define the vertical extent of COCs. Note that depth to groundwater by itself is not an adequate justification for not sampling groundwater to define the vertical extent of COCs.

Section 350.51(i), concerning connections to a public water supply, is not being adopted as proposed. The change from the proposed rule was based upon unsupportive public comments received.

Adopted §350.51(j), concerning the collection of representative samples of groundwater, revises the text to reflect the fact that samples collected from any environmental medium (not just groundwater) should be collected and handled in a manner which will yield representative concentrations of COCs.

Adopted §350.51(k), concerning collecting representative samples of surface water, revises the text to reflect the fact that samples collected from either surface water or sediment should be collected and handled in a manner in accordance with a different, more appropriate guidance document for surface water/sediment collection, than was indicated in the prior rule. For this change, *Implementation Procedures* is deleted, and *Surface Water Quality Monitoring Procedures, Volume I* is to be used in its place. Here, alternate sampling methodologies are still allowable with approval by the executive director.

Adopted §350.51(m), concerning site-specific background soil concentrations, adds the word "soil" into the rule to clarify that the Texas-specific background concentrations are for soil. Adopted changes to Figure 30 TAC §350.51(m), entitled, "Texas-Specific Background Concentrations," include amending the title to include the word "soil," because the table pertains exclusively to soils, not groundwater or other media; and also amending the title to include the units of milligrams per kilogram (mg/kg). In addition, the reference from fluorine is changed to fluoride, since fluoride is the correct form of the element that should be listed in the table. Finally, the table has been corrected to reflect thorium instead of thallium, as it was mistakenly portrayed as thallium in the prior rule, and had been previously corrected in guidance.

A footnote is adopted for additional clarification to the figure in §350.51(m). It references the document which is the source of the table data: *Background Geochemistry of Some Rocks, Soils, Plants, and Vegetables in the Conterminous United States*, by Jon J. Connor, Hansford T. Shacklette, *et al*., Geological Survey Professional Paper 574-F, U.S. Geological Survey.

Adopted §350.54(d), Data Acquisition and Reporting Requirements, revises the laboratory accreditation requirements to be consistent with 30 TAC Chapter 25, Environmental Testing Laboratory Accreditation and Certification. The new requirements will be implemented on July 1, 2008. The adopted changes clarify the requirements for data generated prior to the implementation of the amended rule. Also adopted is an amendment to §350.54(e)(4) to clarify that method detection limits are not analyst dependent.

Adopted §350.71(k), General Requirements, simplifies, clarifies, and changes the rule. Adopted paragraph (4) is added and is referenced in subsection (k). Additional text adopted for paragraph (1) adds specific context to clarify the intent of the rule and to facilitate consistent rule application. Additional text is also adopted for paragraph (2) to clarify the residential assessment level is the analytical performance criteria to screen COCs from PCL development under this paragraph. Furthermore, the additional text makes paragraph (2) self-contained, eliminating the prior need to also apply paragraph (3) when applying paragraph (2). The adopted amendment to paragraph (3) shortens and simplifies the rule language by deleting subparagraphs (A) and (B)(i) - (vi) from the prior rule. Under amended paragraph (3), a COC not detected in the environmental medium, but known or reasonably anticipated to be associated with activities conducted at the on-site property, can be dropped from PCL development if all of the sample detection limits for the COC are less than the residential assessment level in the environmental medium. Adopted paragraph (4) clarifies that a COC not known or not reasonably anticipated to be associated with a facility or site activity and not detected in the environmental medium can be dropped from PCL development. If the COC is detected in another environmental medium at the on-site property, the COC is considered potentially associated with the facility or site and cannot be screened under adopted paragraph (4). The residential assessment level is intentionally not included in paragraph (4) to allow the person to use a broad spectrum analytical method without having to evaluate each of the analytes reported for those methods when those analytes are not detected and are not known or not reasonably anticipated to be associated with the on-site property.

Section 350.73, Determination and Use of Human Toxicity Factors and Chemical Properties, was changed in response to public comment on the rule, which is explained in the RESPONSE TO COMMENTS section of the preamble. The changes include revisions to §350.73(a) to add a new source to the list of acceptable sources for obtaining human toxicity factors, and to §350.73(b) and §350.73(a), which allow the executive director to direct persons to use a chronic human toxicity factor from a source other than that selected under the hierarchy in §350.73(a) in cases where the executive director has determined it to be necessary to use a more scientifically valid toxicity factor from a different source. The adopted new source of toxicity factors is United States Environmental Protection Agency (EPA) Provisional Peer Reviewed Toxicity Values (PPRTVs) (i.e., Superfund Health Risk Technical Support Center). This change is adopted to §350.73(a) because two of the sources in the list, the "EPA Health Effects Assessment Summary Table" and the "EPA National Center for Environmental Assessment," will no longer have updates to toxicity factors, however, it will likely take a number of years for new toxicity factors to be developed to replace some of the values that are in those sources. Changes are adopted to §350.73(a) and §350.73(b) to give the executive director flexibility to approve a toxicity factor from a different tier of the source hierarchy in cases where a toxicity factor from the source selected in accordance with the hierarchy list provided in §350.73(a) is determined by appropriate TCEQ staff to be less scientifically valid than that from a different source tier based on more recent science. A change is adopted to §350.73(b) to redesignate it as §350.73(c) and to allow for the provision provided in adopted §350.73(b). Subsequent paragraphs and figures are renumbered to accommodate adopted subsection (b).

Changes are adopted to Figure: §350.73(f) to reflect current available chemical and physical data for 2-ethoxy ethanol (Table Compound No. 172).

Adopted §350.73(f)(1) removes incorrect references to leachate tests, including the Synthetic Precipitation Leaching Procedure (SPLP), as appropriate tests for determining the soil-water partition coefficient (K_d) of inorganic compounds or the organic carbon-water partition coefficient (K_{oc}) of ionizing organic compounds. The changes are adopted because leachate tests such as SPLP are not appropriate for determining the partitioning coefficients. The adopted changes continue to allow the use of data from appropriately conducted tests to be used to determine a site-specific K_d or K_{oc}.

Changes are adopted to Figure §350.73(f)(1)(C) to add pH-dependent soil-water partition coefficients (K_d) for antimony and a revised single value for vanadium.

Figure: 30 TAC §350.74(a), entitled "Risk-Based Exposure Limit Equations and Default Exposure Factors for Residents," is adopted to correct the reference citation for the relative bioavailability factor (RBAF) from §350.74(j)(1)(D) to §350.74(j)(1)(C). Figure: 30 TAC §350.74(a), entitled "Risk-Based Exposure Limit Equations and Default Exposure Factors for Residents," and "Risk-Based Exposure Limit Equations and Default Exposure Factors for Commercial/Industrial Worker," is adopted to renumber the references for RBEL-6: Surface Water RBEL to conform to the renumbering in adopted §350.74(h)(5)- (8).

Adopted §350.74(h), concerning the surface water risk-based exposure limit (^{SW}RBEL), includes new language to make persons more aware that they may have to develop multiple RBELs or PCLs depending on the distance downstream from the contaminated site that COCs are expected to be present in the watershed, and that the RBELs and PCLs will vary with the different uses and exposure pathways within the watershed.

Adopted §350.74(h)(2) adds contact recreation as a water body use that the person must consider when applying human health criteria to establish ^{SW}RBELs. Adding contact recreation as a water body use acknowledges the fact that incidental ingestion of surface water and dermal contact with surface water sometimes occurs, and therefore, may be pathways of exposure to COCs, even when a water body is not a drinking water source.

Adopted §350.74(h)(3) replaces "limits" with "effluent limitations" to be more technically accurate. Also, the reference to 30 TAC Chapter 321, Subchapter H, is adopted to be changed to Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG830000, because the existing reference is no longer valid. The adopted language also clarifies that these limitations apply to releases of groundwater or storm water that has been impacted by petroleum fuel.

Adopted §350.74(h)(4) is amended to spell out "United States" rather than use the abbreviation "U.S." In addition, language that clarifies the meaning of the term "federal guidance criteria" is added.

Adopted §350.74(h)(5) is added to be elevated from the former §350.74(h)(6)(B). Elevation of this subsection emphasizes the fact that the specified analytes (chlorides, sulfates, etc.) should be treated as COCs where applicable at the affected property. In response to public comment on the rule, a change was made to §350.74(h)(5) to use these specific analytes as COCs when appropriate.

Because of the adopted additions previously discussed, §350.74(h)(6) is re-designated as §350.74(h)(7), and §350.74(h)(7) is re-designated as §350.74(h)(8). Also, adopted §350.74(h)(7) clarifies the fact that some parameters (nutrients, total dissolved solids, etc.) are sometimes COCs themselves, and adds an example where the RBEL is modified to address general criteria.

Changes are adopted to the groundwater-to-surface water PCL equation contained in Figure: 30 TAC §350.75(b)(1) to clarify that ecological receptors must be considered when determining PCLs for groundwater discharges to surface water. Prior to this rulemaking, the term in the numerator of the equation (^{SW}RBEL) was only related to aquatic life and human health exposure pathways that are addressed by the Texas Surface Water Quality Standards (TSWQS). The adopted new term for the numerator of the equation, the PCL for surface water (^{SW}SW), takes ecological receptors into consideration (including aquatic life) and other human pathways not addressed by the TSWQS, as described in later discussions of adopted changes to this section of the TRRP rule.

Changes are adopted to Figure: 30 TAC §350.75(b)(1) to correct the missing temperature term "K" for the units for the Universal Gas Constant in two places in the figure, and to update the amount of time that an individual is assumed to be exposed to a chemical or multiple COC (i.e., the exposure interval). The exposure interval value is used when performing certain calculations used to determine risk-based values. To reflect more recently published EPA information, the exposure interval(s) value is changed to 9.5×10^8 seconds (30 years). Prior to this rulemaking the value was 1.0×10^9 (33 years). The change reflected in this adoption has already been addressed and implemented in guidance. Another adopted change to the figure replaces incorrect cross-references to tables that are supposed to contain "Soil organic carbon-water coefficient" values (i.e., K_{oc} values) with the correct cross-reference. The adopted cross-references refer to tables containing K_d values, instead of K_{oc} values. An additional adopted change to the figure corrects the definition of the term "LDF," changing it from "Lateral Dilution Factor" to "Leachate Dilution Factor," to better represent the fact that the dilution factor is used in calculations for predicting the concentrations of a COC contained in groundwater after it leaches through soils containing that COC and dilutes in the groundwater. The adopted rule also changed the equation for calculating "The residential saturation limit where NAPL becomes mobile" to show the term "θ_T" as a multiplier, rather than as an exponent, and to correct the residential saturation value given in the figure, changing it from 0.0167 to the correct value of 0.04514. This too has already been achieved through guidance.

Adopted changes to Figure: §350.75(b)(1) also include revising the "Surface Water Exposure Pathway PCL Equation" section of the table to clarify that the PCL for surface water (^{SW}SW) is determined by comparing the value of the risk-based exposure limit for surface water for aquatic life and human health concerns (^{SW}RBEL), to the value of the PCL for surface water for ecological protection ($^{SW}SW_{Eco}$), and choosing the smaller of the two values. A change is adopted to the same section of the table to add a cross-reference to §350.77(a).

Adopted §350.75(i)(4) clarifies that PCLs for discharges from groundwater to surface water are equal to PCLs for surface water plus adjustments for dilution (when allowed). The previously mentioned adopted change also clarifies that adjustments for dilution apply to ecological exposure pathways, as well as human health exposure pathways, for discharges from groundwater to surface water. Additional adopted changes to §350.75(i)(4) clarify that the PCLs for surface water for ecological protection ($^{SW}SW_{Eco}$) must be considered when developing PCLs for dis-

charges from groundwater to surface water, provide a cross-reference to the appropriate section of the rule for developing those PCLs, add a cross-reference to §350.75(i)(4)(A) for clarity, and remove unnecessary cross-references. In response to public comment, additional adopted changes to §350.75(i)(4)(A) clarify that different dilution factors may be applicable to the surface water RBEL and the $^{SW}SW_{eco}$. Section 350.75(i)(4)(A) provides that the final groundwater to surface water PCL would be based on the lowest quotient for a given COC.

The deleted cross-references were unnecessary because they are contained in §350.75(i)(4)(B). A reference to determining whether a water body is fresh water or marine is deleted because it applies to the establishment of PCLs for surface water, rather than the development of PCLs for the discharge of groundwater to surface water.

Changes are adopted to §350.75(i)(4)(A) - (C) as a part of the previously mentioned clarification that adjustments for dilution apply to ecological exposure pathways (including aquatic life), as well as to human health exposure pathways.

Adopted §350.76(c), Approaches for Specific Chemicals of Concern to Determine Human Health Protective Concentration Levels, provides flexibility to establish residential lead $^{Tot}Soil_{Comb}$ PCLs. The revision to the rule allows for the use of property specific inputs and models. Adopted subsection (c)(2) establishes that any model is considered a Tier 3 evaluation. Input values and models used in Tier 3 evaluations require the approval of the agency, but variance from certain model default exposure factors such as soil/dust ingestion rates and exposure frequency is not allowed in accordance with adopted §350.76(c)(2). In response to public comment, a request for variance from the soil/dust ingestion rates and exposure frequency is not allowed in accordance with adopted §350.76(c)(2). Subsequent paragraphs and figures are renumbered to accommodate adopted subsection (c)(2).

Adopted §350.76(e) directs the use of the same approach currently being used to demonstrate attainment of the critical PCL for 2,3,7,8 - Tetrachlorodibenzodioxin (TCDD) in soil, for attainment of the critical PCL for 2,3,7,8-TCDD in other media (e.g., groundwater, sediment).

Changes are adopted to Figure: §350.76(g)(2), relating to Total Petroleum Hydrocarbons, to revise the surrogate chemicals. The prior rule addressed total petroleum hydrocarbon (TPH) contamination using a surrogate-chemical toxicity/physical property approach for the various aliphatic and aromatic carbon range fractions resulting from analysis by TCEQ Method 1006. The surrogate chemicals used by TCEQ for the various aliphatic and aromatic fractions appear in Figure: §350.76(g)(2). The Massachusetts Department of Environmental Protection (MA DEP) was one of the first regulatory agencies to use the toxicity surrogate-chemical approach for addressing environmental TPH contamination (MA DEP, 1994). In 1997, the Total Petroleum Hydrocarbon Criteria Working Group (TPHCWG) published *Development of Fraction Specific Reference Doses (RfDs) and Reference Concentrations (RfCs) for Total Petroleum Hydrocarbons* (TPHCWG, 1997). TCEQ review of the 1994 MA DEP and 1997 TPHCWG approaches was useful in developing the current TRRP toxicity surrogate approach for TPH. TPHCWG surrogate chemicals and toxicity factors are currently used by TCEQ for several aliphatic and aromatic fractions. In November 2003, MA DEP published their *Final Updated Petroleum Hydrocarbon Fraction Toxicity Values for the VPH/EPH/APH Methodology*. TCEQ reviewed the 2003 MA DEP document and determined that several revisions to the surrogate chemicals found in Figure: §350.76(g)(2) are justified based on new scientific information and/or analyses conducted since the TPHCWG surrogate toxicity factors were published in 1997. Additionally, the footnote to this figure is revised to correct the term to reflect "less than or equal to."

Section 350.77, Ecological Risk Assessment and Development of Ecological Protective Concentration Levels, is amended. An ecological risk assessment is conducted to determine the potential impacts posed to ecological receptors (i.e., aquatic life and wildlife) by COCs. The process is a tiered approach, with increasingly complex criteria being evaluated as the process progresses from Tier 1 (using an exclusion criteria checklist to determine if significant exposure to COCs is likely), to Tier 2 (comparing concentrations of COCs at an affected property to literature-based PCLs), to Tier 3 (using site-specific measurements of exposure and the effects of exposure to COCs).

Adopted §350.77(a) acknowledges existing agency guidance that was planned, but not in existence at the time the prior TRRP rule was created. The specific guidance document is the agency's *Guidance for Conducting Ecological Risk Assessments at Remediation Sites in Texas* (RG-263), as amended. The procedures contained in the guidance document have been in use since 2001. Referencing the document in the rule serves to make the person aware of the existence of the guidance document earlier in the ecological risk assessment process.

Adopted §350.77(a) also provides the ability to end an ecological risk assessment evaluation even if the Tier 1 evaluation failed, provided the person can demonstrate that a response action (e.g., a cap that prevents exposure to impacted soils) will eliminate the potential for wildlife to be exposed to COCs, or if it can be demonstrated that concentrations of COCs that are protective for humans are also protective of ecological receptors. The prior version of the TRRP rule indicated that a person could end the ecological risk assessment evaluation, based on the previously described factors, only if the response action is completed to address exposure to COCs by humans. The adopted changes broaden the type of response actions that may be considered as justification for ending the ecological risk evaluation to include response actions completed for any reason, so long as the potential for ecological receptors to be exposed to a COC is eliminated or rendered insignificant. The agency has determined that the adopted changes will reduce costs and effort with regard to ecological risk evaluations, without significantly impacting the protection of human health and the environment.

In addition, adopted §350.77(a) acknowledges the possibility of ending an ecological risk assessment evaluation following a Tier 1 evaluation that is failed due to surface water and/or sediment exposure pathway issues, using the expedited stream evaluation process. The expedited stream evaluation process has been implemented via the previously mentioned *Guidance for Conducting Ecological Risk Assessments at Remediation Sites in Texas* (RG-263), as amended. The expedited stream evaluation process allows a person to exit the ecological risk assessment process if the evaluation establishes that the completed surface water and sediment exposure pathways are insignificant. Acknowledging the existence of the expedited stream evaluation process in the rule serves to make the person aware of the existence of the guidance document earlier in the ecological risk assessment process.

Adopted §350.77(b) includes a revision to correct a typographical error and a clarification that a person is required to continue

on to Tier 2 or Tier 3 of the ecological risk assessment process unless a reasoned justification, as described in §350.77(a), and/or an expedited stream evaluation demonstrates that the ecological risk involved is acceptable. The adopted changes also inform the person that the reasoned justification approach and the expedited stream evaluation process are described in the agency's guidance. That guidance document is the *Guidance for Conducting Ecological Risk Assessments at Remediation Sites in Texas* (RG-263), as amended.

Adopted §350.77(c) is amended to provide a reference to the agency's ecological risk assessment guidance. The adopted revision informs the person of the location of guidance concerning the elimination of a COC that does not pose an ecological risk and the development of PCLs for a COC that does pose an unacceptable risk to selected ecological receptors.

Adopted §350.77(c) also clarifies the current procedure for conducting a Tier 2 screening-level ecological risk assessment. The adopted clarifications are intended to enable the person to avoid a recurring issue that has been observed by agency staff reviewing Tier 2 screening-level ecological risk assessments. The adopted changes do not modify the current procedures for conducting Tier 2 screening-level ecological risk assessments.

Adopted new §350.90, Spatial and Electronic Information, was changed in response to public comment on the rule, which is explained in the RESPONSE TO COMMENTS section of the preamble. The rule requires a person to provide accurate spatial coordinates for any site data (e.g., sampling locations), as required by the agency, in a format to be specified by the agency. The change made to §350.90(b) adds the stipulation that reports required under this subchapter may be requested in an electronic format. These provisions are adopted to facilitate agency management of the data and evaluation and use of the data. Also adopted are conforming rule changes that delete §§350.91(c), 350.92(b), 350.93(b), 350.94(m), 350.95(f), and 350.96(b). Further conforming rule changes are adopted to §§350.92, 350.93, and 350.96, striking the "(a)" to make subsection (a) in each case implied.

Adopted §350.91(b)(7), Affected Property Assessment Report, adds language to indicate that if an expedited stream evaluation is conducted, it should be included in the Affected Property Assessment Report (APAR).

Additional language is added in §350.91(b)(15) to indicate that the person is to provide spatial data coordinates, as requested by the agency, for the affected property and any sampling or testing locations, in a format that is approved or required by the agency. Prior §350.91(b)(15) is renumbered as §350.91(b)(16).

Adopted §350.95(b), Response Action Completion Report, was changed in response to public comment on the rule. The change adds additional cross-references to institutional control rule requirements in the rule to clarify that institutional controls may be required for reasons other than commercial/industrial land use. The adopted language also includes the term "when applicable."

Adopted §350.96(a), Post-Response Action Care Reports, replaces the word "reports" with "report."

Adopted §350.111(c), Use of Institutional Controls, reflects a clarification and resulting change in language that acknowledges that the subject at issue is more appropriately addressed in this section rather than in the definition of "Person" contained in §350.4(a)(62) of the prior version of the TRRP rule. Therefore, the definition of "Person" is changed in the adopted rule, and the institutional control practice for non-responsible party governmental entities as it existed in the prior version of the rule is preserved by incorporating the necessary language into this section of the adopted rule. This adopted change is consistent with both current agency practice and the prior version of the TRRP rule. The adopted change reflects the intent that a governmental entity that is not a responsible party is excluded from the requirement of having to obtain written consent from the landowner prior to filing a deed notice or Voluntary Cleanup Program certificate of completion in the real property records. The language is also amended so that if subsection (b)(4) relating to change in circumstance, subsection (d) relating to technical impracticability, or subsection (f) relating to missing landowner, of this section apply, persons also are not required to obtain written landowner consent.

Adopted §350.111(c)(4) also incorporates the language and concept that was removed from the definition of "Person" in adopted §350.4(a)(62). This change is consistent with both current practice and the prior version of the TRRP rule which provides a governmental entity who is performing remediation activities under this title, but who is not a responsible party, the ability to impose a deed notice on property if the landowner refuses consent to file a restrictive covenant on the property in accordance with Remedy Standard B requirements. This rule provision is needed to extend the beneficial use of finite state and federal remediation funds so that more sites can be addressed, rather than expending excessive funds to complete an unwarranted removal/decontamination remedy, when a control-based remedy that is fully protective of human health and the environment is the lowest cost remedial alternative. Conforming rule changes are adopted to §350.111(c)(2) and (3) to move the "or" at the end of paragraph (2) to the end of paragraph (3).

Adopted §350.111(e) replaces the incorrect cross-reference of §350.33(f)(3)(E) with §350.111(f)(3)(F).

Adopted §350.134(b), Qualifying Criteria (for establishing a facility operations area), references 30 TAC Chapter 60, Compliance History, which was adopted post-Chapter 350. Chapter 60 rules establish additional criteria for evaluating the compliance history of a facility.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in 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 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 commission has determined that the adopted rulemaking does not fall under the definition of a "major environmental rule" because the adopted amendments and new rule are primarily designed to clarify the existing regulatory requirements and adjust methods and measures to ensure a consistent application of soil and water analysis and remediation standards. In furtherance of this effort at promoting consistency, certain policies and practices concerning sampling, remediating, and reporting are altered in a manner which ensures flexibility in the remediation process while maintaining appropriate protection of human health and the environment. The adopted amendments and new rule do not rise to the level of material, but rather

are limited to incorporating modifications to the current regulatory framework based upon the implementation of the rules to date.

Furthermore, the adopted rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a), 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 rulemaking does not meet any of these four applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law; 2) does not exceed the requirements of state law; 3) 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 any state and federal program; and 4) is not adopted solely under the general powers of the agency, but rather under specific authorizing statutes as referenced in the STATUTORY AUTHORITY sections of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rules and performed an assessment of whether these adopted rules constitute a takings under Texas Government Code, Chapter 2007. The specific purpose of the rules is to clarify the existing regulatory requirements and adjust methods and measures to ensure a consistent application of soil and water analysis and remediation standards. Among other technical changes, the adopted rule contains a clarification of language regarding the filing of institutional controls by non-responsible party governmental entities performing remedial actions. The adopted change reflects the practice of the prior version of the TRRP rule but inserts the clarifying language in §350.111 as opposed to the prior means of excluding the qualifying governmental entities from the defined subset of persons to whom TRRP is applicable in §350.4(a)(62). Inserting the language in §350.111, rather than §350.4(a)(62), is adopted to achieve the same result of the prior TRRP rule regarding institutional controls while avoiding the overbroad and unintended interpretation that governmental entities are excluded from all other requirements of TRRP.

Promulgation and enforcement of the adopted amendments and new rule constitute neither a statutory nor a constitutional taking of private real property. Specifically, the adopted regulations do not affect a landowner's rights in real property because the clarification in the rulemaking does not burden (constitutionally) nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would exist in the absence of the adopted clarification of the regulations. In other words, there are no burdens imposed on private real property under this rulemaking because the adopted amendments and new rule do not materially change the substance of the rule but rather clarify the institutional control process as it relates to non-responsible party governmental entities conducting remedial actions. Therefore, the adopted rules do not have any impact on the use or enjoyment of private real property, and there will be no reduction in value of property as a result of this rulemaking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

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

The commission reviewed this rulemaking for consistency with the CMP goals and in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

PUBLIC COMMENT

The commission received comments from Brown and Caldwell (B&C), Groundwater Services, Inc. (GSI), Lowerre & Frederick, submitting on behalf of Lowerre & Frederick, Clean Water Action, Environmental Defense, Public Citizen, Sustainable Energy and Economic Development Coalition, and Texas Campaign for the Environment (Lowerre & Frederick), Texas Chemical Council (TCC), the Office of Public Interest Counsel of the Texas Commission on Environmental Quality (OPIC), URS Corporation (URS), and an individual. The public comment period closed at 5:00 p.m. on October 9, 2006.

RESPONSE TO COMMENTS

§350.2(g), Applicability

The TCEQ received comments concerning this section from TCC, Lowerre & Frederick, and OPIC. TCC supported the proposed language. Lowerre & Frederick and OPIC both expressed concern that the commission did not provide reasoned justification for the proposed changes. OPIC stated that a justification as to how the variance would benefit human health and the environment was not provided. Lowerre & Frederick and OPIC expressed a concern that the proposed rule language is contrary to the original intent and purpose of applying Chapter 350 to PST sites.

The commission acknowledges the comments submitted by TCC.

In response to Lowerre & Frederick's and OPIC's comments, the commission stresses that the proposed rule change would continue to be protective of human health and the environment insofar as standards under Chapter 334 are designed to ensure such protectiveness. As explained in the March 26, 1999, preamble to the TRRP rules adopted at that time, the agency shifted from Chapter 334 to Chapter 350 for LPST sites with the intention of making the regulatory strategies and requirements consistent for the benefit of both the regulated community and the agency (see the March 26, 1999, issue of the *Texas Register* (24 TexReg 2210 - 2211)). The adopted variance provides remediation flexibility to the landowner under appropriate and qualified circumstances, while maintaining protection of human health and the environment.

In the 1999 preamble to the TRRP rule, the commission originally expressed that it was seeking consistency with other programs which deal with the same types of chemicals of concern. However, in light of the experience gained since TRRP became applicable to LPST sites, the commission has re-evaluated its position for the limited circumstances described in the adopted rule. The commission notes that many of the LPST releases being reported are discovered through real estate transactions conducted at properties where a tank system has been removed, in

some cases prior to implementation of Chapter 334. Other LPST sites exist in close proximity to sites which had tank systems removed and either have already been closed or are still conducting corrective action under Chapter 334. These LPST sites potentially have similar types of releases, subsurface and receptor conditions, and, in many cases, the hydrocarbon plumes from the sites are commingled, yet would be required to conduct activities under two different rules. In order to avoid such inconsistency, a qualified person may choose to apply for the variance, as described in the adopted rule, which may result in a more timely remediation effort and related potential benefits to human health and the environment.

The variance will be applicable only to sites where a release occurred prior to the application of Chapter 350 to LPST releases. New releases from all operational facilities will be regulated under Chapter 350.

Lowerre & Frederick also requested clarification regarding whether the variance will be applicable for LPST sites that are being remediated under the Voluntary Cleanup Program.

Under prior TRRP rules, LPST sites that are in the Voluntary Cleanup Program may comply with either the TRRP rule or with Chapter 334, depending on whether or not the release was reported prior to September 1, 2003 (March 26, 1999, issue of the *Texas Register* (24 TexReg 2210 - 2211)). Under the adopted rules, the owner/operator of a site with historic contamination (release occurring prior to September 1, 2003) may apply for a variance.

OPIC noted that language in the preamble makes reference to "neighboring" sites, and the rule stated sites in "proximity." OPIC suggested the term adjacent be used, or that proximity be defined.

The commission agrees with OPIC's comments, and is specifying in the rule that a variance may be granted for a property within 0.25 miles of another LPST site which is regulated under Chapter 334. Within this distance, it is reasonable to expect comparable subsurface conditions as they relate to potential receptors. This distance is also appropriate in consistently remediating commingled plumes. Most of these mature releases have stable plumes typically limited in extent (most not exceeding 1,200 feet) as indicated in the 1997 Texas Bureau of Economic Geology study "Extent, Mass and Duration of Hydrocarbon Plume from Leaking Storage Tanks Sites in Texas" (GC97-1).

OPIC commented that the detection date should not determine which facilities fall under TRRP versus under Chapter 334. Additionally, OPIC stated that the later detection of a release may increase risk and adverse effects to the environment and human health.

The commission will consider granting a variance only to LPST sites where the facility ceased to operate, and the underground storage tank/aboveground storage tank system has been permanently removed. This would restrict the use of Chapter 334 to legacy/historical contamination situations. All releases occurring after September 1, 2003, would be regulated in accordance with Chapter 350.

The variance is only applicable to sites with comparable conditions (e.g., release, site, and receptor conditions). The variance will not be granted for situations where the person cannot demonstrate that additional regulatory requirements would be necessary if activities were conducted in accordance with Chapter 350. In instances where there is a high risk to human health and the environment, the variance may not be considered, since the regulatory requirements under both rules would be comparable.

OPIC commented that if the variance is adopted, the rule language should be revised to enhance readability and understanding. OPIC recommended the reordering of the rule language and suggested changes to clarify the requirements, and applicability of the variance.

The commission thanks OPIC for their comments and has incorporated the suggestions in the adopted rule.

§350.4(a)(6), Definitions

Regarding the proposal in §350.4(a)(6) to include diffuse non-point source pollution in surface water and sediment as an example of an anthropogenic source, Lowerre & Frederick objected for a number of reasons. They argue that non-point source pollution in these media may not be evident to the person sampling the media, and that many upstream point sources may be causing contamination that the person is tempted to attribute to anthropogenic background. Lowerre & Frederick argue that unless a non-point source is evident, that persons should not use the anthropogenic background argument. Lowerre & Frederick further stated that if the agency's intent is to reduce the extent of investigation and remediation of surface water and sediment, it should do so using its broad prosecutorial discretion. In an example using nitrates, Lowerre & Frederick argue that where an entire water body is impacted by nitrates, the anthropogenic background designation would remove the water body in part or in whole from meeting the surface water RBEL.

Concerning the definition of "Background," the proposed language would have added diffuse non-point source pollution in surface water and sediment as an example of anthropogenic background. The commission proposed the addition to make it clear that the agency would consider non-point source pollution as a possible anthropogenic background argument for surface water and sediment. The commission agrees with Lowerre & Frederick that it would have been difficult for persons to demonstrate that COCs in surface water and sediment are attributable to non-point source pollution, rather than the TRRP affected property in question, or multiple upstream point sources. As is, the existing rule language does not preclude consideration of an anthropogenic background proposal for surface water and sediment, including anthropogenic background attributable to non-point source pollution. For this reason, combined with the need to discuss this topic more in guidance, the commission has deleted the proposed change to §350.4(a)(6).

§350.4(a)(62), Definitions

Concerning §350.4(a)(62), Lowerre & Frederick commented that the change of the definition of "Person" to make governmental entities that are not responsible parties subject to TRRP is not necessary since the entities' exclusion from the prior definition was by design and not confusing. Lowerre & Frederick further commented that there is no reasoned justification for the change. Lowerre & Frederick's comment recognized the need to provide relief for non-responsible party governmental entities from certain institutional control requirements; however, this comment argued that the prior rule addressed the situation with more wisdom by omitting governmental entities who are not responsible parties from the entirety of the rule.

As stated in the preamble to the proposed rule, the TCEQ agrees that non-responsible party governmental entities performing

cleanups were intentionally excluded from the definition of "Person" contained in the prior rule. The prior definition of the rule was intended, in part, to provide relief for a governmental entity that was performing a remedial action but was not a responsible party, from being required to obtain: a) a restrictive covenant in the situation where the landowner refuses to execute the covenant; or b) the written consent from a landowner prior to filing a deed notice or Voluntary Cleanup Program certificate of completion on that landowner's property. TCEQ's basis for this definition change is not founded upon the premise that the prior definition was merely confusing. Rather, the change is adopted because of the unintended, broad interpretation of the prior definition which seemed to invite the argument that non-responsible party governmental entities conducting cleanups on National Priorities List sites were exempt from following the substantive requirements (such as certain Protective Concentration Levels) of TRRP as provided by 40 Code of Federal Regulations Part 300. The TCEQ consistently opposes such arguments when they are proffered; yet the resultant delay and additional burden on resources necessary to repeatedly oppose the argument provide a reasoned justification for the rule change. As stated in the preamble to the proposed rule changes, the rule changes are based on the need to correct and clarify provisions to promote consistency. This definition change is necessary to insure the consistent application of TRRP to the remediation of sites conducted by governmental entities which are not responsible parties. Therefore, the rule is adopted as proposed and corresponding amendments are made in §350.111(c) to address the institutional control requirements for non-responsible party governmental entities conducting cleanups.

§350.4(a)(88), Definitions

The commission received a number of comments expressing divergent points of view regarding the proposed revision to the definition of "Residential surface soil" contained in §350.4(a)(88). Under the proposed revision, "Residential surface soil" would have been redefined from 0-15 feet below ground surface (bgs) to 0-5 feet bgs, or to the top of the uppermost groundwater-bearing unit or bedrock, whichever is less in depth. Lowerre & Frederick opposed the proposed revision and commented that the TCEQ has a long history of recognizing exposure to soils in the 0-15 feet bgs interval (from the excavation of soil for swimming pool installation, for example) as a reasonably anticipated to be complete exposure pathway for residential scenarios and that the rationale TCEQ used in the 1999 TRRP preamble to reject comments lobbying for a more shallow surface soil interval and to support the 0-15 feet bgs residential surface soil interval remains sound. Lowerre & Frederick also expressed concern that there are no institutional control requirements for residential property under Remedy Standard A to notify innocent landowners and construction workers that bring soils from depths greater than 5 feet bgs to the surface that the soil may contain concentrations which are not health-protective. OPIC asked why the definition of surface soil is more appropriately adjusted to a depth of 5 feet bgs than to 15 feet bgs for both residential and commercial/industrial properties if the proposed change is only for the sake of consistency and simplicity of the application of TRRP. TCC, URS, and GSI agreed with the proposed revision to simplify the application of TRRP and preparation of affected property assessment reports.

Historically, TCEQ has considered exposure to soils in the 0-15 feet bgs interval from excavation for residential construction (e.g., swimming pools, septic systems) as a reasonably anticipated to be complete exposure pathway for residential scenarios. Although the commission believes a residential surface soil definition of 0-5 feet bgs would reduce the complexity of applying the TRRP rule and be sufficiently health-protective in the majority of cases, there is a lack of new information (e.g., federal guidance, published studies) since 1999 which would compel such a change. Additionally, residential pools are common in Texas and the possibility of excavated soils from 5-15 feet bgs being deposited at the surface with subsequent frequent exposure cannot be ruled out. If this were to occur, there would be no notice to residents of contaminants in subsurface soil, as institutional controls are not required for many Remedy Standard A response actions at residential properties. Therefore, as a reasonable precaution, the commission is not adopting the revision as proposed and is retaining the prior rule definition of residential surface soil.

§350.33(f)(4)(E), Remedy Standard B

Concerning §350.33(f)(4)(E), two commenters supported the proposed change. The TCC commended the TCEQ for developing a risk-based approach to non-aqueous phase liquids (NAPL) management which is protective of human health and the environment while providing common sense and flexible application of NAPL response actions. The TCC supported the proposed change because risk-based NAPL response actions provide a valuable tool needed for TRRP implementation. URS noted this change to be consistent with the current state of science relative to NAPL and believes that it will provide reasonable flexibility during a remedy implementation while remaining protective of human health and the environment.

The commission acknowledges the comments from TCC and URS, but is not adopting the proposed changes in response to other comments in order to restore the provisions to reflect the commission's original intent as described in the adoption preamble to the prior rule.

Concerning §350.33(f)(4)(E), Lowerre & Frederick noted a disparity between the executive summary and the actual proposed rule change. The executive summary implied that NAPL will continue to be removed to the extent practicable, while the actual proposed rule language struck this, or at least the removal of readily recoverable NAPL, as a requirement. Lowerre & Frederick opposed the actual rule proposal which will allow NAPL to remain in place if it does not pose any adverse health risk. In their opinion, NAPL recovery should be addressed under a pollution cleanup approach, not a risk-based approach.

The commission agrees with the commenter regarding the apparent disparity between the executive summary comments and preamble compared to the actual proposed rule. The commission's original preference as described in the adoption preamble to the prior rule (see the September 17, 1999, issue of the *Texas Register* (24 TexReg 7546)), that identified NAPL be removed or treated, did not carry over clearly into the proposed rule. The commission's objective in the prior rule was to strike a balance between the starting presumption that readily recoverable NAPL within a Plume Management Zone be removed to the extent practicable and the recognition that controls may be appropriate in some situations. Therefore, the commission has decided to not make this proposed amendment and to instead maintain the 1999 rule. In contrast, the proposed language in clause (i) appears to be overly broad and could result in situations where no readily recoverable NAPL is removed if the person were to demonstrate that the NAPL remaining in place is protective of human health and the environment. Additionally, the commission has determined that this proposal is not supportable

based upon the following reasons: 1) As proposed, clause (i) is redundant to the general requirements for Remedy Standard B as stated in §350.33(a) for protection of human health and the environment; 2) Clause (i) does not provide the person with any clearer direction for compliance compared to the original performance standard of recovering readily recoverable NAPL; 3) The performance requirement in the prior rule was promulgated to be compatible with a major policy of the EPA that regards NAPL as "principal threat waste" which should at a minimum be removed or treated. The proposed text appears to depart from the EPA policy. The commission chooses not to establish exceptions within this provision requiring a different response to NAPL for sites regulated under delegated federal programs such as the Resource and Conservation Recovery Act; and 4) Clause (i) could also conflict with clause (iv) of this subparagraph in certain situations. For instance, a person attempts to show that a NAPL release meets clause (i) by means of a PMZ with natural containment of the stable NAPL zone. However, monitoring over time shows that the extent of NAPL begins to expand under natural conditions or offsite influences. So long as the NAPL zone stays within the PMZ, the person is compliant with clause (i) because of its broad wording, yet compliance with clause (iv) could only be achieved with sufficient NAPL recovery such that an active recovery system can be demonstrated to effectively control or contain NAPL migration.

With regard to the comment that NAPL should be addressed under a pollution cleanup approach, not a risk-based approach, the commission points out that the person can address NAPL within a PMZ with any combination of removal, decontamination and control options available under Remedy Standard B. In keeping with the original intent of this provision, the commission is restoring the consideration for recovering readily recoverable NAPL which is initially a pollution cleanup approach. The commission is developing technical guidance in support of this provision which will clarify the conditions requiring recovery of readily recoverable NAPL. The guidance will be titled *Risk-Based NAPL Management* (RG-366/TRRP-32). Therefore, the commission is not adopting the revisions as proposed.

Lowerre & Frederick commented that if NAPL is not removed, groundwater resources will be compromised for many generations beyond what would be the case if NAPL removal had occurred. Lowerre & Frederick stressed the importance of preserving these valuable resources for future Texans, even if the approach is simply natural attenuation.

The commission agrees and points out that the prior rule and adopted revisions retain the overall intent to protect human health and the environment, including groundwater resources. With particular regard to NAPL within a PMZ, the commission advocated in the original TRRP rule's adoption preamble as published in the September 17, 1999, issue of the *Texas Register* (see 24 TexReg 7546) that remediation be completed in a timely manner: *Specifically with regard to monitored natural attenuation, the remedial life span of the matter will be longer with NAPLs in place which serve as a continuing source of dissolved-phase COCs. However, as with any remedy, source area abatement is generally paramount to shortening remedial time frames. The acceptability of the remedial time frame will be made in the context of overall site risks on a site-specific basis. This commentor also questions whether using a monitored natural attenuation remedy, NAPL could remain in place, even though the monitoring period could be quite long. The commission notes that all response actions, including monitored natural attenuation, must be capable of achieving the Remedy Standard B response objectives "within a reasonable time frame." "Quite long" using a monitored natural attenuation approach does not appear "reasonable" if there are any other more prompt and workable response approaches. The commission advocates that remediations be completed in a timely manner and included the institutional control provisions of §350.31(h) to reinforce this point. Nevertheless, the commission also recognizes the fact that corrective action resources are finite and limited, and remedial time frames can be adjusted in a protective manner to provide an effective balance of progress and cost. So there is no elimination of the use of monitored natural attenuation solely for the presence of NAPLs.* Thus, without achieving removal of readily recoverable NAPL, a person is more likely to remain in a state of perpetual post-response action care.

Lowerre & Frederick noted several concerns about leaving NAPL in place. Lowerre & Frederick stated that without an evaluation of the vapor intrusion exposure pathway, the TCEQ cannot ensure that high levels of toxins are not entering the homes and businesses of the people they are supposed to protect. The commenter stated that the vapor intrusion potential with NAPL present far exceeds the potential where no NAPL is present, and more generations of Texans may be adversely affected by leaving the NAPL in place.

The commission shares the commenter's concern regarding the need to protect people from exposure to vapors from NAPL, particularly if left in place, but disagrees with the commenter regarding the evaluation of the vapor intrusion pathway. The TRRP rule addresses the vapor intrusion pathway with several approaches. First, as part of the general requirements for remedy standards, §350.31(a) and §350.33(a)(1) require the person to make the affected property protective and prohibit the exposure of humans to concentrations of COCs in exposure media, in this case the air, in excess of the critical human health PCL. Second, §350.31(c) requires the person to address and respond to buildup of explosive atmospheres in surface and subsurface structures and areas of routine construction. When volatile NAPLs and high concentrations of volatile COCs are in close proximity to basements, for example, the person can be required to conduct monitoring and take appropriate actions. While this provision is intended to address explosive hazards, it also follows that vapors, though not at explosive concentrations, could be a human health concern from long-term inhalation. Thus, the air inhalation pathway can be considered complete or reasonably anticipated to be complete and the person would have to respond to §350.71(c)(3) to develop PCLs protective for inhalation of volatile emissions in outdoor air above a PMZ. The person can attempt to show that the pathway is not complete by either demonstrating with vapor monitoring data or other appropriate method that emissions from groundwater are protective, or demonstrate that an existing structure (e.g., concrete slab) effectively blocks the pathway. Third, specifically focused on NAPLs in a PMZ is §350.33(f)(4)(E)(v) which requires that NAPLs not result in critical PCLs for other environmental media, in this case air, being exceeded at the applicable point of exposure. Lastly, the agency notes that if removal of readily recoverable NAPLs would not result in concentrations of COCs protective for air inhalation, then supplemental NAPL control measures which address suitable future use conditions or construction measures could be used so as to attain protective air exposure conditions. To address the concerns about vapor intrusion from NAPL adversely affecting more generations of Texans, the commission refers to its response to the preceding comment regarding NAPL

removal and reasonable time frames for achieving response objectives.

Lowerre & Frederick commented that NAPLs present in the PMZ may spread beyond the PMZ without causing the COCs in dissolved-phase groundwater to exceed PCLs, while still impacting groundwater quality beyond the PMZ in terms of aesthetic properties (odor, taste, color, etc, such as "old" diesel type aspects). Lowerre & Frederick stated that this may happen because the monitoring requirements at the point of exposure downgradient of the PMZ do not screen for aesthetic properties; they only screen for human health and environment protective concentration levels.

The commission points out that this concern is addressed in the TRRP rule by a number of provisions. First, NAPL expansion within an existing PMZ would trigger §350.33(f)(4)(E)(iv), which requires the person to operate an active recovery system to effectively control or contain NAPL migration. To illustrate another example of the way the rule addresses the concern is to presume the person is developing a PMZ to address a NAPL zone. As part of the affected property assessment required by §350.51, the person must conduct a field survey to locate water wells at least 500 feet beyond the boundary of the affected property and conduct a records survey to identify all water wells within 0.5 miles of the limits of the groundwater affected property. This information has bearing on the establishment of a PMZ as reflected in §350.33(f)(4)(A)(i) which considers, among other items, the proximity and withdrawal rates of groundwater users, the current and future uses of groundwater in the area, and the persistence and permanence of the potentially adverse effects. If the commission determines that aesthetics are a concern in light of these findings, the person can be required to develop numeric criteria in accordance with §350.74(f), regarding the groundwater ingestion risk-based exposure limit, and §350.74(i), regarding aesthetics. The person would then use these numeric criteria for groundwater monitoring purposes at the alternate point of exposure established at the downgradient limit of the PMZ.

§350.34, No Further Action

Lowerre & Frederick commented that the TCEQ should clarify that Remedy Standard A closures are limited to institutional controls on land use and modify §350.32(b)(1) to state that, along with physical controls, other institutional controls are prohibited under Remedy Standard A.

The commission disagrees that clarification is needed that Remedy Standard A closures are limited to institutional controls on land use and that modification is needed to §350.32(b)(1) to state that other institutional controls are prohibited under Remedy Standard A. The commission believes that the prior rule is sufficiently clear as to the allowable institutional controls under Remedy Standard A. This has not proven to be an issue of confusion or concern, since the prior rule was implemented in 1999. As previously noted, the adopted revisions to §350.34 do not add or remove any institutional control requirements for either Remedy Standard A or B.

Concerning §350.34(1), Lowerre & Frederick opposed the proposed changes. Lowerre & Frederick commented that the proposed change would imply that institutional controls other than land use can be utilized under Remedy Standard A. Lowerre & Frederick commented that the prior rule does not seem to specifically authorize any institutional controls to be utilized in a Remedy Standard A closure other than land use.

The commission disagrees that the proposed revisions to §350.34(1) would allow any additional institutional controls to be applied to any property that did not exist in the prior rule, regardless of the Remedy Standard or land use of that property. The revisions are intended to clarify the rule by adding references to provisions under which an institutional control may be required under Remedy Standard A.

Lowerre & Frederick also commented that the proposed revisions to §350.34(1) do not conform to the idea of complete risk reduction under Remedy A, due to the reference in §350.51(l)(3) to the use of statistical methods to determine representative concentrations of COCs.

The commission notes that the use of statistical approaches to determine representative concentrations of COCs at a property is allowed under the prior rule for Remedy Standard A, subject to agency approval. The proposed revisions to §350.34 do not alter risk reduction of the prior rule under either Remedy Standard A or B.

Lowerre & Frederick commented that the agency has not provided a reasoned justification for the proposed revisions to §350.34(1).

The commission considers the adopted revisions to §350.34(1) to be reasonably justified because the only change made is to add references to the prior rule provisions. This modification does not change the requirements of the prior rule; however, due to the apparent misunderstanding as to the intent of the proposed changes, the adopted §350.34(1) and (2) contain additional clarification regarding the institutional controls in question. The additional clarification spells out the basis, as set forth in the prior rule, for the need for the newly-referenced institutional controls (e.g., that an institutional control is required for the use of a non-default exposure area, the use of occupational inhalation criteria as RBELs, or the use of non-default RBEL exposure factors).

Concerning §350.34(1) and (2) TCC commented that the proposed rule language contained a typographical error which should have read "§350.51(l)(3) or (4)" rather than "§350.51(1), (3) or (4)."

The TCEQ agrees with this comment and has made the change to the adopted rule.

§350.37(i) Human Health Points of Exposure

Regarding POEs for surface water runoff or groundwater discharges to surface water, URS commented that the proposed change to §350.37(i) to include the entire extent of any on-site or off-site surface water body meeting the criteria may be burdensome as it is unclear how far downstream potential impacts must be identified. Additionally, TCC recommended deletion of the word, "any" in the last sentence. TCC stated that this is a significant overstatement with implications regarding extent and commingling that would best be addressed in guidance.

The commission disagrees with the suggestion that this language is burdensome because the rule has not defined the distance to which downstream impacts must be identified. Where there are releases to surface water, the objective of this language is to ensure that persons will be mindful that water bodies down gradient of the initial point of entry may need to be evaluated depending on the nature of the release, fate and transport characteristics of the COCs in question, and the nature of the watershed. Based on this information, persons should make a determination as to the distance downstream to

evaluate a release, subject to agency concurrence. In response to the TCC suggestion that the word "any" be removed from the last sentence, the sentence has been modified to state, "this includes the surface water body at the initial point of entry and other water bodies that may be impacted by COCs associated with the release in question."

§350.37(k), Human Health Points of Exposure

Regarding POEs for intermittent water bodies (§350.37(k)), TCC combined concerns with those offered in response to the proposed change to §350.37(i).

The TCC recommendation is not specific to the language added in §350.37(k) related to the application of both sediment and surface soil POEs to intermittent water bodies. The intent of the proposed language is to make persons aware that it may be appropriate to evaluate intermittent streams as soil and sediment depending on the possible human health and ecological exposure pathways at a particular affected property. The language is not intended to direct persons to do this in every case. The commission agrees that the discussion of affected property characteristics that would necessitate consideration of either exposure medium (soil or sediment), would be best addressed in guidance. The commission has made no changes to the proposal in response to this comment.

§350.51(d), Affected Property Assessment

Regarding vertical soil assessment requirements in §350.51(d), Lowerre & Frederick commented that the Executive Summary describes a rule change that is not listed in the proposed rule and the actual proposed rule changes are not listed in the Executive Summary.

The commission agrees that the language in the Executive Summary regarding the proposed changes to §350.51(d) does not accurately reflect the proposed changes in the rule. The commission clarifies that the prior rule and the adopted rule both require that the vertical extent of a release be investigated to the greater of the method quantitation limit or the background concentration. The adopted amendment in the rule changes the reference to the "$_{GW}$Soil PCL" to "residential assessment level" for vertical assessment requirements when an adequate groundwater assessment has been conducted.

Lowerre & Frederick, in commenting on the Executive Summary, requested that the commission require a groundwater sample be collected in almost every case and vertical assessments should not allow use of SPLP as a groundwater protection based PCL.

The commission's response to the comments that pertain to the proposed changes as reflected in the Executive Summary language is that the commission is not substituting the phrase "the higher of the method quantitation limit or background concentrations" with the phrase "the residential assessment level." With this understanding, the commission believes the comments that pertain to the proposed changes as reflected in the Executive Summary language have been addressed.

Lowerre & Frederick also commented that the proposed changes to §350.51(d) reflected in the rule are supported and give more clarity as to how §350.75(i)(7)(C) is to be evaluated in relation to assessment requirements.

The commission acknowledges the support for the adoption of this rule.

Lowerre & Frederick also commented that depth of vertical delineation wells itself should not be a factor in eliminating further vertical delineation requirements, but rather other factors such as the competence and thickness of a geologic formation to prevent contaminant migration and the absence of preferential vertical migration pathways should be considered.

The commission agrees that the depth of the groundwater-bearing unit and the corresponding depth of a soil boring/groundwater monitoring well required to assess such groundwater-bearing unit is not in and of itself a justification for use in §350.75(i)(7)(C). Site-specific determinations for applicability of using §350.75(i)(7)(C) for vertical assessment will require several supporting lines of evidence. The commission agrees that competence and thickness of a geologic formation and absence of preferential vertical migration pathways are lines of evidence that should be considered in determining applicability of §350.75(i)(7)(C).

The TCC expressed support for the proposed amendment as reflected in the Executive Summary to allow the vertical extent of a release to be investigated to the assessment level, rather than to the currently stated greater of the method quantitation limit or the background concentration.

The commission clarifies that the prior rule and the adopted rule require that the vertical extent of a release must be investigated to the greater of the method quantitation limit or the background concentration. The adopted rule changes the reference to the "$_{GW}$Soil PCL" to "residential assessment level" for vertical assessment requirements when an adequate groundwater assessment has been conducted.

§350.51(i), Affected Property Assessment

Regarding §350.51(i), GSI commented that although it understands the commission must facilitate the implementation of Texas Water Code (TWC), §26.408, the addition of the new language is problematic because water utilities (and other entities) do not maintain "publicly-available lists" of properties that are connected to their water systems. GSI also commented that while utility companies may be able to provide their general geographic areas of service to the public, they "will not" identify the specific properties for which service is provided. GSI further commented that the precise meaning of the word "connected" is unclear, and asks whether undeveloped properties that have access to a public water supply, but do not have current service, are considered to be "connected."

Also regarding §350.51(i), Lowerre & Frederick commented that while it supports the memorialization of TCEQ's TWC, §26.408 data collection requirements, it cannot support the rule change because it appears to link TWC, §26.408 data collection efforts to the submittal of an APAR, and this in turn increases the time that private well owners may ingest contaminated groundwater. Lowerre & Frederick further commented that the reporting of contaminated groundwater to the TCEQ should be linked to a document submittal that immediately follows reporting of the release to the commission.

Lastly, the TCC commented that they supported the proposed change to §350.51(i).

The commission agrees that groundwater contamination should be reported to the TCEQ as soon as possible. The commission guidance document *Determining Which Releases are Subject to TRRP* October 21, 2003), for example, states in part that releases must be reported to the TCEQ within 24 hours of occurrence or discovery, in accordance with the TWC and applicable program requirements. The proposed language was not

intended to be a comprehensive memorialization of all TWC, §26.408 data collection requirements, as these are already contained in the guidance, *Preparation of a Drinking Water Survey Report* (RG-428). Based upon the public comments received, and in consideration of all relevant information, the commission has decided not to adopt the proposed change to §350.51(i).

§350.51(m), Affected Property Assessment

Regarding §350.51(m), URS supported the proposed changes but requested that the rule clarify that these background concentrations defined in rule for soil, can also be used for sediments in intermittent streams. URS was concerned that limiting the use of the Texas-specific background concentrations to soil is problematic in that additional data may need to be collected where sediment in an intermittent stream is being evaluated in its dry scenario as soil.

URS is correct that the agency, in certain circumstances, has accepted soil background data in lieu of sediment background data for intermittent streams. Normally, the use of soil background data to evaluate sediment constituents is not appropriate since the sediment (aquatic) and soil (terrestrial) environments (chemistry and biology) are dissimilar and cannot be used interchangeably. The agency's position in guidance has been that this approach (use of soil background concentrations for intermittent streams) may be useful where perennial pools do not occur, and there is adequate justification provided to evaluate the stream bottom as soil. This has been allowed on a case-by-case basis only. Therefore, the commission disagrees with the suggestion. Furthermore, the suggestion is beyond the scope of the proposal. No change has been made in response to this comment.

§350.71(k), General Requirements

Regarding §350.71(k), Lowerre & Frederick commented the proposed rule strikes out many valuable considerations when the sample quantitation limit is greater than the residential assessment level. These are important considerations and should be left in the rule as they are currently listed.

The commission disagrees the rule language in the existing §350.71(k)(3)(B)(i) - (vi) should be retained, when considering the entirety of the adopted rule. By removing §350.71(k)(3)(B)(i) - (vi) from the rule, the commission eliminates the potential for misapplication of that provision to COCs known or reasonably anticipated to be associated with current or historical activities conducted at the on-site property. The rule is amended to allow the person to focus on the detected COCs and the COCs known or reasonably anticipated to be associated with activities conducted at the on-site property. In addition, commonly used broad spectrum methods generate analytical results for a large number of analytes amenable to those analyses. The language in §350.71(k)(3)(B) removed from the rule by this amendment required the person to evaluate each of those analytes against the respective residential assessment level even though the analyte was not detected in any environmental medium at the on-site property and the analyte was not known or reasonably anticipated to be associated with the on-site property. The adopted provisions require that evaluation only for detected COCs and COCs known or reasonably anticipated to be associated with the on-site property, but do not require the person to make that evaluation for COCs not detected in any environmental medium at the on-site property and not known or reasonably anticipated to be associated with the on-site property. As adopted, §350.71(k)(2) and §350.71(k)(3) require the sample quantitation limits (now termed the sample detection limits by this amended rule) are less than the respective residential assessment level for detected COCs and COCs known or reasonably anticipated to be associated with the on-site property. To ensure the appropriate analytical method is used for detected COCs and COCs known or reasonably anticipated to be associated with the on-site property, §350.54(e)(3) requires the person to use an analytical method capable of quantitating the COC at or below the residential assessment level. When no available analytical method is capable of achieving a method quantitation limit less than the residential assessment level for the COC, the §350.54(e)(3) provision allows the person to use the best available method having the lowest method quantitation limit.

URS commented that the revisions are generally supported and clarify the data screening process.

The commission acknowledges the support for the adoption of this rule.

TCC commented that they are in agreement with the approach presented in the amended language and commented that the provision will prevent the development of needless PCLs, thus helping to reduce the time needed for APAR development.

The commission acknowledges the support for the adoption of this rule.

§350.73(a), Determination and Use of Human Toxicity Factors and Chemical Properties

The commission received several comments regarding the proposed revision to the method of selecting appropriate chronic human health toxicity factors contained in §350.73(a). Lowerre & Frederick opposed the change and commented that the revision would result in human toxicity factors developed by the regulated community moving from the bottom to the top of the hierarchy and superseding the objectivity and public trust inherent in toxicity factors from the other sources. Additionally, Lowerre & Frederick expressed concern that the executive director approval required for toxicity factors from "other scientifically valid sources" under §350.73(a)(7) would be delegated solely to TCEQ project managers. TCC also opposed the change, commenting that peer-reviewed and scientifically-defensible toxicity data should be the preferred method of selecting toxicity factors. However, the TCC supported adding Provisional Peer Reviewed Toxicity Values (PPRTVs) as the secondary source in the hierarchy of sources for human toxicity factors. GSI expressed concerns that some of the listed sources are not readily available and the proposed rule language may require that provisional toxicity factor values or other inappropriate values be used, and suggested TRRP indicate that the TCEQ tables provide appropriate toxicity factors.

The commission recognizes the importance of peer-reviewed and scientifically defensible chronic human toxicity factors and agrees that toxicity factors from sources high in the hierarchy list of the prior rule, such as the Integrated Risk Information System (IRIS), are generally preferred. The commission appreciates TCC support in regards to adding PPRTVs as the secondary source in the hierarchy of sources for human toxicity factors. Under the proposed revision to §350.73, toxicity factors available from sources high in the hierarchy list would have continued to be utilized in the vast majority of cases. However, to address the concerns raised in comments, the proposed rule language was revised to retain the toxicity factor source hierarchy of the prior rule with a provision added as §350.73(b) to provide the agency

with flexibility, if needed, based on scientific considerations. In limited instances, a toxicity factor from the source selected under the hierarchy list in §350.73(a) may be determined by appropriate TCEQ staff to be no longer scientifically defensible based on more recent science (e.g., a toxicity factor may have been developed more than 10 years ago and in some cases may no longer be utilized by the agency which developed it). In such cases, the agency desires the flexibility for the executive director to approve a toxicity factor from a different tier of the source hierarchy (e.g., "other scientifically valid sources as approved by the executive director"). Therefore, the proposed rule language was revised to retain the toxicity factor source hierarchy in §350.73(a) with the provision that in accordance with new adopted §350.73(b), the executive director may direct persons to use a toxicity factor from a source other than that selected under the hierarchy in cases where the executive director has determined it to be necessary to use a more scientifically valid toxicity factor from a different source. The flexibility provided by adopted §350.73(b) is similar to that which would have been provided by proposed §350.73(a)(7), which would have allowed the executive director to approve a more recent and more scientifically valid toxicity factor from a source other than that selected in accordance with the hierarchy list (e.g., potentially EPA's Office of Pesticide Programs or Office of Water). Appropriate TCEQ staff will be delegated the task of determining when utilizing toxicity factors in accordance with §350.73(b) is necessary and appropriate based on scientific validity. The TCEQ will continue to maintain a table of appropriate chronic human health toxicity factors for convenient reference because many users of the TRRP rule rely on TCEQ tables, as opposed to the original sources. The table will also aid in ensuring consistency and the use of appropriate toxicity factors across sites. The commission adopts §350.73(a) - (c).

§350.73(f)(1), Determination and Use of Human Toxicity Factors and Chemical Properties

Concerning §350.73(f)(1), comments were received from B&C and from GSI. The comments from both B&C and GSI expressed the desire to retain the current rule language and to allow the use of Synthetic Precipitation Leaching Procedure (SPLP) in the determination of site-specific soil/soil-water partition coefficients. GSI stated that SPLP leachate tests are the only practical method available to measure a site-specific K_d value and B&C quote from the EPA (1994) (*Test Methods for Evaluating Solid Waste*, SW-846, US EPA, OSWER, Washington D.C.) SPLP method, noting that it was designed to determine the mobility of both organic and inorganic analytes present in liquids, soils, and wastes.

The commission disagrees with the comments of GSI. The SPLP analytical method (EPA Method 1312) was developed to estimate mobility of hazardous waste in the soil column. The EPA made clear that the analytical method was to be used to " . . . model an acid rain leaching environment . . ." (EPA, 1996: *Soil Screening Guidance: User's Guide*, EPA 540-R-96-018, US EPA, OSWER, Washington D.C.). In April 1996, the EPA introduced the option of using a leach test that ". . . may be used instead of the soil/water partition equation . . ." (EPA, 1996: *Soil Screening Guidance: User's Guide*, EPA 540-R-96-018, EPA, OSWER, Washington D.C.), making a clear distinction between a synthetic leaching procedure and the determination of K_d. Further, the EPA indicates that ". . . if this option is chosen, soil parameters are not needed for this pathway . . ." (EPA, 1996). The EPA intends that a leach test may be used in lieu of the soil/water partitioning equation model for evaluating mobility of constituents in soils. Neither the EPA, nor states, intend that results of a leach test are to be substituted for, or otherwise used to develop soil-water partition coefficients. Additionally, a leach test should not be blended into a fate and transport model. The TCEQ objects to the use of the SPLP analytical method for use in the determination of soil-water partitioning coefficients for the following reasons: 1) the SPLP method (EPA Method 1312) is not intended for, nor does it address K_d determination in any way; 2) a K_d determination is made at chemical equilibrium, and the SPLP (EPA Method 1312) does not require, nor does it address chemical equilibrium; 3) the determination of the K_d is based on a number of analytical results over a range of concentrations to construct the sorption isotherm from which a K_d can be derived, the SPLP procedure does not address the construction of sorption isotherms nor the derivation of K_d; and 4) the determination of the K_d isotherm requires a rigorous analysis to construct appropriately (e.g., Langmuir D, 1997 *Aqueous Environmental Geochemistry*; EPA, 1999 *Understanding Variation in Partition Coefficient, K_d, Values; Volume I: The K_d Model of Measurement, and Application of Chemical Reaction Codes*, EPA 402-RR-99-004A, OAR, Washington, D.C.). It is for these reasons that the TCEQ believes not only that use of the SPLP leachate is not "the only practical method available to measure a site-specific K_d value," but that it is not a K_d determination method at all. The TCEQ agrees with B&C's observation that the SPLP procedure is designed to determine the mobility of both organic and inorganic analytes present in liquids, soils and wastes.

B&C commented that the SPLP leaching of actual samples of affected soils provides a more accurate measure of partitioning than many laboratory partitioning tests.

The commission disagrees with the comment because K_d determinations are predicated upon the establishment of chemical equilibrium of chemical components partitioned between the solid and liquid phases of the system being measured. Wisconsin Department of Natural Resources (DNR) (*Guidance on Use of Leaching Tests*, PUBL RR-523-03, 2003) states that many systems subjected to EPA Method 1312 do not reach equilibrium within 24 hours and may require up to 96 hours. The SPLP method specifies an extraction period of 18 ± 2 hours and does not require chemical equilibrium. Therefore, since the SPLP analytical method does not even address the most fundamental aspect of the K_d determination, it cannot qualify as a method for determining K_d values.

GSI acknowledged that while SPLP was not developed specifically as a method to measure K_d, the method can be used to measure K_d provided that the chemical concentration in the leachate is not limited by compound solubility and that the SPLP procedure is very similar to American Society for Testing and Materials (ASTM) Standard D 5285-03, a procedure for measuring K_d recommended in *Toxicity Factors and Chemical/Physical Parameters* (TCEQ RG-366/TRRP-19).

The commission agrees with GSI regarding the limitations of the SPLP analytical method. However, GSI's comments do not acknowledge the most important aspect of the K_d determination laboratory procedure: attaining chemical equilibrium within the system. The commission concurs with GSI's observation that ASTM Standard Test Method D 5285 is "very similar" to the SPLP method, with one important exception: ASTM D 5285 requires confirmation of equilibrium conditions during the laboratory experiment. This test feature is among the reasons the TCEQ has recommended its use for K_d determinations in Table 1 of TRRP-19.

B&C commented that many laboratory partitioning tests which rely on spiked samples and do not accurately simulate aging of a release that may have occurred over the course of decades in some cases.

The commission acknowledges the potential for such a scenario. However, since K_d determinations are based on chemical equilibria, the "simulation of aging" is not relevant either to the appropriate laboratory experiments or to the SPLP analytical method.

GSI commented that although TRRP-19 provides recommended methods for measuring site-specific K_d, none of these methods are appropriate because: 1) they are not standard methods offered by commercial laboratories; and 2) they require use of clean site soils, and therefore do not reflect "dual equilibrium" desorption or other processes that limit the desorption of chemicals from historically contaminated soils.

The commission disagrees with aspects of this comment. Firstly, TRRP-19 recommends four international (ASTM) standard methods for K_d determinations. The remaining methods recommended in TRRP-19 are those used by the EPA specifically for K_d determinations. Since the proper determination of K_d is a laboratory experimental procedure, not merely a sample analysis, it should be considered a specialized procedure, and not all commercial environmental laboratories could be expected to provide that service. However, the TCEQ is aware of commercial laboratories willing and capable of performing a standard K_d determination. Secondly, TCEQ-recommended K_d determination methods are capable of evaluating and accommodating numerous complex isotherm sorption models (e.g., EPA, 1999 *Understanding Variation in Partition Coefficient, K_d, Values; Volume I: The K_d Model of Measurement, and Application of Chemical Reaction Codes*, EPA 402-RR-99-004A, OAR, Washington, D.C.). The complete absence of K_d-related determination methodology in EPA Method 1312 is among the primary reasons that the commission considers the SPLP leaching method inappropriate for use in K_d determinations.

GSI commented that only tests that utilize contaminated site soils will yield K_d values that accurately reflect the site-specific potential for chemical leaching to groundwater.

The commission believes this statement is imprecise. Proper K_d determinations utilize representative uncontaminated soils from contaminated sites that provide the most accurate site-specific K_d values for use in the Tier 2 and Tier 3 ^{GW}Soil PCL models.

GSI commented that other state regulatory agencies (e.g., Wisconsin DNR) have recognized the utility of leaching tests and specifically SPLP for measuring site-specific K_d values. The TCEQ should retain this valuable tool for the development of appropriate site-specific PCLs that accurately reflect the potential for leaching to groundwater and if necessary, the TCEQ should issue guidance presenting the appropriate application of SPLP for measuring site-specific K_d values.

Aspects of this comment inaccurately characterize the regulatory acceptance of SPLP. Other state regulatory agencies (e.g., Wisconsin DNR) do not use SPLP for measuring site-specific K_d values. As discussed, Wisconsin DNR (*Guidance on Use of Leaching Tests*, PUBL RR-523-03, 2003) states that many systems subjected to EPA Method 1312 do not reach equilibrium within 24 hours and may require up to 96 hours. The SPLP method specifies an extraction period of 18 ± 2 hours and does not require chemical equilibrium. Therefore, since the EPA Method 1312 (SPLP analytical method) must be modified with respect to confirmation of equilibrium, it is no longer the SPLP method. As such, the adopted rule language acknowledges this critical technical distinction and instead continues to allow the use of "very similar" K_d-determination-specific methods in Table 1 of TRRP-19, as previously noted by GSI.

GSI commented that a guidance document could address appropriate chemical concentrations in soil relative to the compound solubility and present the appropriate methods for calculating K_d from the SPLP test results.

The commission points out that it has published recommended standard methods for the determination of K_d in Table 1 of TRRP-19, but that the use of SPLP in those determinations is inappropriate.

B&C commented that the valence state of spiked inorganics may differ from the valence state of the actual release, thereby rendering recovery of spiked inorganics even less representative of the actual mobility of inorganic COCs in the affected media. It is recognized that SPLP involves a 20x dilution; this should be corrected for by multiplying the reported leachate concentration by 20 before comparing total concentrations to SPLP leachate concentrations to arrive at a Tier 2 soil-leachate partition factor for the COC (K_{sw}). Obviously, a sufficient number of total and SPLP analyses must be conducted and a reasonable curve fit must be demonstrated before a Tier 2 K_{sw} can be established based upon the comparison of total to SPLP concentrations. However, if these conditions are met, the relationship between total and SPLP concentrations provides a technically defensible method for developing a Tier 2 K_{sw}.

The commission agrees with the comment by B&C that use of SPLP in the determination of K_d is fraught with complexities, requires significant modifications, and must be supplemented by methodologies that can provide a defensible K_d value. These are the primary reasons that led the commission to conclude that the most accurate and defensible site-specific K_d values can most easily be obtained using the recommended standard laboratory experiments published in Table 1 of TRRP-19. These are the same primary reasons for adopting the rule language that removes reference to the SPLP method for K_d determination. However, the TCEQ continues to accept non-standard proposals for K_d-determination methods for approval.

B&C commented that in accordance with §350.75(g), the executive director may require the person to provide sufficient monitoring data to verify that PCLs established under any tier are based on an appropriate understanding of conditions at the affected property. Therefore, a Tier 2 K_{sw} established by use of SPLP testing can be verified by groundwater monitoring.

The commission acknowledges the provision for requesting sufficient monitoring. However, the use of SPLP for purposes of K_d determinations is excluded from the rule language for the reasons provided.

§350.74(h), Development of Risk-Based Exposure Limits

Regarding the new provision in §350.74(h) that the surface water RBEL is protective of down gradient water bodies, URS requested that the TCEQ clarify how far downstream this change would be applicable. URS further stated that if applied to a great distance downstream, additional work would be required without a corresponding benefit. TCC had similar objections and stated that the provision is too ill-defined and should be deferred to guidance.

The commission disagrees with the suggestion that the rule clarify the distance downstream for consideration of the surface wa-

ter RBEL. The adopted rule language already notes that the fate and transport characteristics of the COC should be considered. Furthermore, it should be noted that in the development of the existing TRRP-24 guidance document (related to the determination of surface water and sediment PCLs), the multi-stakeholder work group attempted to define a distance downstream but was not able to reach consensus. A definition of a "cutoff" distance downstream is beyond the scope of the proposal. Consideration of a "cutoff" distance would warrant input from the public. This distance should be determined on a case-by-case basis. No change has been made in response to this comment.

§350.74(h)(3), Development of Risk-Based Exposure Limits

Regarding the proposed changes to §350.74(h)(3), the TCC recommended that the rule be modified to clarify that the associated limits (the surface water RBELs) apply to TRRP only when the general TPDES permit currently applies to the affected property, and suggests language to this effect.

The commission disagrees with the TCC suggestion that the general permit limits apply to TRRP only when the affected property currently has a general TPDES permit. As was the intent in the original rule language referencing Chapter 321, Subchapter H, the general permit is being used as a source of RBEL values only, not as a way to restate what is already regulated through the general permit at a particular affected property. The limits in the general permit would then be one of the sources of RBELs for given COCs. If, for example, the MTBE (methyl tert-butyl ether) limit in the general permit is lower than the MTBE RBEL applicable to aquatic life and human health (e.g., paragraphs (1), (2), and (4), then the surface water RBEL would be based on the limit defined in the general permit. The question whether the affected property discharge is regulated by the general permit is irrelevant. What is relevant is whether the release of groundwater or storm water from the facility in question has been impacted by petroleum fuel as defined in the general permit. Currently the general permit defines petroleum fuel as gasoline, diesel fuel, fuel oil, kerosene, and jet fuel. No change has been made to the proposed rule language.

§350.74(h)(5), Development of Risk-Based Exposure Limits

In response to the proposal in §350.74(h)(5) that the criteria for chlorides, sulfates, total dissolved solids, and pH be emphasized as RBELs, the TCC recommended leaving this discussion in the TRRP-10 guidance document.

Elevation of this subsection emphasizes the fact that the specified analytes (chlorides, sulfates, et al.) should be treated as COCs where appropriate, and as such, they would have corresponding RBEL values. As provided in the existing TRRP-24 guidance, these types of parameters need only be evaluated in association with an affected property if they are COCs for the affected property. Once they are determined to be COCs, then this particular rule language provides the source for the appropriate RBEL values. The identification of a COC or target COC is not the subject of this rule provision, and will likely be discussed in the TRRP guidance document (TRRP-10, "Target COCs") noted in the TCC comment. The commission disagrees with the TCC recommendation. However, since there is a possible misunderstanding that the rule is directing that these types of parameters will always be COCs, the commission is modifying the proposed rule language to state that "The person shall apply the numerical criteria, as appropriate, for chlorides, sulfates, total dissolved solids, and pH, for classified segments as specified in §307.10(1) of this title (relating to Appendices A - E), as amended."

§350.75(b)(1), Tiered Human Health Protective Concentration Level Evaluation

Regarding Figure §350.75(b)(1), TCC commented that the word "lesser" should be used rather than "lessor."

The commission agrees and has made the recommended change.

§350.75(i)(4), Tiered Human Health Protective Concentration Level Evaluation

Regarding §350.75(i)(4), TCC commented that the proposed change does not accurately reflect the process of calculating a groundwater-to-surface water PCL (^{SW}GW), as the language suggests that there is only one surface water dilution factor for all surface water RBELs, and neglects the possibility that different dilution factors may be applicable to different surface water RBELs. TCC provided an example where dilution factors for ecological and human health exposure pathways are based on differing critical stream flows. TCC suggested the addition of a clarifying statement at the end of the paragraph to account for situations where different surface water dilution factors may be applicable to the surface water RBEL or the ecological surface water PCL. In such cases, TCC recommended that the RBEL and PCL be divided by their respective dilution factors prior to determining the critical groundwater PCL relevant to these pathways.

The commission agrees and has made the recommended change. This scenario (use of differing stream flows to determine the dilution factor) will only occur where the groundwater discharge is clearly greater than 15% of the 7Q2 (seven-day, two-year low-flow) for releases to freshwater streams and rivers (per §350.75(i)(4)(D)). When determining the groundwater-to-surface water dilution factor in this particular case, it is appropriate to pair the human health surface water RBEL with the harmonic mean flow, and to pair the aquatic life surface water RBEL with 0.25 times the 7Q2 for acute criteria, and the 7Q2 for chronic criteria.

§350.76(c), Approaches for Specific Chemicals of Concern to Determine Human Health Protective Concentration Levels

Lowerre & Frederick commented on the potential use of EPA's Integrated Exposure Uptake Biokinetic (IEUBK) Model for Lead in Children. Lowerre & Frederick opposed the proposed revision unless the model is insulated with conservative assumptions, citing concerns that neither the person performing the remediation nor TCEQ staff are likely to be able to ensure that the model is appropriately calibrated for site-specific conditions, that the model assumptions based on current conditions (e.g., exposure patterns, lead species) may not be protective of potential future exposure, and that assessment and notice to innocent landowners will be limited in the event a higher residential soil lead PCL is calculated. TCC expressed agreement with the proposed revision.

The commission appreciates TCC support of the proposed revision and recognizes the importance of the concerns raised by Lowerre & Frederick. The proposed language for §350.76(c)(2) indicates that both use of a model and site-specific model input values must be approved by the executive director. Given the potential adverse impact of lead on young children, the executive director will consider it critical, when deciding whether to approve model use for a site, that potential exposure of children to elevated soil lead be reduced through remediation of elevated soil lead in as timely a manner as possible. If model use

or site-specific model inputs are not approved by the executive director, response actions must proceed using the Tier 1 PCL for residential soil lead. If use of a model is approved for a site, appropriate TCEQ staff will ensure that the model is properly calibrated for site-specific conditions and that appropriately conservative input values (e.g., exposure factors) are utilized such that the calculated Tier 3 residential soil PCL for lead is expected to be protective of both current and future residential exposure. Proposed site-specific inputs which are less conservative than default model inputs will be rigorously evaluated and must be scientifically defensible and consider potential future residential exposure, since in many cases institutional controls are not required for Remedy Standard A response actions at residential properties. To aid in ensuring that model assumptions result in the calculation of a Tier 3 PCL which is adequately protective of potential future residential exposure, the proposed rule language was revised for adopted §350.76(c)(2) to indicate that consistent with the procedure used to develop residential human health risk-based exposure limits (RBELs) for chemicals without a chemical-specific approach in accordance with §350.74, variance from certain model default exposure factors such as soil/dust ingestion rates and exposure frequency to less conservative (i.e., lower) numerical values will not be allowed. Additionally, because it is often difficult to anticipate the future use of different areas of a residential property, the use of area-specific model inputs (e.g., exposure factors for a lawn versus a garden) to derive different residential soil lead PCLs for the various areas of a residential property will not be allowed. Incorporation of site-specific inputs (e.g., bioavailability) could result in either a higher or lower residential soil PCL for lead, which in either case would be more scientifically defensible than use of default input values.

TCC submitted a comment in support of proposed §350.76(e). Section 350.76(e) directs the use of the same approach currently being used to demonstrate attainment of the critical PCL for 2,3,7,8-TCDD in soil for attainment of the critical PCL for 2,3,7,8-TCDD in other media (e.g., groundwater, sediment).

The commission recognizes TCC's support of adopted §350.76(e).

§350.77(a), Ecological Risk Assessment and Development of Ecological Protective Concentration Levels

URS commented that they are concerned that the impact of this proposed change might differ from agency expectations. As they understand the process, the change does not end the ecological risk assessment, but effectively moves it downstream. This then would require a person to collect more data, in the form of additional samples, or apply dilution factors to develop alternate ecological PCLs.

The primary purpose of this revision is to acknowledge in the rule the expedited stream evaluation process that is being implemented through the commission's ecological risk assessment guidance. The conditions under which this type of evaluation can be conducted are specified in detail in the guidance. URS is correct that the expedited stream evaluation itself does not end the ecological evaluation in that the primary assessment is moved further downstream. However, the combination of a Tier 1 Exclusion Criteria Checklist that failed because of the surface water/sediment pathway, and a completed expedited stream evaluation for qualifying waters that showed no downstream impacts, does constitute a potential exit point from the ecological risk assessment process that was not previously identified in the rule. The commission has made no changes in response to this comment.

§350.90, Spatial and Electronic Information

Concerning §350.90, which requests the collection and reporting of spatial coordinates and associated data attributes in a format approved or required by the executive director, the TCC commented that they support this proposal.

The commission appreciates TCC's support of the proposal.

§350.91(b)(7), Affected Property Assessment Report

Concerning §350.91(b)(7) that amends the information to be submitted in the Affected Property Assessment Report to include an expedited stream evaluation, the TCC commented that they support this proposal.

The commission appreciates TCC's support of the proposal.

§350.91(b)(15), Affected Property Assessment Report

Concerning §350.91(b)(15), the TCC commented that they support the proposal to provide spatial coordinates, as requested by the agency, for the affected property and any sampling or testing locations.

The commission appreciates TCC's support of the proposal.

GSI's recommendation was that, while the proposal is sensible and appropriate, an effective date should be included to clarify that the requirement does not apply to locations sampled prior to adoption of the new requirement. The effective date would prevent problems associated with locating samples prior to adoption of the proposed change for which accurate spatial coordinates may not be available.

The commission recognizes and agrees that there are many sampling locations, such as borings and surficial soil samples, which can no longer be located. The commission has no intention of requesting spatial data on sampling points that can no longer be located. However, on active cases the commission would expect the collection of spatial data for monitor wells and other obvious sampling points. The commission does not expect spatial data on sites where the case has been closed with no further action. For these reasons, the commission disagrees that an effective date for the rule provision is necessary, and therefore the commission has made no changes in response to this comment.

An individual requested clarification on this proposed revision. He asks if it means that persons will need to provide longitude and latitude, Universal Transverse Mercator, or other coordinates for each sampling location. He further inquires as to what other data attributes are envisioned. He asks if the new provision would require that actual global positioning system coordinates for each sample location be provided in a table. Finally, he inquires as to what problems TCEQ is trying to address with these regulations.

The commission will address the last question first. The commission is requesting spatial data in order to utilize geographic information system mapping capabilities. With spatial data on sites and other points of interest, the commission will be able to conduct spatial evaluations of release sites. This information will provide more complete knowledge of regional problems and provide the ability to manage programs and cases on a strategic basis.

The commission is in the process of procuring a data management system. At this time the exact data attributes and database structure have not yet been determined. Once the data management system is implemented, the agency will provide instructions on how to submit spatial coordinates and other data, and the precise data which will need to be submitted under the rule.

§350.95(b), Response Action Completion Report

Concerning §350.95(b), Lowerre & Frederick opposed the proposed revisions. Lowerre & Frederick indicated that the reasons for opposing the proposed revisions are similar to those which they raised in addressing §350.34(l). Lowerre & Frederick commented that the current rule structure was derived from the predecessor rule, the Texas Risk Reduction Standards, at Chapter 335, Subchapter S. Lowerre & Frederick further commented that the Risk Reduction Standards required that any form of institutional control, other than land use, fell under Risk Reduction Standard No. 3. Lowerre & Frederick also commented that Risk Reduction Standard No. 3 included the derivation of medium-specific concentrations based upon site-specific factors, and that an equivalent structure should be retained in the TRRP rule so that land owners and prospective purchasers can continue to believe that Remedy Standard A is a "no strings attached" closure except for specified commercial/industrial land use.

The commission disagrees with the comments for reasons similar to those noted in the response to the comments to the proposed revisions to §350.34(l). The adopted revisions are intended to clarify the rule by adding the appropriate references to rule provisions under which an institutional control may be required. The structure of the prior rule is unaffected by the adopted revisions to §350.95(b), because the institutional control requirements of the prior rule would not be changed; however, due to the apparent misunderstanding as to the intent of the proposed changes, the adopted §350.95(b) contains additional clarification to that provided in the originally proposed revisions. The additional clarification spells out the basis, as contained in the prior rule, for the need for the newly-referenced institutional controls (e.g., that an institutional control is required for the use of a non-default exposure area, the use of occupational inhalation criteria as RBELs, or the use of non-default RBEL exposure factors).

The commission considers the adopted revisions to §350.95(b) to be reasonably justified because the only change to prior §350.95(b) was to add references to rule provisions which were already present in the prior rule.

Concerning §350.95(b) TCC commented that the proposed rule language contained a typographical error which should have read "§350.51(l)(3) or (4)" rather than "§350.51(1), (3) or (4)."

The TCEQ agrees with this comment and has made the change to the adopted rule.

§350.111(c), Use of Institutional Controls

Concerning §350.111(c) and (c)(4), Lowerre & Frederick commented that the preamble for the 1999 TRRP rulemaking noted commission concerns regarding potential takings and slander of title arguments that could be lodged against the agency for the filing of deed notices without consent. The comment suggested that the TCEQ should consider these potential claims in this current rule undertaking. In a general comment to the rule, Lowerre & Frederick argued that the change to the rule attempts to provide regulatory backing for the filing of a deed notice without consent and will subject the agency to claims of takings.

In the 1999 adoption preamble to the TRRP rule, the agency did, in fact, note a concern regarding the risk of potential takings claims associated with implementing a rule that allowed persons conducting cleanups to file deed notices on affected property without obtaining consent. In that preamble, the commission also recognized that its statements regarding the requirement for obtaining consent for the filing of a deed notice were being made out of an abundance of caution. Additionally, in the 1999 adoption preamble the agency acknowledged that its Takings Impact Analysis for the adopted TRRP rule supported the argument that a regulatory taking could not be claimed based solely on the impact of a deed notice because the institutional control provisions of the rule are "not the producing cause of any diminution of property" since "levels of COC are already present at the affected property; and it is the presence of these chemicals that may have caused any property devaluation" (March 26, 1999, issue of the *Texas Register* (24 TexReg 2452)). At that time, without a compelling reason otherwise, the commission could not justify allowing for even a minimal risk of exposure to takings claims by crafting a rule that would establish the filing of deed notices without consent as the normal practice for all persons conducting cleanups.

Even during the initial stage of the development of the original TRRP rule, however, the commission recognized that the rule would be unworkable if it required governmental entities conducting cleanups for which they were not responsible to secure either a restrictive covenant or consent for the filing of a deed notice. To address the problem of the finite state and federal public resources for remediation efforts, the agency opted to define non-responsible party governmental entities out of the purview of the 1999 TRRP rule altogether. As mentioned in the section discussing the definition of "Person," the agency now recognizes that the prior definitional solution for dealing with the institutional control issue is no longer ideal; yet, the need is still present for exceptions to the institutional control requirements as they apply to non-responsible governmental entities. Therefore, the agency is changing the rule to mirror the current practice and policy related to institutional controls and more clearly deal with that subject in §350.111(c).

As was true at the time of the 1999 adoption of the TRRP rule, the agency does not believe that a viable regulatory taking claim can be made based on the rule's provision for non responsible governmental entities to file a deed notice on the rare occasion when consent cannot be obtained. In addition to those factors listed in the 1999 adoption preamble, the grounds for a taking claim would not exist where a governmental entity that did not cause or contribute to the contamination is performing the remediation and arguably greatly improving the value of the land through those remediation efforts. Further, the adopted rule does not prevent the pursuit of damages by the affected property owners from the responsible parties. Additionally, the Private Real Property Rights Preservation Act creates an exception for governmental actions taken in response to a real and substantial threat to public health and safety. The remediation and institutional control actions are being taken to address the real and substantial threats to public health and safety posed by the Site, and these response actions squarely fit within the "taking" exception (Texas Government Code, §2007.003(b)(13)).

Concerning §350.111(c) and §350.111(c)(4), Lowerre & Frederick commented that the inclusion of non-responsible party gov-

ernmental entities in the TRRP rule can only water down the existing rule because responsible parties will seek to apply the same standards used by these non-responsible governmental entities. The comment argued that omitting governmental entities who are not responsible parties from the entirety of the rule is the wiser option. In a general, yet related, comment to the rulemaking, Lowerre & Frederick argued that this change will create an arbitrary distinction between governmental agencies who are not responsible parties and those governmental agencies that are responsible parties (and responsible parties in general).

The revision of the rule to include governmental entities which are not responsible parties within the framework of TRRP, while excluding them from certain specific process requirements of §350.111, strengthens the TRRP rule rather than weakens it. As discussed in the section related to the definition of "Person," the inclusion of non-responsible party governmental entities in this definition is an important change in the effort to require the consistent application of TRRP substantive requirements to NPL sites. However, the necessary definitional change dictates this corresponding change to the institutional control requirements to maintain the status quo for these non-responsible party governmental entities which are using finite state and federal public funds to remediate property contaminated by others. In other words, this rule provision is necessary to maintain the existing condition of the rule and extend these funds so that more sites can be addressed, rather than expending excessive funds to complete an unwarranted removal/decontamination remedy, when a control-based remedy that is fully protective of human health and the environment is the lowest cost remedial alternative. Given this policy rationale, the varied treatment of these non-responsible party governmental entities is logical, rather than arbitrary. Further, the language of the rule is unambiguous in its sole application to governmental entities which are not responsible parties. Neither the language nor the supporting policy of the rule would apply to any entity apart from one that qualifies as a governmental entity which is not a responsible party; therefore, the dilution of the rule is not a warranted concern.

Concerning §350.111(c), in a general comment to the rule, Lowerre & Frederick commented that allowing a non-responsible party governmental entity to file a deed notice rather than a restrictive covenant will undermine the agency's historical assertion that restrictive covenants are superior to deed notices in terms of protectiveness.

The agency has firmly established a regulatory preference for restrictive covenants for innocent landowners in the TRRP rule, and that priority remains intact, and even bolstered, with the amendment to §350.111. The TRRP rule favors the restrictive covenant because this mechanism provides the agency with enforcement power over activity of innocent landowners that could potentially interfere with controls implemented in the remediation process. Again, this preference remains unchanged in the rule, and is underscored by the requirement that was added to the rule whereby non-responsible party governmental entities must first seek to obtain consent for the implementation of a restrictive covenant. Only after the non-responsible party governmental entity has sought and is denied the consent for a restrictive covenant does the rule allow for that party to initiate the implementation of a deed notice. While the preference for a restrictive covenant has consistently been the policy followed by the agency for cleanups implemented by non-responsible party governmental entities, no such requirement was previously contained in rule. This addition to §350.111 underscores, rather than undermines, the agency's preference for the protection afforded by the restrictive covenant.

Concerning §350.111(c) and §350.111(c)(4), Lowerre & Frederick commented that the TCEQ model deed notice language borders on being restrictive in a manner which is inappropriate for a deed notice. The comment opposed the use of these notices as quasi-restrictive covenants.

The TCEQ has crafted model deed notice language such that current and prospective lessees and landowners of property will be sufficiently warned of the residual chemicals of concern or other environmental issues associated with the affected property and will employ necessary precaution in property use. The cautionary language in the model deed notice clearly delineates the environmental concerns and the corresponding precautions that should be understood by those associated with affected property; however, unlike a restrictive covenant, the deed notice does not add to the cautionary language words of prohibition that would unduly restrict the property. The agency does not employ deed notices as quasi-restrictive covenants. As previously noted, the TRRP rule strongly favors the use of restrictive covenants for innocent landowner property by all parties conducting cleanups whether or not the party is a governmental entity or a non-responsible party.

Concerning §350.111(c) and §350.111(c)(4), Lowerre & Frederick commented that it is unnecessary to include Voluntary Cleanup Program certificates in the exception to the requirement for landowner consent in deed notices secured by non-responsible party governmental entities given the unlikelihood that a landowner would object to the filing given the benefits of a certificate of completion.

The TRRP rule requires consent not only for deed notices and restrictive covenants but also Voluntary Cleanup Program certificates of completion. Therefore, providing this exception to consent for Voluntary Cleanup Program certificates of completion in the amended rule is appropriate.

Concerning §350.111(c) and §350.111(c)(4), TCC submitted a comment supporting this change.

The TCEQ acknowledges the support for the adoption of this rule.

SUBCHAPTER A. GENERAL INFORMATION

30 TAC §§350.2 - 350.4

STATUTORY AUTHORITY

The amended rules are adopted under the following statutory authority: TWC, §5.103 and §26.011, which provide the commission with authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; TWC, §5.103(c), which states the commission must adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the practice and procedure requirements of the agency, and Texas Health and Safety Code (THSC), Texas Solid Waste Disposal Act, §361.017 and §361.024, which provide the commission the authority to regulate industrial solid waste and municipal hazardous wastes and all other powers necessary or convenient to carry out its responsibilities. In addition, the amended rules are adopted under TWC, §26.039, which states that activities which are inherently or potentially capable of causing or resulting in the spillage or accidental discharge of waste or other substances and which pose serious or signifi-

cant threats of pollution are subject to reasonable rules establishing safety and preventive measures which the commission may adopt or issue; TWC, §26.121, which prohibits persons from discharging wastes into or adjacent to any water in the state unless authorized to do so and prohibits persons from committing any other act or engaging in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state; TWC, §26.262, which states that it is the policy of this state to prevent the spill or discharge of hazardous substances into the waters in the state and to cause the removal of such spills and discharges without undue delay; and TWC, §26.264, which provides the commission with authority to issue rules necessary and convenient to carry out the policy referenced in TWC, §26.262. Authority to adopt the amended rules is also provided by TWC, §26.341, which states that it is the policy of this state to maintain and protect the quality of groundwater and surface water resources in the state from certain substances in underground and aboveground storage tanks that may pollute groundwater and surface water resources, and requires the use of all reasonable methods, including risk-based corrective action to implement this policy; TWC, §26.345, which provides the commission with the authority to adopt rules necessary to carry out the policy referenced in TWC, §26.341; and TWC, §26.401, which states that it is the policy of this state that discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies be conducted in a manner that will maintain present uses and not impair potential uses of groundwater or pose a public health hazard, and that the quality of groundwater be restored if feasible.

The adopted amendments implement TWC, §§5.103, 26.011, 26.039, 26.262, 26.264, 26.341, 26.345, and 26.401, and THSC, §361.017 and §361.024.

§350.2. Applicability.

(a) General applicability. On May 1, 2000, persons shall comply with the requirements of this chapter to the extent not modified by the provisions of this section. Before May 1, 2000, the person may use this chapter upon the effective date of the chapter. The rules in this chapter specify objectives for response actions for affected properties and further specify the mechanism to evaluate such response actions once an obligation is established to take a response action via other applicable rules, orders, permits or statutes. All actions undertaken and demonstrations required by this chapter must be performed and documented to the reasonable satisfaction of the executive director. Additionally, no person shall submit information to the executive director or to parties who are required to be provided information under this chapter which they know or reasonably should have known to be false or intentionally misleading, or fail to submit available information which is critical to the understanding of the matter at hand or to the basis of critical decisions which reasonably would have been influenced by that information. This chapter does not establish requirements for reporting releases to program areas. The regulations in this chapter address releases of chemicals of concern (COCs) as defined by various programs subject to this chapter as specified in subsections (b) - (m) of this section. However, the regulations in this chapter do not eliminate the need for the person to meet any more stringent or additional requirements found in the particular rules for the covered program areas or applicable federal requirements.

(b) Property where a release of COCs occurs that is regulated under Chapter 327 of this title (relating to Spill Prevention and Control), as amended. The person shall first complete notification for releases under §327.3 of this title (relating to Notification Requirements), as amended, and then conduct response actions under §327.5 of this title (relating to Actions Required), as amended. The person shall utilize this chapter to conduct response actions when either the conditions of paragraphs (1) or (2) of this subsection apply.

(1) The person chooses to respond under this chapter to a release of COCs within the first six months after the release is reported to the executive director.

(2) The person determines that the response action to the release of COCs cannot be completed to the satisfaction of the executive director within the first six months following notification to the executive director.

(c) Property regulated under Chapter 330 of this title (relating to Municipal Solid Waste). Persons shall comply with the requirements of this chapter for those municipal solid waste properties except when subject to the requirements of 40 Code of Federal Regulations Parts 257 and/or 258, as amended. However, for those municipal solid waste properties subject to the requirements of 40 Code of Federal Regulations Parts 257 and/or 258, as amended, the executive director may establish an alternative health-based groundwater protection standard for a COC in accordance with §330.409 of this title (relating to Assessment Monitoring Program), as amended. Determination of such an alternative standard shall be made using the procedures of Subchapter D of this chapter (relating to Development of Protective Concentration Levels).

(d) Property regulated under Chapter 331 of this title (relating to Underground Injection Control). The person shall address unauthorized releases of COCs from associated tankage and equipment utilizing the procedures of this chapter. Excursions of injected mining solutions at in-situ mining properties or injection of waste which is confined below all underground sources of drinking water as defined in §331.2 of this title (relating to Definitions), as amended, are not subject to the requirements of this chapter.

(e) Property regulated under Chapter 332 of this title (relating to Composting). The person shall comply with the requirements of this chapter to conduct assessments, response actions, and post-response action care for releases of COCs in environmental media at a compost facility, mulching facility or land application property authorized under Chapter 332 of this title, as amended.

(f) Property regulated under Chapter 333 of this title (relating to Brownfields Initiatives). The person entering the Voluntary Cleanup Program (VCP) shall comply with all requirements found in the Texas Health and Safety Code, Chapter 361, Subchapter S, as amended, concerning the Voluntary Cleanup Program; Subchapter A of Chapter 333 of this title (relating to Voluntary Cleanup Program Section), as amended; and the requirements of this chapter. Where there is a conflict between the requirements of this chapter and the requirements in the Texas Health and Safety Code, Chapter 361, Subchapter S, as amended, and Chapter 333, Subchapter A of this title, as amended, the requirements of the Texas Health and Safety Code, Chapter 361, Subchapter S, as amended, and Chapter 333, Subchapter A of this title, as amended, shall apply.

(g) Property regulated under Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks). The person shall comply with the requirements of this chapter for the assessment, response actions, and post-response action care for releases of regulated substances from underground storage tanks (USTs) as specified in Chapter 334, Subchapter A of this title (relating to General Provisions), as amended, and for releases of petroleum products from aboveground storage tanks (ASTs) as specified in Chapter 334, Subchapter F of this title (relating to Aboveground Storage Tanks), as amended, which are reported to the executive director in accordance with Chapter 334, Subchapter D of this title (relating to Release Reporting and

Corrective Action), as amended, on or after September 1, 2003, unless a variance is granted in accordance with the requirements in paragraphs (1)- (7) of this subsection. Additional corrective action requirements for these facilities are found in Chapter 334, Subchapters D, J, and K of this title (relating to Release Reporting and Corrective Action; Leaking Petroleum Storage Tank Corrective Action Specialist Registration and Project Manager Licensing; and Storage, Treatment, and Reuse Procedures for Petroleum-Substance Contaminated Soil, respectively), as amended. For releases discovered and reported to the executive director before September 1, 2003, the person shall continue to comply with Chapter 334, Subchapters D, G, H, J, K, and M of this title (relating to Release Reporting and Corrective Action; Target Concentration Criteria; Reimbursement Program; Leaking Petroleum Storage Tank Corrective Action Specialist Registration and Project Manager Licensing; Storage, Treatment, and Reuse Procedures for Petroleum-Substance Contaminated Soil; and Reimbursable Cost Specifications for the Petroleum Storage Tank Reimbursement Program, respectively), as amended, which were in effect prior to the effective date of this chapter, not to preclude compliance with a subsequent amendment of Chapter 334 of this title.

(1) The executive director may consider requests for a variance to applicability of this chapter, as amended, upon submission of a written request for a variance from applicability of this chapter that includes the following documentation in a form prescribed or allowed by the executive director:

(A) documents, either submitted in accordance with the requirements of Chapter 334, Subchapters A, C, D, and F of this title, as amended and as applicable, or otherwise credible and appropriate documented evidence as determined by the executive director demonstrating that, before September 1, 2003, the UST system at the property for which the variance is sought was permanently removed from service and the AST at the property for which the variance is sought was removed from the property;

(B) a draft restrictive covenant to be filed in the property records of the county where the property is located upon granting of the variance by the executive director that:

(i) prohibits use of ASTs or USTs at the property or at any subsequent subdivision of the property;

(ii) is written in favor of the TCEQ and the State of Texas; and

(iii) runs with the land;

(C) documents identifying UST or AST release sites addressed under Chapter 334, Subchapters D and G of this title, as amended, that are within 1/4 mile from the property for which the variance is sought, with an accompanying description comparing the release, site, and receptor conditions at the release sites located within 1/4 mile and any other relevant factors that demonstrate any regulatory inequity that may occur as the result of compliance with this chapter; and

(D) any other information requested by the executive director that is reasonably necessary for appropriate consideration of the request.

(2) The executive director may grant a variance requested in accordance with paragraph (1) of this subsection if:

(A) before September 1, 2003, the UST system at the site for which the variance is sought was permanently removed from service and the AST at the site for which the variance is sought was removed from the property;

(B) a UST or AST release site addressed under Chapter 334, Subchapters D and G of this title, as amended, is within 1/4 mile from the site for which a variance is sought;

(C) within 45 calendar days of a request for additional information by the executive director, or within a time period directed or agreed upon by the executive director in writing, the person seeking a variance submitted the requested information; and

(D) the variance request documents an unjustifiable degree of regulatory inequity between the site for which a variance is sought and a UST or AST release site addressed under Chapter 334, Subchapters D and G of this title, based on a comparison of the release, site, and receptor conditions and any other relevant factors at the release sites located within 1/4 mile.

(3) The executive director must provide written notice to the person seeking the variance that the variance is granted, denied, or repealed. The executive director may direct the person seeking the variance to make changes to the draft restrictive covenant described in paragraph (1)(B) of this subsection if necessary to ensure that the restrictive covenant conforms with the intent of this subsection. If the executive director denies the request or repeals the variance, the notice required by this paragraph must include the reason(s) the variance has been denied or repealed.

(4) Within 45 calendar days of issuance of the written notice described in paragraph (3) of this subsection that grants the variance, the person who sought the variance shall provide:

(A) proof that the restrictive covenant, with any changes directed by the executive director, described in paragraph (1)(B) of this subsection was filed in the property records of the county where the property is located; and

(B) a copy of the restrictive covenant filed in the property records of the county where the property is located.

(5) Upon the effective date indicated in the notice granting a variance, the person who sought the variance shall comply with Chapter 334, Subchapters D and G of this title, as amended, in lieu of this chapter.

(6) The executive director shall repeal a variance if the person who sought the variance fails to comply with paragraph (4) of this subsection unless the person who sought the variance provides compelling evidence that uncontrollable circumstances, including, but not limited to, an act of God, an act of war, severe meteorological conditions, or other similar occurrences beyond the reasonable control of the person seeking the variance, led to their inability to comply within the time frame provided in paragraph (4) of this subsection.

(7) Regardless of whether the release has been fully addressed and closed under Chapter 334, Subchapters D and G of this title, a variance granted under this subsection is automatically repealed, and this chapter becomes immediately applicable to the release, if the property or subdivision of the property is used for UST or AST purposes as regulated under Chapter 334 of this title.

(h) Property regulated under Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste). The person shall comply with the requirements of this chapter when undertaking the remediation of affected property at facilities used for the storage, processing or disposal of industrial solid waste or municipal hazardous waste, or for the remediation of environmental media containing COCs resulting from releases from waste management facility components (e.g., tank, container storage area, surface impoundment, etc.), either as part of closure or at any time before or after closure. The person shall close a waste management facility component in a man-

ner that minimizes or eliminates the need for further maintenance and controls. The manner of closure shall also minimize or eliminate, to the extent necessary to protect human health and the environment, the post-closure escape of waste, contaminants, leachate, run-off, or decomposition products to the surrounding environmental media. Waste management facility components undergoing closure for which the person can demonstrate that no release of COCs to surrounding environmental media has occurred are subject to this chapter only with regard to this closure performance standard and the removal, decontamination or control requirements for waste as specified in Subchapter B of this chapter (relating to Remedy Standards). In the event a release of COCs to surrounding environmental media has occurred, then the person shall comply with this chapter for response to the release. The person shall comply with §335.118(b) of this title (relating to Closure Plan; Submission and Approval of Plan), as amended, or applicable permit provisions regarding requirements for public participation in the corrective action process for permitted hazardous waste facilities. The person shall also comply with the requirements of paragraphs (1) - (3) of this subsection, as applicable.

(1) Any person who stores, processes, or disposes of industrial solid waste or municipal hazardous waste at a facility permitted under §335.2(a) of this title (relating to Permit Required), as amended, shall, unless specifically modified by other order of the commission, close the facility in accordance with the closing provisions of the permit.

(2) Any person who stores, processes, or disposes of hazardous waste is also subject to the applicable provisions relating to closure and post-closure in Chapter 335, Subchapters E and F of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities, respectively), as amended.

(3) The person may utilize this chapter to determine if COCs, specifically listed hazardous waste or hazardous constituents, exceed concentrations protective of human health and the environment when making "contained-in" determinations for environmental media being managed as wastes (e.g., excavated soils, investigation derived wastes such as monitor well purge water, etc.) for purposes of treatment or disposal in a different location. In such cases, the person must still perform a waste classification in response to Chapter 335, Subchapters A and R of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General; and Waste Classification, respectively), as amended.

(4) The person may propose a facility operations area (FOA) to address multiple sources of COCs within an active facility that is required to perform corrective action for releases pursuant to a permit or commission corrective action order. The requirements for establishing a FOA are specified in Subchapter G of this chapter (relating to Establishing a Facility Operations Area).

(i) Affected property regulated under Chapter 335, Subchapter K of this title (relating to Hazardous Substance Facilities Assessment and Remediation). The person shall comply with all requirements found in the Texas Health and Safety Code, Chapter 361, Subchapter F, as amended; Chapter 335, Subchapter K of this title, as amended; and the requirements of this chapter for any release or threatened release of hazardous substances into the environment that may constitute an imminent and substantial endangerment to public health and safety or the environment. Where there is a conflict between the requirements in this chapter and the requirements of Texas Health and Safety Code, Chapter 361, Subchapter F, as amended, and Chapter 335, Subchapter K of this title, as amended, the requirements of Texas Health and Safety Code, Chapter 361, Subchapter F and Chapter 335, Subchapter K of this title shall apply.

(j) Property regulated under Chapter 336 of this title (relating to Radioactive Substance Rules). The person shall comply with the requirements of Chapter 336 of this title, as amended, regarding contamination limits for radioactive material in environmental media. In instances involving remediation of releases in media containing both radioactive material and other COCs, the person shall use the contamination limits determined in accordance with Chapter 336 of this title, as amended, for radioactive material and PCLs determined by the procedures of this chapter for other COCs.

(k) Property regulated under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation). The executive director may reference this chapter in permits subject to Chapter 312 of this title, as amended, when specifying closure provisions to address releases of COCs from facility components at municipal wastewater treatment plants.

(l) Other releases. The executive director may require the use of this chapter to address other releases of COCs subject to Texas Water Code, Chapter 26, as amended.

(m) Use of this chapter on or after May 1, 2000. The person who started a response action under Chapter 335, Subchapters A and S of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste in General; Risk Reduction Standards, respectively), as amended, may qualify to continue under those previous commission rules subject to the limitations specified in paragraphs (1)- (4) of this subsection. Any person desiring to remain under Chapter 335 of this title may not use any of the provisions of this chapter. If a person elects to proceed under this chapter, then they shall not be allowed to return to Chapter 335 of this title. Also, the person shall respond as described in §350.35 of this title (relating to Substantial Change in Circumstances) in the event a substantial change in circumstance occurs which results in an unacceptable threat to human health or the environment.

(1) The person who has submitted an initial notification of intent to conduct a Risk Reduction Standard 1 or 2 response action (i.e., §335.8(c)(1) and (2) of this title (relating to Closure and Remediation), as amended) prior to May 1, 2000, and has submitted a final report within five years after that date may request that the response action be reviewed according to the regulations in effect at the time of initial notification. Persons will automatically qualify for this grandfathering provision if they have previously received a letter from the agency acknowledging receipt of the initial notification, or submit other forms of documentation by May 1, 2001, that proper and timely notification had been made.

(2) The person who has submitted a remedial investigation report that fully complies with §335.553(b)(1) of this title (relating to Required Information), as amended, prior to May 1, 2001, may elect to either continue under those rules or to proceed under this chapter.

(3) Any closure plans approved as part of a permit issued prior to May 1, 2000, but not implemented at the time of permit renewal are subject to review for compliance with this chapter as part of the permit renewal process.

(4) The person may resubmit plans or reports that the person has revised voluntarily to conform with the requirements of this chapter, unless such resubmittal would result in noncompliance with a previously approved or imposed schedule of compliance.

§350.4. Definitions and Acronyms.

(a) Definitions.

(1) Affected property--The entire area (i.e., on-site and off-site; including all environmental media) which contains releases of chemicals of concern at concentrations equal to or greater than the assessment level applicable for residential land use and groundwater classification.

(2) Alternate point of exposure--A location other than the prescribed point of exposure where an individual human or population will be assumed to have a reasonable potential to come into contact with chemicals of concern based on property-specific considerations.

(3) Assessment level--A critical protective concentration level for a chemical of concern used for affected property assessments where the human health protective concentration level is established under a Tier 1 evaluation as described in §350.75(b) of this title (relating to Tiered Human Health Protective Concentration Level Evaluation), except for the protective concentration level for the soil-to-groundwater exposure pathway which may be established under Tier 1, 2, or 3 as described in §350.75(i)(7) of this title, and ecological protective concentration levels which are developed, when necessary, under Tier 2 and/or 3 in accordance with §350.77(c) and/or (d), respectively, of this title (relating to Ecological Risk Assessment and Development of Ecological Protective Concentration Levels).

(4) Attenuation action level--The maximum concentration of a chemical of concern which can be present at an attenuation monitoring point and not exceed the applicable critical protective concentration level at the points of exposure over time.

(5) Attenuation monitoring point--A location within the migration pathway of a chemical of concern which is used to verify that the critical PCL will not be exceeded at the points of exposure.

(6) Background--A population of concentrations characterized from samples in an environmental medium containing a chemical of concern that is naturally occurring (i.e., the concentration is not due to a release of chemicals of concern from human activities) or anthropogenic (i.e., the presence of a chemical of concern in the environment which is due to human activities, but is not the result of site-specific use or release of waste or products, or industrial activity). Examples of anthropogenic sources include non-site specific sources such as lead from automobile emissions, arsenic from use of defoliants, and polynuclear aromatic hydrocarbons resulting from combustion of hydrocarbons. There are some commonalities regardless of the activity; specifically, the chemicals of concern have resulted from the use of a product in its intended manner and may be present at generally low levels over large areas (tens of square miles up to hundreds of square miles). Background is required for use in a statistical model appropriate for testing the hypothesis that the background area characterized by these kinds of models has the same concentrations of the chemical of concern as the affected property. The background area characterized is as "close" as possible to the affected property, in either space or time, as required.

(7) Bedrock--The solid rock (i.e., consolidated, coherent, and relatively hard naturally formed material that cannot normally be excavated by manual methods alone) that underlies gravel, soil or other surficial material.

(8) Bioaccumulative chemical of concern--A chemical of concern which has the tendency to accumulate in the tissues of an organism as a result of food consumption or dietary exposure and/or direct exposure (e.g., gills and epithelial tissue) to an environmental medium.

(9) Carcinogen--A chemical of concern which causes an increased incidence of benign or malignant neoplasms, or substantially decreases the time to develop neoplasms, in animals or humans (a chemical of concern can act as both a carcinogen and a noncarcinogen).

(10) Carcinogenic risk level--The probability of development of a neoplasm due to continuous lifetime exposure to a single carcinogen acting through an individual or combined exposure pathway.

(11) Chemical of concern--Any chemical that has the potential to adversely affect ecological or human receptors due to its concentration, distribution, and mode of toxicity. Depending on the program area, chemicals of concern may include the following: solid waste, industrial solid waste, municipal solid waste, and hazardous waste as defined in the Texas Health and Safety Code, §361.003, as amended; hazardous constituents as listed in 40 Code of Federal Regulations Part 261, Appendix VIII, as amended; constituents on the groundwater monitoring list in 40 Code of Federal Regulations Part 264, Appendix IX, as amended; constituents as listed in 40 Code of Federal Regulations Part 258 Appendices I and II, as amended; pollutant as defined in Texas Water Code, §26.001, as amended; hazardous substance as defined in the Texas Health and Safety Code, §361.003, as amended, and Texas Water Code, §26.263, as amended; regulated substance as defined in Texas Water Code, §26.342, as amended, and §334.2 of this title (relating to Definitions), as amended; petroleum product as defined in Texas Water Code, §26.342, as amended, and §334.122(b)(12) of this title (relating to Definitions for ASTs), as amended; other substances as defined in Texas Water Code, §26.039(a), as amended; and daughter products of the aforementioned constituents.

(12) Closure--The act of permanently taking a waste management unit or facility out of service.

(13) Commercial/industrial land use--Any real property or portions of a property not used for human habitation or for other purposes with a similar potential for human exposure as defined for residential land. Examples of commercial/industrial land use include manufacturing; industrial research and development; utilities; commercial warehouse operations; lumber yards; retail gas stations; auto service stations; auto dealerships; equipment repair and service stations; professional offices (lawyers, architects, engineers, real estate, insurance, etc.); medical/dental offices and clinics (not including hospitals); financial institutions; office buildings; any retail business whose principal activity is the sale of food or merchandise; personal service establishments (health clubs, barber/beauty salons, mortuaries, photographic studios, etc.); churches (not including churches providing day care or school services other than during normal worship services); motels/hotels (not including those which allow residence); agricultural lands; and portions of government-owned land (local, state, or federal) that have commercial/industrial activities occurring. Land use activities consistent with this classification have the North American Industrial Classification System code numbers 11 - 21 inclusive; 22 except 22131; 23 - 56 inclusive; 61 except 61111, 61121, and 61131; 62 except 62211, 62221, 62231, 62311, 62322, 623311, 623312, 62399, and 62441; 71 except 71219; 72 except 721211 and 72131; 81 except 814; and 92 excluding 92214.

(14) Community--An assemblage of plant and animal populations occupying the same habitat in which the various species interact via spatial and trophic relationships (e.g., a desert community or a pond community).

(15) Compensatory ecological restoration--The creation of ecological services by or through restoration or the setting aside of, preferably, a comparable type of habitat as that which is impacted to offset residual ecological risk at an affected property. A net environmental benefits analysis or similar evaluation of ecological services

may be used in the determination of the appropriate level of compensation.

(16) Complete exposure pathway--An exposure pathway where a human or ecological receptor is exposed to a chemical of concern via an exposure route (e.g., incidental soil ingestion, inhalation of volatiles and particulates, consumption of prey, etc.).

(17) Construction zone--The typical depth of construction within soil for an affected property considering the planned or historical installation of subsurface utilities, foundations, basements, or other such subsurface structures within the vicinity of the affected property not to extend below the top of bedrock.

(18) Control--To apply physical or institutional controls to prevent exposure to chemicals of concern. Control measures must be combined with appropriate maintenance, monitoring, and any necessary further response action to be protective of human health and the environment.

(19) Critical protective concentration level--The lowest protective concentration level for a chemical of concern within a source medium determined from all of the applicable human health exposure pathways as described in §350.71 of this title (relating to General Requirements), and when necessary, protective concentration levels for applicable ecological exposure pathways as required in §350.77 of this title (relating to Ecological Risk Assessment and Development of Ecological Protective Concentration Levels).

(20) Cumulative carcinogenic risk--The aggregate risk due to exposure of an individual human receptor to multiple carcinogens originating from a single affected property and acting through an individual or combined exposure pathway.

(21) Decontaminate--Application or occurrence of a permanent and irreversible treatment process to a waste or environmental medium so that the threat of release of chemicals of concern at concentrations above the critical protective concentration levels is eliminated.

(22) Deed notice--An instrument filed in the real property records of the county where the affected property is located that is intended to provide to owners, prospective buyers and others notice and information regarding, but which does not, by itself, restrict use of the affected property.

(23) *De minimus*--The description of an area of affected property comprised of one acre or less where the ecological risk is considered to be insignificant because of the small extent of contamination, the absence of protected species, the availability of similar unimpacted habitat nearby, and the lack of adjacent sensitive environmental areas.

(24) Ecological benchmark--A state standard, federal guideline, or other exposure level for a chemical of concern in water, sediment, or soil that represents a protective threshold from adverse ecological effects. An ecological benchmark may also be a toxicity reference value that is established by the person based on scientific studies in the literature.

(25) Ecological hazard index--The sum of individual ecological hazard quotients of COCs within a class of compounds that exert ecological effects which have the same toxicological mechanism or endpoint (e.g., PAHs, PCBs).

(26) Ecological hazard quotient--The ratio of an exposure level to a chemical of concern to a toxicity value selected for the risk assessment for that chemical of concern (e.g., a no observed adverse effects level).

(27) Ecological protective concentration level--The concentration of a chemical of concern at the point of exposure within an exposure medium (e.g., soil, sediment, groundwater, or surface water) which is determined in accordance with §350.77(c) or (d) of this title (relating to Ecological Risk Assessment and Development of Ecological Protective Concentration Levels) to be protective for ecological receptors. These concentration levels are primarily intended to be protective for more mobile or wide-ranging ecological receptors and, where appropriate, benthic invertebrate communities within the waters in the state. These concentration levels are not intended to be directly protective of receptors with limited mobility or range (e.g., plants, soil invertebrates, and small rodents), particularly those residing within active areas of a facility, unless these receptors are threatened/endangered species or unless impacts to these receptors result in disruption of the ecosystem or other unacceptable consequences for the more mobile or wide-ranging receptors (e.g., impacts to an off-site grassland habitat eliminate rodents which causes a desirable owl population to leave the area).

(28) Ecological risk assessment--The process that evaluates the likelihood that adverse ecological effects may occur or are occurring as a result of exposure to one or more stressors; however, as used in this context, only chemical stressors (i.e., COCs) are evaluated.

(29) Ecological services--The physical, chemical, or biological functions of natural resources that one natural resource provides for another or to the public. Examples include provision of food, protection from predation, and nesting habitat, among others.

(30) Ecological services analysis--A measurement of the potential change in ecological services based on considerations which may include, but are not limited to: the percent change in ecological services at the affected property that are attributable to COCs and/or potential response actions; the spatial extent of the affected property; and the recovery period.

(31) Environmental medium--A material found in the natural environment such as soil (including non-waste fill materials), groundwater, air, surface water, and sediments, or a mixture of such materials with liquids, sludges, gases, or solids, including hazardous waste which is inseparable by simple mechanical removal processes, and is made up primarily of natural environmental material.

(32) Exclusion criteria--Those conditions at an affected property which preclude the need to establish a protective concentration level for an ecological exposure pathway because the exposure pathway between the chemical of concern and the ecological receptors is not complete or is insignificant.

(33) Exposure area--The smallest property surface area within which it is believed that exposure to chemicals of concern in soil or air by a receptor would be limited under reasonably anticipated current or future use scenarios.

(34) Exposure medium--The environmental medium or biologic tissue in which or by which exposure to chemicals of concern by ecological or human receptors occurs.

(35) Exposure pathway--The course that a chemical of concern takes from a source area to ecological or human receptors and includes a source area, a point of exposure, and an exposure route (e.g., ingestion), as well as a transport mechanism if the point of exposure is different from the source area.

(36) Facility--The installation associated with the affected property where the release of chemicals of concern occurred.

(37) Facility Operations Area--One or more areas (lateral and vertical extent) of an operational chemical or petroleum manufacturing plant with North American Industrial Classification System code

numbers 325 or 324, respectively, with a hazardous waste permit or commission corrective action order within which response actions to multiple releases of COCs can be consolidated for purposes of compliance with this chapter on an area-wide basis by using interim or permanent response actions. The lateral extent of the facility operations area is limited to the contiguous area actively used for the development, manufacture, process, transfer, storage, and management of chemical or refinery products, hazardous materials, substances and wastes subject to Resource Conservation and Recovery Act regulation, and includes ancillary components such as, but not necessarily limited to, power plants and cooling units.

(38) Feeding guilds--Groups of ecological receptors used to represent the variety of species that may be exposed to chemicals of concern at the affected property. The feeding guilds are generally based on function within an ecosystem, potential for exposure, and physiological and taxonomic similarity. Examples include carnivorous mammals, carnivorous birds, and piscivorous birds.

(39) Functioning cap--A low permeability layer or other approved cover meeting its design specifications to minimize water infiltration and chemical of concern migration, and prevent ecological or human receptor exposure to chemicals of concern, and whose design requirements are routinely maintained.

(40) Groundwater-bearing unit--A saturated geologic formation, group of formations, or part of a formation which has a hydraulic conductivity equal to or greater than 1×10^{-5} centimeters/second.

(41) Groundwater production zone--The groundwater-bearing unit(s) which contributes water to a well. For example, if a well penetrates four distinct groundwater-bearing units isolated by competent aquitards, but the well is screened in only two of the units and has a competent annular seal to isolate the other two units, then the groundwater production zone consists of only the two units that contribute water to the well.

(42) Groundwater protective concentration level exceedence zone--A protective concentration level exceedence zone within a groundwater-bearing unit.

(43) Hazard index--The sum of two or more hazard quotients for multiple noncarcinogens originating from a single affected property.

(44) Hazard quotient--The ratio of the level of exposure of a noncarcinogen acting through an individual or combined exposure pathway over a specified time period to a reference dose for the noncarcinogen derived for a similar exposure period.

(45) Implementation Procedures--The most current version of *Procedures to Implement the Texas Surface Water Quality Standards*, as amended.

(46) Innocent Owner or Operator--Those persons so designated in accordance with Texas Health and Safety Code, Chapter 361, Subchapter V, Immunity From Liability of Innocent Owner or Operator, as amended.

(47) Institutional control--A legal instrument placed in the property records in the form of a deed notice, Voluntary Cleanup Program Certificate of Completion (VCP Certificate of Completion), or restrictive covenant which indicates the limitations on or the conditions governing use of the property which ensures protection of human health and the environment or equivalent zoning and governmental ordinances.

(48) Judgmental sample--An investigative sample of an environmental medium which is purposefully located based upon property-specific information.

(49) Laboratory Control Sample--A spiked blank sample analyzed by the laboratory to assess laboratory ability to successfully recover chemicals of concern from a control matrix.

(50) Landscaped area--An area of ornamental, introduced, commercially installed, or manicured vegetation which is routinely maintained.

(51) Long-term effectiveness--The ability of a remedy to maintain the required level of protection of human health and the environment over time.

(52) Lower explosive limit--The lowest concentration of a vapor or gas in air that will produce a flash of fire when an ignition source (heat, arc, or flame) is present.

(53) Method detection limit--The minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined for each COC from the analysis of a sample of a given matrix type containing the COC.

(54) Method quantitation limit--The lowest non-zero concentration standard in the laboratory's initial calibration curve and is based on the final volume of extract (or sample) used by the laboratory.

(55) Monitored natural attenuation--The use of natural attenuation within the context of a carefully controlled and monitored response action to achieve protective concentration levels at the point of exposure.

(56) Natural attenuation--The reduction in mass or concentration of a chemical of concern over time or distance from the source of a chemical of concern due to naturally occurring physical, chemical, and biological processes, such as: biodegradation, dispersion, dilution, adsorption, and volatilization.

(57) Natural attenuation factor--The numerical value which represents the natural attenuation (i.e., reduction) in chemical of concern concentrations during transport from the source area to the point of exposure. The natural attenuation factor is the concentration at the source area divided by the concentration at the point of exposure. The natural attenuation factor is always greater than or equal to one for the purposes of this rule.

(58) Natural Resource Trustees--The federal agencies as designated by the President and the state agencies as designated by the Governor pursuant to the National Contingency Plan, Oil Pollution Act, and CERCLA §107(f)(2)(A) and (B) to act on behalf of the public as trustees of natural resources (e.g., water, air, land, wildlife). The Trustees include TCEQ, Texas Parks and Wildlife Department, Texas General Land Office, National Oceanic and Atmospheric Administration, and the Department of the Interior.

(59) Off-site property (off-site)--All environmental media which is outside of the legal boundaries of the on-site property.

(60) On-site property (on-site)--All environmental media within the legal boundaries of a property owned or leased by a person who has filed a self-implementation notice or a response action plan for that property or who has become subject to such action through one of the agency's program areas for that property.

(61) Permanence/permanent/permanently--The property of a response action which is capable of enduring indefinitely without posing the threat of any future release of chemicals of concern above the critical protective concentration levels established for the property.

(62) Person--An individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(63) Physical barrier--Any structure or system, natural or manmade, that prevents exposure or prevents migration of chemicals of concern to the points of exposure.

(64) Physical control--A structure or hydraulic containment action which prevents exposure to and/or migration of chemicals of concern when combined with appropriate post-response action care to protect human health and the environment. Examples of physical controls are caps, slurry walls, sheet piling, hydraulic containment wells, and interceptor trenches, but typically not fences.

(65) Plume management zone--The area of the groundwater protective concentration level exceedence zone at the time of response action plan submittal, plus any additional area allowed in accordance with §350.33(f)(4) of this title (relating to Remedy Standard B).

(66) Point of exposure--The location within an environmental medium where a receptor will be assumed to have a reasonable potential to come into contact with chemicals of concern. The point of exposure may be a discrete point, plane, or an area within or beyond some location.

(67) Prescribed points of exposure--The prescribed on-site and off-site locations within an environmental medium where an individual human or population will be assumed to come into contact with chemicals of concern from an affected property.

(68) Protective concentration level--The concentration of a chemical of concern which can remain within the source medium and not result in levels which exceed the applicable human health risk-based exposure limit or ecological protective concentration level at the point of exposure for that exposure pathway.

(69) Protective concentration level exceedence zone--The lateral and vertical extent of all wastes and environmental media which contain chemicals of concern at concentrations greater than the critical protective concentration level determined for that medium, as well as, hazardous waste. A protective concentration level exceedence zone can be thought of as the volume of waste and environmental media which must be removed, decontaminated, and/or controlled in some fashion to adequately protect human health and the environment.

(70) Reasonably anticipated to be completed exposure pathway--A situation with a credible chance of occurrence in which an ecological or human receptor may become exposed to a chemical of concern (i.e., complete exposure pathway) without consideration of circumstances which are extreme or improbable based on property characteristics.

(71) Release--Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, with the exception of:

(A) A release that results in an exposure to a person solely within a workplace, concerning a claim that the person may assert against the person's employer;

(B) An emission from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(C) A release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. §2011 *et seq.*), if the release is subject to requirements concerning financial protection established by the Nuclear Regulatory Commission under §170 of that Act;

(D) For the purposes of the environmental response law §104, as amended, or other response action, a release of source, by-product, or special nuclear material from a processing site designated under §102(a)(1) or §302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. §7912 and §7942), as amended; and

(E) The normal application of fertilizer.

(72) Remediation--The act of eliminating or reducing the concentration of chemicals of concern in environmental media.

(73) Remove--To take waste or environmental media away from the affected property to another location for storage, processing or disposal in accordance with all applicable requirements. Removal is an irreversible process that results in permanent risk reduction at an affected property.

(74) Residential land use--Property used for dwellings such as single family houses and multi-family apartments, children's homes, nursing homes, and residential portions of government-owned lands (local, state, or federal). Because of the similarity of exposure potential and the sensitive nature of the potentially exposed population, day care facilities, educational facilities, hospitals, and parks (local, state or federal) shall also be considered residential.

(75) Response action--Any activity taken to comply with these regulations to remove, decontaminate and/or control (i.e., physical controls and institutional controls) chemicals of concern in excess of critical PCLs in environmental media, including actions taken in response to releases to environmental media from a waste management unit before, during, or after closure.

(76) Restrictive covenant--An instrument filed in the real property records of the county where the affected property is located which ensures that the restrictions will be legally enforceable by the executive director when the person owning the property is an innocent landowner.

(77) Risk-based exposure limit--The concentration of a chemical of concern at the point of exposure within an exposure medium (e.g., soil, sediment, vegetables, groundwater, surface water, or air) which is protective for human health. Risk-based exposure limits are the fundamental risk-based values which are initially determined and used in the development of protective concentration levels. Risk-based exposure limits do not account for cumulative effects from exposure to multiple chemicals of concern, combined exposure pathways, and cross-media or lateral transport of chemicals of concern within environmental media.

(78) Sample detection limit--The method detection limit, as defined in this section, adjusted to reflect sample-specific actions, such as dilution or use of smaller aliquot sizes than prescribed in the analytical method, and to take into account sample characteristics, sample preparation, and analytical adjustments. The term, as used in this rule, is analogous to the sample-specific detection limit.

(79) Sediment--Non-suspended particulate material lying below surface waters such as bays, the ocean, rivers, streams, lakes, ponds, or other similar surface water body (including intermittent streams). Dredged sediments which have been removed from below surface water bodies and placed on land shall be considered soils.

(80) Selected ecological receptors--Species that are to be carried through the ecological risk assessment as representatives of the different feeding guilds and communities that are being evaluated. These species may not actually occur at the affected property, but may

be used to represent those within the feeding guild or community that may feed on the affected property.

(81) Sensitive environmental areas--Areas that provide unique and often protected habitat for wildlife species. These areas are typically used during critical life stages such as breeding, hatching, rearing of young, and overwintering. Examples include critical habitat for threatened and endangered species, wilderness areas, parks, and wildlife refuges.

(82) Soil protective concentration level exceedence zone--A protective concentration level exceedence zone within the surface soil or subsurface soil which may extend down to a groundwater-bearing unit(s). These protective concentration level exceedence zones may also be present below or between groundwater-bearing units.

(83) Source area--The volume of a chemical of concern in environmental media (e.g., soil or groundwater) which is leaching, dissolving or emitting chemicals of concern. Of primary regulatory concern are the source areas that are leaching, dissolving or emitting chemicals of concern at unprotective concentrations under natural conditions, and not in consideration of any physical controls (e.g., slurry walls, caps), that will result in protective concentrations being exceeded at the point of exposure. The source area need not be the horizontal and vertical extent of the protective concentration level exceedence zone when cross-media or lateral chemical of concern transport is required for a point of exposure to be reached. Generally, a source area is located in the vicinity of or below primary release sources (e.g., tanks, pipelines, drums, lagoons, landfills, etc.).

(84) Source medium--An environmental medium containing chemicals of concern which must be removed, decontaminated and/or controlled in order to protect human health and the environment. The source medium may be the exposure medium for some exposure pathways.

(85) Stressor--Any physical, chemical, or biological entity that can induce an adverse response; however, as used in this context, only chemical entities apply.

(86) Subsurface soil--For human health exposure pathways, the portion of the soil zone between the base of surface soil and the top of the groundwater-bearing unit(s). For ecological exposure pathways, the portion of the soil zone between 0.5 feet and 5 feet in depth.

(87) Surface cover--A layer of artificially placed utility material (e.g., shell, gravel).

(88) Surface soil--For human health exposure pathways, the soil zone extending from ground surface to 15 feet in depth for residential land use and from ground surface to 5 feet in depth for commercial/industrial land use; or to the top of the uppermost groundwater-bearing unit or bedrock, whichever is less in depth. For ecological exposure pathways, the soil zone extending from ground surface to 0.5 feet in depth.

(89) Surface water--Any water meeting the definition of surface water in the state as defined in §307.3 of this title (relating to Definitions and Abbreviations), as amended.

(90) Toxicity reference value--An exposure level from a valid scientific study that represents a conservative threshold for adverse ecological effects.

(91) Waste control unit--A municipal or industrial solid waste landfill, including those Resource Conservation and Recovery Act regulated units closed as landfills, with a liner system (i.e., synthetic or clay) and an engineered cap, that have been closed pursuant to an approved closure plan, previous regulations, or will be implemented pursuant to an approved response action plan.

(b) Acronyms.

(1) APAR--Affected property assessment report;

(2) COC--Chemical of concern;

(3) FOA--Facility Operations Area;

(4) K_d--Soil-water partition coefficient;

(5) K_{oc}--Octanol-water partition coefficient;

(6) LOAEL--Lowest observed adverse effect level;

(7) MCL--Maximum contaminant level;

(8) NAPLs--Nonaqueous phase liquids;

(9) NOAEL--No observed adverse effect level;

(10) PCL--Protective concentration level;

(11) PCLE zone--Protective concentration level exceedence zone;

(12) POE--Point of exposure;

(13) PRACR--Post-response action care report;

(14) RACR -- Response action completion report;

(15) RAER--Response action effectiveness report;

(16) RAP--Response action plan;

(17) RBEL--Risk-based exposure limit;

(18) SIN--Self-implementation notice;

(19) TAC--Texas Administrative Code;

(20) TCEQ--Texas Commission on Environmental Quality;

(21) TPDES--Texas Pollutant Discharge Elimination System; and

(22) U.S. EPA--United States Environmental Protection Agency.

(c) Risk-based exposure limit nomenclature. A nomenclature is used in Subchapter D of this chapter (relating to the Development of Protective Concentration Levels) to refer to specific RBELs. The RBEL nomenclature reflects the exposure medium and the exposure route. The exposure medium appears first in superscript text, followed by RBEL in regular text and lastly the exposure route in subscript text. For example $^{Soil}RBEL_{Ing}$ is a RBEL where soil is the exposure medium and ingestion is the exposure route.

(1) $^{Air}RBEL_{Inh}$--air inhalation RBEL;

(2) $^{Soil}RBEL_{Derm}$--dermal contact with soil RBEL;

(3) $^{Soil}RBEL_{Ing}$--ingestion of soil RBEL;

(4) $^{GW}RBEL_{Ing}$--ingestion of groundwater RBEL;

(5) $^{GW}RBEL_{Class\ 3}$--class 3 groundwater RBEL;

(6) ^{SW}RBEL--surface water RBEL;

(7) $^{AbgVeg}RBEL_{Ing}$--ingestion of aboveground vegetables RBEL; and

(8) $^{BgVeg}RBEL_{Ing}$--ingestion of below-ground vegetables RBEL.

(d) Protective concentration level nomenclature. A nomenclature is used in Subchapter D of this chapter (relating to the Development of Protective Concentration Levels) to refer to specific PCLs. The PCL nomenclature reflects the exposure medium, source medium and the exposure route. The exposure medium appears first in superscript text, followed by the source medium in regular text and lastly the exposure route in subscript text. For example, $^{GW}GW_{Ing}$ is a PCL where groundwater is the source medium (GW), groundwater is the exposure medium (^{GW}), and ingestion is the exposure route ($_{Ing}$). Cross-media transfer is indicated when exposure occurs in a different medium than the source medium. For example, $^{Air}Soil_{Inh\text{-}V}$ is a PCL where soil is the source medium and air is the exposure medium.

(1) $^{GW}GW_{Ing}$--PCL for groundwater ingestion;

(2) $^{GW}GW_{Class\ 3}$--PCL for class 3 groundwater;

(3) $^{Air}GW_{Inh\text{-}V}$--PCL for inhalation of volatiles from groundwater;

(4) ^{SW}GW--PCL for groundwater discharge to surface water;

(5) $^{Tot}Soil_{Comb}$--surface soil PCL for combined soil ingestion, dermal contact, inhalation of volatiles and particulates, and for residential land use, ingestion of aboveground and below-ground vegetables;

(6) $^{Air}Soil_{Inh\text{-}VP}$--PCL for inhalation of volatiles and particulates from surface soil;

(7) $^{Soil}Soil_{Derm}$--PCL for dermal contact with surface soil;

(8) $^{Soil}Soil_{Ing}$--PCL for ingestion of surface soil;

(9) $^{Veg}Soil_{Ing\text{-}Inorg}$--surface soil PCL for ingestion of inorganic COCs in vegetables;

(10) $^{Veg}Soil_{Ing\text{-}Org}$--surface soil PCL for ingestion of organic COCs in vegetables;

(11) ^{GW}Soil--PCL for surface and subsurface soil to protect groundwater;

(12) $^{Air}Soil_{Inh\text{-}V}$--PCL for inhalation of volatiles from subsurface soil;

(13) $^{Air}Air_{Inh}$--air PCL for inhalation; and

(14) ^{SW}SW--surface water PCL.

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

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SUBCHAPTER B. REMEDY STANDARDS

30 TAC §§350.33, 350.34, 350.37

STATUTORY AUTHORITY

The amended rules are adopted under the following statutory authority: TWC, §5.103 and §26.011, which provide the commission with authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; TWC, §5.103(c), which states the commission must adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the practice and procedure requirements of the agency, and Texas Health and Safety Code (THSC), Texas Solid Waste Disposal Act, §361.017 and §361.024, which provide the commission the authority to regulate industrial solid waste and municipal hazardous wastes and all other powers necessary or convenient to carry out its responsibilities. In addition, the amended rules are adopted under TWC, §26.039, which states that activities which are inherently or potentially capable of causing or resulting in the spillage or accidental discharge of waste or other substances and which pose serious or significant threats of pollution are subject to reasonable rules establishing safety and preventive measures which the commission may adopt or issue; TWC, §26.121, which prohibits persons from discharging wastes into or adjacent to any water in the state unless authorized to do so and prohibits persons from committing any other act or engaging in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state; TWC, §26.262, which states that it is the policy of this state to prevent the spill or discharge of hazardous substances into the waters in the state and to cause the removal of such spills and discharges without undue delay; and TWC, §26.264, which provides the commission with authority to issue rules necessary and convenient to carry out the policy referenced in TWC, §26.262. Authority to adopt the amended rules is also provided by TWC, §26.341, which states that it is the policy of this state to maintain and protect the quality of groundwater and surface water resources in the state from certain substances in underground and aboveground storage tanks that may pollute groundwater and surface water resources, and requires the use of all reasonable methods, including risk-based corrective action to implement this policy; TWC, §26.345, which provides the commission with the authority to adopt rules necessary to carry out the policy referenced in TWC, §26.341; and TWC, §26.401, which states that it is the policy of this state that discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies be conducted in a manner that will maintain present uses and not impair potential uses of groundwater or pose a public health hazard, and that the quality of groundwater be restored if feasible.

The adopted amendments implement TWC, §§5.103, 26.011, 26.039, 26.262, 26.264, 26.341, 26.345, and 26.401, and THSC, §361.017 and §361.024.

§350.33. Remedy Standard B.

(a) To attain Remedy Standard B, the person shall:

(1) Remove, decontaminate, and/or control the surface soil, subsurface soil, and groundwater human health PCLE zones, other environmental media, and hazardous and non-hazardous waste in accordance with the provisions of this section such that humans will not be exposed to concentrations of COCs in the exposure media in excess of the residential or commercial/industrial critical human health PCLs, as applicable, at the prescribed, or any approved alternate POEs established for environmental media in accordance with §350.37 of this title (relating to Human Health Points of Exposure);

(2) Ensure that leachate from the surface and subsurface soil PCLE zones does not increase the concentration of COCs in class 2 groundwater above the measured concentration at the time of RAP submittal in circumstances when an alternate POE to class 2 groundwater is authorized in response to subsection (f)(4) of this section; and

(3) Use either subparagraph (A) or (B) of this paragraph to respond to an affected property when either the initial concentrations of COCs within environmental media exceed only the ecological PCLs (i.e., there is no exceedence of human health PCLs) or when there will be residual concentrations of COCs above the ecological PCLs following completion of a human health response action. When human health PCLs are exceeded within environmental media at an affected property, a person must perform a response action pursuant to paragraph (1) of this subsection to address these risks to human health unless the person adequately demonstrates that the threats to human health are minimal and that a human health-based response action would have a significant and highly disproportionate effect on ecological receptors.

(A) The person shall remove, decontaminate, and/or control the environmental media, and hazardous and non-hazardous waste in accordance with the provisions of this section such that ecological receptors will not be exposed to concentrations of COCs in the exposure medium in excess of the ecological PCLs at the POEs determined in accordance with §350.77 of this title (relating to Ecological Risk Assessment and Development of Ecological Protective Concentration Levels).

(B) When, after consultation with the Natural Resource Trustees, it is determined appropriate by the executive director, the person may use the results of a Tier 2 or 3 ecological risk assessment performed in accordance with §350.77 of this title (relating to Ecological Risk Assessment and Development of Ecological Protective Concentration Levels) and other appropriate information or data to conduct an ecological services analysis of the affected property. However, an ecological services analysis must be conducted whenever concentrations of COCs which exceed ecological PCLs are proposed to be left in place with the potential for continuing exposure. The ecological services analysis must, at a minimum, include an evaluation of the effects of reasonable and feasible remediation alternatives, including complete removal/decontamination to PCLs and a control measure to prevent ecological exposure to COCs in excess of ecological PCLs, with respect to present and predicted losses of ecological services; and clear justification for leaving COCs in place above ecological PCLs. Furthermore, the person shall also ensure, where appropriate, that the ecological services analysis includes a plan to provide compensatory ecological restoration which may also be combined with some type of active response action (e.g., hot spot removal) or passive response action (e.g., natural attenuation) for the affected property. The ecological services produced by the restoration activity must exceed the future ecological service decreases potentially associated with the continued exposure to COCs and/or any selected response action at the affected property. The person must conduct the compensatory ecological restoration and other activities associated with the ecological services analysis with the approval of and in cooperation with the Natural Resource Trustees. The executive director may develop guidance which further describes the ecological services analysis process.

(b) As defined further by the surface and subsurface soil response objectives in subsection (e) of this section and the groundwater response objectives in subsection (f) of this section, the person performing a response action to attain Remedy Standard B may use removal and/or decontamination, removal and/or decontamination with controls, or controls only, with the exception of response actions for Class 1 groundwater PCLE zones which must be removed and/or decontaminated to the critical groundwater PCL for each COC.

(1) The person may use both physical and institutional controls.

(2) For all actions to attain Remedy Standard B, the person shall demonstrate that the response actions which they propose to use will attain the requirements of subsection (a) of this section within a reasonable time frame given the particular circumstances of an affected property. Remedial alternatives, including the use of monitored natural attenuation as a decontamination or control remedy, must be appropriate considering the hydrogeologic characteristics of the affected property, COC characteristics, and the potential for unprotective exposure conditions to continue or result during the remedial period.

(c) PCLs for Remedy Standard B are determined through consideration of on-site and off-site POEs, or alternate POEs.

(d) Remedy Standard B is not a self-implementing standard. The person must receive the executive director's written approval of a RAP and an APAR, either submitted at the same time as the RAP or previously, before commencing response actions to attain the standard, but this does not preclude the person from taking interim measures.

(e) The following are the Remedy Standard B surface and subsurface soil response objectives and associated requirements for response actions performed in accordance with subsections (a)(1) - (2), and (a)(3)(A) of this section to address human health and/or ecological risks at an affected property. A person may choose to attain the surface and subsurface soil response objectives for an affected property either by conducting a response action which makes use of removal and/or decontamination or by conducting a response action which makes use of removal and/or decontamination with controls or controls only.

(1) When all surface and subsurface soil response objectives specified in subsection (a) of this section are met through removal and/or decontamination, then the person shall fulfill any post-response action care obligations described in the approved RAP, but shall not be required to provide financial assurance for the soils.

(2) When a person chooses to attain the surface and subsurface soil response objectives specified in subsection (a) of this section for an affected property by conducting a response action which uses removal and/or decontamination with controls or controls only, then the person must also comply with the requirements of this paragraph.

(A) The person shall demonstrate that any physical control or combination of measures proposed to be used (e.g., waste control unit, cap, slurry wall, treatment that does not attain decontamination; or a landfill) will reliably contain COCs within and/or derived from the surface and subsurface soil PCLE zone materials over time.

(B) The person shall fulfill the post-response action care obligations described in the approved RAP.

(C) The person shall provide financial assurance in accordance with subsections (l) and (m) of this section.

(f) The following are the Remedy Standard B groundwater response objectives and associated requirements for response actions performed in accordance with subsections (a)(1) - (2), and (a)(3)(A) of this section to address human health or environmental risk at an affected property. The person shall achieve the Remedy Standard B groundwater PCLE zone response objectives stated in paragraph (1) of this subsection, unless the person demonstrates that an affected property meets the qualifying criteria for one, or a combination, of the modified groundwater response approaches described in paragraphs (2) - (4) of this subsection. A person who satisfactorily demonstrates technical impracticability as described in paragraph (3) of this subsection, may use technical impracticability to establish a plume management zone as described in paragraph (4) of this subsection for instances when a

plume management zone would not otherwise be authorized by the executive director, except that the person shall not allow the groundwater plume management zone to expand beyond the existing boundary of the groundwater PCLE zone. A person who uses one, or a combination, of the modified groundwater response approaches shall fulfill the post-response action care obligations described in the approved RAP. A person who uses one, or a combination, of the modified groundwater response approaches which utilizes a physical control(s) shall provide financial assurance as specified in subsections (l) and (m) of this section.

(1) General groundwater response objectives. For all groundwater classes, the person must:

(A) use either an active restoration approach or monitored natural attenuation (if appropriate considering the hydrogeologic characteristics of the affected property, chemical-specific data for the COCs, and whether the anticipated time frame to achieve the critical groundwater PCLs is reasonable) to reduce the concentration of COCs to the critical groundwater PCLs throughout the groundwater PCLE zone;

(B) while achieving subparagraph (A) of this paragraph, prevent COCs at concentrations above the critical groundwater PCLs from migrating beyond the existing boundary of the groundwater PCLE zone;

(C) prevent COCs from migrating to air at concentration levels above the PCLs for air (i.e., $^{Air}Air_{Inh}$);

(D) prevent COCs from migrating to surface water at concentration levels above the PCLs for groundwater discharges to surface water (i.e., ^{SW}GW); and

(E) prevent human and ecological receptor exposure to the groundwater PCLE zone.

(2) Waste control unit. When the approved RAP includes an existing or planned waste control unit which overlies an existing groundwater PCLE zone, the person may, with the executive director's approval, exclude the groundwater throughout that portion of the groundwater PCLE zone directly underlying the waste control unit from the requirement to meet the groundwater response objectives provided in paragraph (1) of this subsection. To use this approach, the person shall comply with the institutional control requirements in §350.31(g) of this title (relating to General Requirements for Remedy Standards), with the exception that proof of compliance with the institutional control requirements must be submitted to the executive director within 120 days of approval of the RAP, which provides notice of the existence and location of the groundwater PCLE zone beneath the waste control unit and which prevents usage of and exposure to this groundwater until such time as the COCs may reduce to the critical groundwater PCLs. Beyond the perimeter of the waste control unit, the groundwater response objectives must be met.

(3) Technical impracticability. A technical impracticability demonstration can be used for all three classes of groundwater under Remedy Standard B. To use this approach, the person must:

(A) demonstrate in accordance with the United States Environmental Protection Agency (EPA) "Guidance for Evaluating the Technical Impracticability of Ground-Water Restoration" (Office of Solid Waste and Emergency Response Directive 9234.2-25 or subsequent version), as amended, or other method approved by the executive director, that it is not feasible from a physical perspective using currently available remediation technologies due either to hydrogeologic or chemical-specific factors to reduce the concentration of COCs throughout all or a portion of the groundwater PCLE zone to the applicable critical groundwater PCLs within a reasonable time frame;

(B) use removal or decontamination actions to reduce the concentrations of COCs to the critical groundwater PCLs for any portion of the groundwater PCLE zone for which it is technically practicable;

(C) prevent migration of COCs from that portion of the groundwater PCLE zone which satisfies the technical impracticability demonstration in subparagraph (A) of this paragraph;

(D) achieve the performance criteria in subsection (f)(4)(E) of this section for NAPLs;

(E) establish a plume management zone for the area where COCs cannot be removed so as to attain the critical PCLs, and prevent COCs at concentrations above the critical groundwater PCLs from spreading beyond the existing boundary of the groundwater PCLE zone; and

(F) comply with the institutional control requirements in §350.31(g) of this title (relating to General Requirements for Remedy Standards), with the exception that proof of compliance with the institutional control requirements must be submitted to the executive director within 120 days of the approval of the RAP, which provides notice of the existence and location of the groundwater PCLE zone and which prevents usage of and exposure to groundwater from this zone until such time as the COCs may reduce to the critical groundwater PCLs.

(4) Plume management zones. With the approval of the executive director, the person may use a plume management zone under Remedy Standard B for class 2 and 3 groundwater-bearing units which presently contain a groundwater PCLE zone.

(A) To use a plume management zone, the person must demonstrate that the COCs will not pose a substantial present or potential hazard to human health or the environment as long as the attenuation action levels are not exceeded at the respective attenuation monitoring points based upon a consideration of the following factors:

(i) potentially adverse effects on groundwater quality, considering:

(I) the physical and chemical characteristics of the COC, including its potential for migration;

(II) the hydrogeological characteristics of the affected property and surrounding land;

(III) the quantity of groundwater and the direction of groundwater flow;

(IV) the proximity and withdrawal rates of groundwater users;

(V) the current and future uses of groundwater in the area;

(VI) the existing quality of groundwater, including other sources of COCs and their cumulative impact on the groundwater quality;

(VII) the potential for health risks caused by human exposure to COCs;

(VIII) the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to COCs;

(IX) the persistence and permanence of the potentially adverse effects; and

(ii) potentially adverse effects on hydraulically-connected surface water quality, considering:

(I) the volume and physical and chemical characteristics of the COCs present at the affected property;

(II) the hydrogeological characteristics of the affected property and surrounding land;

(III) the quantity and quality of groundwater, and the direction of groundwater flow;

(IV) the patterns of rainfall in the region;

(V) the proximity of the source area to surface water;

(VI) the current and future uses of surface waters in the area and any water quality standards established for these surface waters;

(VII) the existing quality of surface water, including other sources of COCs and their cumulative impact on surface-water quality;

(VIII) the potential for health risks caused by human exposure to COCs;

(IX) the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to COCs; and

(X) the persistence and permanence of the potentially adverse effects.

(B) Provided the person demonstrates that the establishment of a plume management zone is appropriate, the POE to groundwater may be changed from throughout the groundwater PCLE zone to an alternate location established in accordance with §350.37(l) or (m) of this title (relating to Human Health Points of Exposure) as applicable, or at the POE for ecological receptors determined in accordance with §350.77 of this title (relating to Ecological Risk Assessment and Development of Ecological Protective Concentration Levels), where that location is more restrictive.

(C) In order to establish a plume management zone, the person must:

(i) comply with the institutional control requirements in §350.31(g) of this title, with the exception that proof of compliance with the institutional control requirements shall be submitted to the executive director within 120 days of the approval of the RAP, which provides notice of the existence and location of the plume management zone and which prevents exposure to groundwater from this zone until such time as COCs may reduce to the critical groundwater PCLs;

(ii) demonstrate through an appropriate technical presentation that COCs will not migrate beyond the downgradient boundary of the plume management zone at concentrations above the critical groundwater PCLs; and

(iii) demonstrate through the performance of a field survey in the plume management zone that there are no artificial penetrations (e.g., abandoned wells or wells with open-hole completions) which can allow COCs at concentrations which exceed the critical groundwater PCLs to migrate from the groundwater PCLE zone to currently unaffected groundwater-bearing units.

(D) The person shall establish groundwater attenuation monitoring points beginning at an appropriate hydraulically upgradient location within the groundwater PCLE zone and continuing down the approximate central flow path of the COCs to the downgradient extent of the plume management zone.

(i) The number and location of attenuation monitoring points shall be demonstrated to be adequate to reliably verify over time the current and future conformance with the plume management zone response objectives. The number and location of attenuation monitoring points shall depend upon a site-specific evaluation of the hydrogeologic conditions of an affected property, the fate and transport characteristics of the COCs, and the length and configuration of the plume management zone.

(ii) The person shall calculate attenuation action levels for each COC at each attenuation monitoring point that cannot be exceeded in order for the critical groundwater PCLs to not be exceeded at the POE. The person shall periodically evaluate the adequacy of the attenuation action levels using any newly acquired empirical monitoring data and reestablish them as necessary to ensure the critical groundwater PCLs are not exceeded at the groundwater POE.

(iii) The person shall monitor concentrations of COCs in groundwater at the attenuation monitoring points and the POE in accordance with a schedule approved by the executive director which is adequate to reliably demonstrate conformance with the applicable groundwater response objectives. If an attenuation action level is exceeded at its respective attenuation monitoring point, or a critical groundwater PCL is exceeded at the groundwater POE, then the person shall take an active response action to meet the response objectives presented in subparagraph (F) of this paragraph. The executive director may authorize the person to implement an accelerated monitoring program prior to initiating an active response action in order to verify that a response action is warranted.

(E) The person is required to reduce NAPLs which contain COCs in excess of PCLs within a plume management zone to the extent practicable. In the determination of adequate NAPL reduction, the executive director may consider conformance with the following criteria and other relevant factors:

(i) readily recoverable NAPLs have been recovered;

(ii) the NAPLs will not generate explosive conditions as defined in §350.31(c) of this title (relating to General Requirements for Remedy Standards);

(iii) the NAPLs will not discharge to the ground surface, to surface waters, to structures, or to other groundwater-bearing units;

(iv) the vertical and lateral extent of NAPLs will not increase under natural conditions, or sufficient NAPLs have been recovered such that an active recovery system can be demonstrated to effectively control or contain migration of NAPLs (i.e., no increased NAPL extent); and

(v) the NAPLs will not result in the critical groundwater PCLs being exceeded at the downgradient boundary of the plume management zone or in the critical PCLs for other environmental media being exceeded at the applicable POE.

(F) The person shall have the continuing obligation to assess whether changes to local hydraulic gradients would increase the likelihood that COCs can migrate beyond the plume management zone at concentrations above the critical groundwater PCLs. If such changed conditions occur, the person must take any necessary corrective action to ensure that concentrations of COCs exceeding the critical groundwater PCLs do not migrate beyond the boundary of the plume management zone and report the changed condition to the executive director in a timely manner. The person may demonstrate that the hydrogeologic characteristics of a property are such that off-site activities cannot influence an on-site plume management zone and, thus, not be required to monitor changes in the hydraulic gradient.

(i) A person may choose to attain the groundwater response objectives for a plume management zone at an affected property either by conducting a response action, if necessary, which makes use of removal and/or decontamination, or with use of removal and/or decontamination with controls or controls only. For both of these approaches, in situations where the PCLE zone extends beyond the limits of an institutional control and the POE to groundwater is thus located within the existing limits of the groundwater PCLE zone, a person may use monitored natural attenuation as a decontamination process provided the person shall demonstrate that the groundwater PCLE zone is not expanding and that the critical groundwater PCL will be met at the POE within a reasonable time frame given the particular circumstances of an affected property. In the situation where the groundwater PCLE zone has not reached steady-state conditions and is migrating downgradient within the plume management zone, the person must use a response action other than monitored natural attenuation, unless it can be demonstrated that the critical groundwater PCL and any other critical PCLs will not be exceeded at the respective POEs.

(ii) When a person chooses to attain the groundwater response objectives for a plume management zone at an affected property by conducting a removal and/or decontamination response action, the person must comply with the requirements of this clause.

(I) The person must remove and/or decontaminate the groundwater PCLE zone to the extent necessary so that the critical groundwater PCLs will not be exceeded at the POE and the attenuation action levels are not exceeded at their respective attenuation monitoring points, and so that the critical PCLs for other environmental media will not be exceeded at their applicable POEs.

(II) The person shall fulfill the post-response action care obligations described in the approved RAP.

(III) Provided the person adequately documents attainment of the groundwater plume management zone response objectives provided in subclause (I) of this clause, there are no financial assurance requirements.

(iii) When a person chooses to attain the groundwater response objectives for a plume management zone at an affected property by conducting a response action which uses removal and/or decontamination with controls or controls only, the person must comply with the requirements of this clause.

(I) The person must remove, decontaminate, and/or control the groundwater PCLE zone to the extent necessary so that the critical groundwater PCLs will not be exceeded at the POE and so that the critical PCLs for other environmental media will not be exceeded at their applicable POEs.

(II) The person may use physical controls (e.g., slurry walls, sheet piling, interceptor trenches, or hydraulic control wells) which are capable of reliably containing and preventing the expansion over time of the groundwater source area.

(III) For any portion of a groundwater PCLE zone within class 2 or 3 groundwater which is outside of any physical control constructed in accordance with subclause (II) of this clause, the person must reduce the concentration of COCs such that the remaining COCs will satisfy the conditions specified in clause (ii)(I) of this subparagraph.

(IV) The person shall fulfill the post-response action care obligations described in the approved RAP.

(V) The person shall provide financial assurance for post-response action care in accordance with subsections (l) and (m) of this section.

(g) The type, method and extent of post-response action care will be defined on a site-specific basis in the approved RAP and shall be a function of the long-term effectiveness of the response action used to address the soil and/or groundwater PCLE zones or other environmental media containing COCs, the nature and design of any physical controls, the physical and chemical characteristics of the COCs, the geology and hydrogeology of the affected property, and the adjacent land use. The person shall conduct post-response action care as appropriate which includes, but is not limited to:

(1) monitoring of environmental media to verify response action effectiveness over time;

(2) inspection, operation, and maintenance of physical controls to ensure the effectiveness and integrity of the controls over time; and

(3) any other actions after the initial completion of the response action at an affected property which are necessary to protect human health or the environment.

(h) The post-response action care period begins upon approval of the RACR by the executive director. The person shall perform post-response action care for 30 years unless the person demonstrates that a shorter post-response action care period would be appropriate due to:

(1) the nature of the response action;

(2) the persistence, migration potential, and toxicity of the COCs; and

(3) the physical characteristics and location of the affected property.

(i) The post-response action care activities shall continue throughout the initial post-response action care period in response to subsection (h) of this section and during any continued post-response action care period in response to subsection (j) of this section until a demonstration is made that there is no longer a threat to human health or the environment from the presence of COCs in any environmental media or physical controls. If the person submits a demonstration which documents that post-response action care is no longer necessary then, upon written approval by the executive director, the remainder of the initial or any continued post-response action care period will be canceled and the person will be released from the requirement to maintain financial assurance, and the financial assurance will be returned. The demonstration of no threat to human health or the environment shall be made by adequately documenting one of the following conditions:

(1) the concentrations of COCs in soils are less than or equal to the critical surface and subsurface soil PCLs, as applicable, and the concentrations of COCs in groundwater are less than or equal to the critical groundwater PCLs as documented with three consecutive years of groundwater monitoring data, unless an alternate monitoring period is approved by the executive director;

(2) the post-response action care activity consists entirely of monitoring the effectiveness of a physical control, and the physical control has been proven successful and secure (i.e., the physical control is permanent and does not require any inspections or maintenance);

(3) an affected property contains only a groundwater PCLE zone and such groundwater PCLE zone has been demonstrated to be reducing in size and to have boundaries which are sufficiently smaller than the boundaries of an institutional control so as to preclude any potential for the groundwater PCLE zone to migrate beyond the boundaries of the institutional control considering both natural hydrogeologic conditions and changes to hydraulic gradients by off-site activities; or

(4) the COC concentrations in surface and subsurface soils exceed only ^{GW}Soil, but the groundwater PCLE zone has been demonstrated to be reducing in size and to have boundaries which are sufficiently smaller than the boundaries of an institutional control so as to preclude any potential for the groundwater PCLE zone to migrate beyond the boundaries of the institutional control considering both natural hydrogeologic conditions and potential changes to hydraulic gradients by off-site activities.

(j) If the person cannot make one of the demonstrations specified in subsection (i) of this section by the end of the initial post-response action care period specified in subsection (h) of this section, then the person shall be required to continue post-response action care for additional 30-year periods or until a demonstration of no threat to human health or the environment can be made under subsection (i) of this section. A shorter continued post-response action care period can be used provided the person demonstrates that such period would be appropriate due to:

(1) the nature of the response action;

(2) the persistence, migration potential, and toxicity of the COCs; and

(3) the physical characteristics and location of the affected property.

(k) The person shall perform the following record keeping and reporting requirements during the initial and any continued post-response action care period:

(1) keep a copy of the approved RAP at the property, or specified alternative location;

(2) keep records of all monitoring data, inspection and maintenance reports, and unexpected occurrences affecting any waste control unit or post-response action care systems;

(3) submit Post-Response Action Care Reports (PRACRs) in accordance with the schedule in the approved RAP; and

(4) notify the executive director in writing within 30 days after an unexpected event occurs, or a condition is detected, during the post-response action care period which indicates that additional response actions will be required at an affected property.

(l) For properties using physical control measures in response to subsections (e)(2) and/or (f) of this section, financial assurance shall be established and maintained for the post-response action care period specified in subsection (h) of this section. The person shall prepare and include in the RAP a written cost estimate in current dollars of the total cost of the post-response action care activities for the post-response action care period specified in subsection (h) of this section. The cost estimate shall be based on the costs of hiring a third party to conduct the post-response action care activities. Within 90 days after the executive director's approval of the RAP and before commencing work indicated in the RAP, an acceptable financial assurance mechanism must be submitted to the commission for post-response action care in the amount specified in the approved RAP. If the total post-response action care cost estimate is $100,000 or less, the executive director may choose to exempt the person from providing a financial assurance demonstration. For persons meeting the requirements of subsection (n) of this section, the amount of financial assurance demonstrated may be less than the total post-response action care cost estimate. Financial assurance for post-response action care shall be demonstrated in compliance with Chapter 37, Subchapter N of this title (relating to Financial Assurance Requirements for the Texas Risk Reduction Program Rules). The executive director may perform the post-response action care activities at an affected property using the funds provided for this purpose when the executive director determines that a person has failed to provide the post-response action care described in an approved RAP.

(m) For properties using physical control measures in response to subsections (e)(2) and/or (f) of this section that require post-response action care beyond the initial post-response action care period, financial assurance shall continue to be demonstrated for the post-response action care period specified in subsection (j) of this section. At least 180 days before the end of the preceding post-response action care period, a written cost estimate in current dollars shall be prepared and submitted for the cost of continuing the post-response action care activities specified in the approved RAP for the additional post-response action care period specified in subsection (j) of this section. The cost estimate shall be based on the costs of hiring a third party to conduct the post-response action care activities. At least 90 days before the end of the preceding post-response action care period, an acceptable financial assurance mechanism shall be submitted for the continued post-response action care period in an amount approved by the executive director. If the total post-response action care cost estimate is $100,000 or less, the executive director may choose to exempt the person from providing a financial assurance demonstration. For persons meeting the requirements of subsection (n) of this section, the amount of financial assurance demonstrated may be less than the total post-response action care estimate. Financial assurance for post-response action care shall be demonstrated in compliance with Chapter 37, Subchapter N of this title (relating to Financial Assurance Requirements for the Texas Risk Reduction Program Rule). The executive director may perform the continued post-response action care activities at an affected property using the funds provided for this purpose when the executive director determines that a person has failed to provide the post-response action care described in an approved RAP.

(n) The owner or an authorized officer of a small business, as defined in this subsection, may seek to reduce the amount of financial assurance demonstrated under this subsection if the initial post-response action care period or subsequent post-response action care periods specified in subsections (h) - (j) of this section are greater than ten years. If the executive director determines a person meets the definition as specified in paragraph (2) of this subsection, the person shall submit the affidavit required by paragraph (1) of this subsection and establish and maintain financial assurance for the post-response action care period in an amount based on the following equation: ((total cost estimate)/(number of years in total response action care period)) X 10. The owner shall continue demonstrating subsequent post-response action care in ten year periods or as directed by the executive director. The owner or an authorized officer is required to notify the executive director when the definition specified in paragraph (2) of this subsection is no longer met. A small business must comply with subsections (l) and (m) of this section relating to financial assurance.

(1) An affidavit signed by the owner or an authorized officer stating the business meets the definition of a small business as defined in paragraph (2) of this section shall be submitted to the executive director.

(2) Definition of small business.

(A) For purposes of financial assurance, a small business shall be defined as any person, firm, or business which employs, by direct payroll and/or through contract, fewer than 100 full-time employees and has net annual receipts of less than $3 million. Net annual receipts are defined as annual gross receipts less returns, discounts, and adjustments. The period used to determine net annual receipts shall be the preceding 12-month accounting year and can be either a calendar or fiscal-based period.

(B) A business that is a wholly-owned subsidiary of a corporation shall not qualify as a small business under this section if the parent organization does not qualify as a small business under this section.

§350.34. No Further Action.

Particular agency program areas covered by this rule will confirm that a person has completed all necessary response actions at an affected property and that no further action is required. The program areas may issue other letters acknowledging conditional or partial completion of response actions, as appropriate.

(1) For Remedy Standard A, such confirmation will be issued subsequent to approval of the RACR by the executive director and, when applicable, receipt by the agency of proof that any required institutional control noting commercial/industrial land use is in effect for the affected property in accordance with §350.31(g) of this title (relating to General Requirements for Remedy Standards), or noting the use of a non-default exposure area is in effect in accordance with §350.51(l)(3) or 4 of this title (relating to Affected Property Assessment), or noting the use of occupational inhalation criteria as RBELs is in effect in accordance with §350.74(b)(1) or noting the use of non-default RBEL exposure factors is in effect in accordance with §350.74(j)(2) of this title (relating to Development of Risk-Based Exposure Limits).

(2) For Remedy Standard B, a conditional no further action letter will be issued subsequent to approval of the RACR by the executive director and, when applicable, receipt by the agency of proof that any required institutional control noting commercial/industrial land use is in effect for the affected property in accordance with §350.31(g) of this title (relating to General Requirements for Remedy Standards), or noting the use of a non-default exposure area is in effect in accordance with §350.51(l)(3) or 4 of this title, or noting the use of occupational inhalation criteria as RBELs is in effect in accordance with §350.74(b)(1) or noting the use of non-default RBEL exposure factors is in effect in accordance with §350.74(j)(2) of this title. The letter will indicate that the person has conditionally completed response actions at the affected property but must perform post-response action care obligations as described in the approved RAP throughout the initial and any continued post-response action care period in response to §350.33(h) - (j) of this title (relating to Remedy Standard B). The letter will also indicate whether the person must establish and maintain financial assurance in response to §350.33(l) and/or (m) of this title for post-response action care for affected properties which use physical controls.

(3) For Remedy Standard B, a final no further action letter will be issued subsequent to termination of the post-response action care period by the executive director as described in §350.33(i) of this title.

§350.37. Human Health Points of Exposure.

(a) General. The person shall use the prescribed on-site and off-site POEs for humans to environmental media to determine PCLs under Remedy Standard A in response to §350.32 of this title (relating to Remedy Standard A) and under Remedy Standard B in response to §350.33 of this title (relating to Remedy Standard B). In order to establish on-site or off-site POEs for commercial/industrial land use, or alternate POEs for on-site or off-site properties, the person must comply with §350.111 of this title (relating to Use of Institutional Controls). Consideration of competent, existing physical controls during the pathway analysis described in §350.71(d) of this title (relating to General Requirements) does not negate or otherwise supercede the POE locations specified in this section. Subsections (b) - (k) of this section identify the media-specific prescribed, on-site and off-site POEs while subsections (l) and (m) of this section establish alternate POEs for class 2 and 3 groundwater under Remedy Standard B. When establishing on-site and off-site POEs for residential or commercial/industrial land use, persons shall use the appropriate receptor as required in §350.71(b) of this title (relating to General Requirements) for the designated land use.

(b) Air human health POEs.

(1) On-site POEs. The prescribed on-site POE to air is within the breathing zone (2 meter height) directly over the soil or groundwater COCs.

(2) Off-site POEs. The prescribed off-site POE to air is within the breathing zone (2 meter height) starting at the nearest boundary with and continuing throughout neighboring off-site properties.

(c) Soil human health POEs.

(1) On-site POEs. The prescribed on-site POE to soil is throughout the surface soil.

(2) Off-site POEs. The prescribed off-site POE to soil is throughout the surface soil starting at the nearest boundary with and continuing throughout neighboring off-site properties.

(d) Human health POEs for class 1, 2, and 3 groundwaters which do not contain any COCs in excess of the critical groundwater PCLs.

(1) On-site POE. The prescribed on-site POE is throughout the upper-most groundwater-bearing unit.

(2) Off-site POE. The prescribed off-site POE is throughout the upper-most groundwater-bearing unit on the nearest boundary with the closest hydraulically downgradient off-site property.

(e) General provisions for human health POEs for class 1, 2, or 3 groundwater.

(1) Whenever there is an existing class 1, 2, or 3 groundwater PCLE zone beneath an existing waste control unit or a waste control unit planned as part of an approved RAP, under Remedy Standard B the person may, with the executive director's approval, exclude the area underlying the waste control unit as a POE to class 1, 2, or 3 groundwater.

(2) Groundwater travel time setback distances for class 1, 2, and 3 groundwater shall be determined based on groundwater seepage velocity which is dependent upon prevailing hydraulic gradient, hydraulic conductivity, and effective porosity.

(f) Human health POEs for class 1 groundwater.

(1) On-site POEs. The prescribed on-site POE to class 1 groundwater is a well which may be completed at all locations throughout the on-site groundwater PCLE zone. For on-site commercial/industrial land use, the person shall establish an additional on-site POE for class 1 groundwater for residents unless the residential-based groundwater PCLE zone already extends off-site. The residential POE shall be set at a distance of two-year groundwater travel time upgradient of the nearest boundary with the closest hydraulically downgradient off-site property. If the residential-based groundwater PCLE zone already extends beyond the two-year groundwater travel time setback distance but not off-site, then the residential POE shall be set at the existing limit of the residential-based groundwater PCLE zone.

(2) Off-site POEs. The prescribed off-site POE to class 1 groundwater is a well which may be completed at all locations throughout an off-site groundwater PCLE zone. For off-site commercial/industrial land use, the person shall establish an additional POE for class 1 groundwater for residents at, and all locations beyond, the existing limit of the off-site residential-based groundwater PCLE zone.

(g) Human health POEs for class 2 groundwater.

(1) On-site POEs. The prescribed on-site POE to class 2 groundwater is a well which may be completed at all locations throughout the on-site groundwater PCLE zone. For on-site commercial/industrial land use, the person shall establish an additional on-site POE for class 2 groundwater for residents unless the residential-based groundwater PCLE zone already extends off-site. The residential POE shall be set at a distance of two years groundwater travel time upgradient of the nearest boundary with the closest hydraulically downgradient off-site property. If the residential-based groundwater PCLE zone already extends beyond the two-year groundwater travel time setback distance but not off-site, then the residential POE shall be set at the existing limit of the residential-based groundwater PCLE zone.

(2) Off-site POEs. The prescribed off-site POE to class 2 groundwater is a well which may be completed at all locations throughout an off-site groundwater PCLE zone. For off-site commercial/industrial land use, the person shall establish an additional POE for class 2 groundwater for residents at, and all locations beyond, the existing limit of the off-site residential-based groundwater PCLE zone.

(h) POEs for class 3 groundwater.

(1) On-site POEs. The prescribed on-site POE to class 3 groundwater is at all locations throughout an on-site groundwater PCLE zone defined by concentrations greater than $^{GW}GW_{Class3}$ for the applicable on-site land use.

(2) Off-site POEs. The prescribed off-site POE to class 3 groundwater is at all locations throughout an off-site groundwater PCLE zone defined by concentrations greater than $^{GW}GW_{Class\ 3}$ for the applicable off-site land use which is sourced from an on-site release of COCs. If commercial/industrial land use is assumed for the off-site property, then the person shall establish an additional POE for class 3 groundwater for residents at, and all locations beyond, the existing limit of the off-site residential-based groundwater PCLE zone.

(i) POEs for surface water runoff or groundwater discharges to surface water. The prescribed POE to surface water will be at the point of surface water runoff or groundwater discharge (i.e., within the groundwater) into and throughout the extent of any on-site or off-site surface water body meeting the definition of surface water in the state as defined in §307.4 of this title (relating to General Criteria), as amended. This includes the surface water body at the initial point of entry and other water bodies that may be impacted by COCs.

(j) POEs for releases of COCs directly to surface water. The prescribed POE for releases directly to surface water is at the point of entry of COCs into and throughout the extent of any surface water body meeting the definition of surface water in the state as defined in §307.4 of this title, as amended.

(k) POEs for sediment. The prescribed POE to sediment is within the upper one-foot of sediment beneath any surface water body meeting the definition of surface water in the state as defined in §307.4 of this title, as amended. For intermittent water bodies, both sediment and surface soil POEs may apply.

(l) Alternate POEs to class 2 groundwater under Remedy Standard B. Provided the person is authorized by the executive director to establish a plume management zone in response to §350.33(f)(4) of this title (relating to Remedy Standard B), the person may establish an alternate on-site POE or off-site POE to class 2 groundwater in accordance with paragraph (1), (2), or (3) of this subsection as dictated by the particular circumstances at the affected property. The current length of the residential-based groundwater PCLE zone shall be determined as of the submittal date of the RAP.

(1) On-site POEs.

(A) The on-site POE to class 2 groundwater may be modified to be a well for residents completed at the on-site downgradient boundary of a plume management zone which includes the current length of the residential-based groundwater PCLE zone plus an additional length determined in accordance with paragraph (4) of this subsection.

(B) In the situation where multiple on-site plume management zones exist, and have commingled, or are within 500 feet of one another such that the management as a combined plume management zone is more feasible and appropriate, with site-specific approval from the executive director, the person may combine the separate plume management zones into a single, combined plume management zone provided the alternate POE for the combined plume management zone satisfies paragraph (4) of this subsection.

(2) Off-site POEs for off-site properties with class 2 groundwater which currently contains the residential-based groundwater PCLE zone. The person may establish an alternate off-site POE to class 2 groundwater as a well for residents completed at the off-site downgradient boundary of a plume management zone which includes the current length of the groundwater PCLE zone plus an additional length determined in accordance with paragraph (4) of this subsection.

(3) Off-site POEs for off-site properties with class 2 groundwater which currently do not contain the residential-based groundwater PCLE zone.

(A) If the person can demonstrate that the subject groundwater-bearing unit has no reasonably anticipated future beneficial use, then the person may allow a plume management zone to extend onto an off-site property. The person shall establish an alternate off-site POE to class 2 groundwater as a well for residents completed at the off-site boundary of a plume management zone which includes the current length of the groundwater PCLE zone plus an additional length determined in accordance with paragraph (4) of this subsection.

(B) Unless the demonstration discussed in subparagraph (A) of this paragraph is made, the person shall not allow a plume management zone within class 2 groundwater to extend onto any off-site property which does not currently contain a residential-based groundwater PCLE zone.

(C) The determination of future beneficial use under subparagraph (A) of this paragraph shall be based upon the existing quality of groundwater, considering nonpoint sources of COCs and their cumulative impact on the groundwater quality, the lack of use of the groundwater based on the presence of superior water supplies, proximity and withdrawal rates of groundwater users, or the property is subject to a zoning or governmental ordinance which is equivalent to the deed notice, VCP certificate of completion or restrictive covenant that otherwise would have been required. The executive director may require the collection of groundwater samples to document the presence of the COCs originating from nonpoint sources.

(4) The maximum additional length of the plume management zone for the situations described in paragraphs (1), (2), and (3) of this subsection shall be established as the smallest of the following applicable distances, unless the affected property is subject to zoning or a governmental ordinance which is equivalent to the deed notice, VCP certificate of completion or restrictive covenant that otherwise would have been required, in which case subparagraphs (C) and (D) of this paragraph do not apply:

(A) up to 500 feet beyond the current length of the residential-based groundwater PCLE zone;

(B) a length of up to 0.25 times the current length of the residential-based groundwater PCLE zone (i.e., up to 25% additional plume length);

(C) to within two years groundwater travel time of the closest hydraulically downgradient off-site property:

(i) for which the owner has not provided written concurrence to allow the recording of an institutional control; or

(ii) which does not contain the residential-based PCLE zone and the groundwater has a reasonably anticipated future beneficial use;

(D) at the current downgradient extent of the residential-based PCLE zone when the residential-based groundwater PCLE zone is already within the two-year travel time setback distance for POEs under subparagraph (C) of this paragraph; or

(E) the distance to a surface water POE as described in subsection (i) of this section.

(m) Alternate POEs to class 3 groundwater under Remedy Standard B. Provided the person is authorized by the executive director to establish a plume management zone in response to §350.33(f)(4) of this title (relating to Remedy Standard B), the person may establish an alternate on-site or off-site POE to class 3 groundwater. The $^{GW}GW_{Class\ 3}$ PCL to be applied at this alternate POE shall be based upon residential land use. The boundary of the plume management zone may be established up to the lesser of:

(1) To within two years groundwater travel time upgradient of:

(A) The closest hydraulically downgradient off-site property for which the landowner has not provided written concurrence to allow the recording of an institutional control for situations where zoning or a governmental ordinance does not serve as the institutional control; or

(B) The downgradient limit of a zoning or governmental ordinance that serves as the institutional control; or

(2) The distance to a surface water POE as described in subsection (i) of this 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.

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SUBCHAPTER C. AFFECTED PROPERTY ASSESSMENT

30 TAC §350.51, §350.54

STATUTORY AUTHORITY

The amended rules are adopted under the following statutory authority: TWC, §5.103 and §26.011, which provide the commission with authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; TWC, §5.103(c), which states the commission must adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the practice and procedure requirements of the agency, and Texas Health and Safety Code (THSC), Texas Solid Waste Disposal Act, §361.017 and §361.024, which provide the commission the authority to regulate industrial solid waste and municipal hazardous wastes and all other powers necessary or convenient to carry out its responsibilities. In addition, the amended rules are adopted under TWC, §26.039, which states that activities which are inherently or potentially capable of causing or resulting in the spillage or accidental discharge of waste or other substances and which pose serious or significant threats of pollution are subject to reasonable rules establishing safety and preventive measures which the commission may adopt or issue; TWC, §26.121, which prohibits persons from discharging wastes into or adjacent to any water in the state unless authorized to do so and prohibits persons from committing any other act or engaging in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state; TWC, §26.262, which states that it is the policy of this state to prevent the spill or discharge of hazardous substances into the waters in the state and to cause the removal of such spills and discharges without undue delay; and TWC, §26.264, which provides the commission with authority to issue rules necessary and convenient to carry out the policy referenced in TWC, §26.262. Authority to adopt the amended rules is also provided by TWC, §26.341, which states that it is the policy of this state to maintain and protect the quality of groundwater and surface water resources in the state from certain substances in underground and aboveground storage tanks that may pollute groundwater and surface water resources, and requires the use of all reasonable methods, including risk-based corrective action to implement this policy; TWC, §26.345, which provides the commission with the authority to adopt rules necessary to carry out the policy referenced in TWC, §26.341; and TWC, §26.401, which states that it is the policy of this state that discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies be conducted in a manner that will maintain present uses and not impair potential uses of groundwater or pose a public health hazard, and that the quality of groundwater be restored if feasible.

The adopted amendments implement TWC, §§5.103, 26.011, 26.039, 26.262, 26.264, 26.341, 26.345, and 26.401, and THSC, §361.017 and §361.024.

§350.51. Affected Property Assessment.

(a) The person shall conduct an affected property assessment in a manner appropriate for the affected property considering the hydrogeology, physical and chemical properties of the COCs, location of human and ecological receptors, and the complete or reasonably anticipated to be completed exposure pathways identified in §350.71 of this title (relating to General Requirements). The assessment shall be designed to collect information necessary to support notification of affected landowners and remedy selection, determine whether or not water resources have been affected or are threatened, and may also evaluate the effectiveness of existing physical controls. Additionally, when existing physical controls will be used as part of the response action in accordance with Remedy Standard B, then the assessment may be

conducted such that the primary focus is placed beyond the limits of the existing physical control in order to reduce the degree of assessment within the limits of the physical control. The assessment shall be conducted in a manner most likely to detect the presence and distribution of COCs above the concentration levels defined in subsections (b) - (e) of this section considering the nature of the release and subsequent modifications to the affected property (e.g., judgmental samples in hot spots, stratified random sampling, systematic grid, etc.), and shall use appropriate quality assurance/quality control. The geology and hydrogeology of the affected property shall be adequately characterized, such that COC fate and transport can be reliably predicted in order to confidently locate existing environmental media containing COCs above the concentration levels defined in subsections (b) - (e) of this section and an appropriate response action can be designed. The person shall use sample collection techniques that meet the data quality needs and are acceptable to the executive director. The results of the assessment shall be documented in an Affected Property Assessment Report in accordance with §350.91 of this title (relating to Affected Property Assessment Report). The person shall conduct an assessment in a manner which is timely considering the size and complexity of the situation, and shall comply with an assessment schedule established in any commission rule, order, or permit, or any assessment schedule approved by the executive director.

(b) The person shall perform an affected property assessment through the collection and analysis of a sufficient number of samples from environmental media to reliably characterize the nature and degree of COCs in the source area(s), as well as the horizontal and vertical extent of COCs in soil and groundwater, which equals or exceeds the applicable concentration of COCs as specified in subsections (c), (d) and (e) of this section, unless the executive director determines on a site-specific basis that additional assessment of the extent of COCs is necessary to evaluate a potential threat to human health and the environment. Information obtained from attempts to attain Remedy Standard A may be submitted for this purpose. The person shall characterize the nature, degree and extent of COCs in other environmental media as required by the executive director in consideration of property-specific factors. The executive director may require the person to determine the concentrations of COCs in outdoor or indoor air on a property-specific basis.

(c) The person shall demonstrate that all COCs in environmental media (except for on-site soils as noted below) which exceed the residential assessment level have been characterized horizontally in all directions. If the assessment level is based upon background concentrations, then the assessment shall only extend to the background concentration level. For soils only, the person can focus the horizontal on-site assessment to define the area exceeding the applicable critical PCL (i.e., residential or commercial/industrial). However, the person shall investigate environmental media, including soils, using adequate on-site or off-site data to determine whether off-site properties have been affected with concentrations of COCs which exceed the residential assessment levels. The requirement to use an assessment level based upon a residential receptor (i.e., residential assessment level) pertains to all off-site properties (i.e., both residential and commercial/industrial land use).

(d) For the vertical soil assessment to adequately determine if groundwater has been or will be affected, the person shall complete the requirements of paragraph (1), (2), (3) or (4) of this subsection.

(1) The person shall demonstrate that the vertical limit of COCs in soil which exceed the higher of the method quantitation limit or background concentrations has been characterized. If the person satisfactorily demonstrates that all reasonably available analytical technology has been used to show that the COC cannot be measured to the method quantitation limit due to sample specific interferences, then the sample detection limit may be used in lieu of the method quantitation limit.

(2) If an adequate groundwater assessment has been conducted (i.e., COC concentrations in groundwater have been measured from appropriate locations), then the person shall characterize the vertical limits of COCs in soil which exceed the residential assessment level. The ^{GW}Soil PCL may not be applicable in the determination of the residential assessment level if the person has conducted an adequate groundwater assessment and can meet the requirements of §350.75(i)(7)(C) of this title (relating to Tiered Human Health Protective Concentration Level Evaluation). The executive director may omit or modify the requirement for a groundwater assessment under this paragraph for use of §350.75(i)(7)(C) of this title on a site-specific determination based upon a combination of supporting evidence including, but not necessarily limited to, probable depth to groundwater, presence of soils or bedrock that prohibit or impede vertical migration of COCs, and physical and chemical properties of the COCs.

(3) If the uppermost groundwater-bearing unit is encountered before the vertical limit of COCs is determined to the higher of the method quantitation limit or background concentrations, then representative groundwater samples (i.e., a groundwater sample does not have to be collected from each boring) must be collected to evaluate potential groundwater impacts. The vertical extent of the soil assessment shall continue beyond the uppermost groundwater-bearing unit as appropriate based on the likelihood that COCs have migrated deeper considering the chemical and physical properties of the COCs (e.g., dense non-aqueous phase liquids) and the hydrogeology of the affected property. The executive director may omit or modify this requirement on a site-specific basis if the vertical assessment would exacerbate the vertical migration of COCs.

(4) If a person has already determined that the groundwater is impacted, then they may satisfy the requirements of this subsection by declaring the entire soil column to the top of the lowest impacted groundwater bearing unit as a soil PCLE zone.

(e) The person shall define the vertical extent of COCs in groundwater to below the residential assessment level by collecting a representative sample from a deeper groundwater-bearing unit with concentrations less than the residential assessment levels, unless the person demonstrates that vertical migration to a lower groundwater-bearing unit is not possible. The person shall base such demonstration on the hydrogeology and the chemical and physical properties of the COCs. The person shall take proper precautions to prevent cross-contamination when collecting a sample from a deeper groundwater-bearing unit. The executive director may omit or modify this requirement on a site-specific basis if the vertical assessment would exacerbate the vertical migration of COCs.

(f) The person shall use concentrations measured in groundwater at or immediately upgradient of the zone of groundwater discharge to surface water to determine if COCs in groundwater have discharged to surface waters.

(g) For affected properties with response actions which are designed and approved under Remedy Standard B for the use of a plume management zone, the person shall characterize the geology and hydrogeology throughout all areas of the plume management zone (i.e., including those areas of the plume management zone which are currently beyond the limits of the groundwater which contains COCs in excess of the assessment level).

(h) The person shall attempt to identify all surface and subsurface structures at the affected property which may influence COC migration, including subsurface utilities.

(i) The person shall conduct a field survey to locate potential receptors, including water wells and surface waters to at least 500 feet beyond the boundary of the affected property; and conduct a records survey to identify all water wells and surface water bodies within 1/2 mile of the limits of groundwater which contains COCs in excess of the residential assessment level. The person shall also attempt to identify any off-site properties within 1/4 mile of the affected property that have environmental information (e.g., soil boring logs, analytical results from samples of environmental media, etc.) collected for submission to the agency which may be useful in fulfilling the requirements of this section, although collection and submittal of this information by the person is not required.

(j) When determining concentrations of COCs in an environmental medium, the person shall collect and handle samples in accordance with sampling methodologies which will yield representative concentrations of COCs present in the sampled medium.

(k) When determining concentrations of COCs in surface water and sediment, the person shall collect and handle samples in accordance with the requirements in the agency's *Surface Water Quality Monitoring Procedures, Volume I*, as amended, or shall use an alternative methodology approved by the executive director.

(l) The person shall determine concentrations of COCs within the environmental media at the affected property. The executive director may approve the use of statistical or geostatistical methods to determine representative concentrations of COCs at the affected property or within areas representative of site-specific background conditions as long as the following conditions are satisfied.

(1) The person shall ensure that all assumptions for the selected statistical or geostatistical method are met or critically examined and explained if the assumptions cannot be met (e.g., random sampling design, normal or log-normal distribution, etc.). Judgmental samples may be used, as long as it can be demonstrated that the resulting estimated representative concentration is not biased low.

(2) An appropriate number of samples for the statistical method shall be used. If site-specific background is determined using the upper confidence limit or similar statistical method, then a minimum of eight samples shall be used. If the person uses an arithmetic average to determine the background concentration, then a minimum of five samples shall be used.

(3) The soil exposure area for existing residential yards or platted residential properties shall not exceed 1/8th acre or the size of the front or back yard of the affected residential lot, unless it is demonstrated that a larger area, not to exceed 1/2 acre, is appropriate based upon the activity patterns of residents at a specific affected property. For other properties classified as residential (e.g., parks, hospitals), the executive director may approve a larger exposure area if justified based on site-specific conditions. If an area larger than 1/8th acre or the size of the front or back yard of the existing affected residential lot is approved by the executive director, then the person shall comply with the applicable institutional control in requirements §350.111(b), (b)(8) or (10) of this title (relating to Use of Institutional Controls). If COCs are relatively homogeneous over an area larger than the residential default size, the executive director may allow concentrations to be averaged over this larger area, in which case the institutional control would not be required.

(4) The soil exposure area for commercial/industrial properties shall not exceed 1/2 acre, unless it is demonstrated that a larger area is appropriate based upon documented activity patterns for commercial/industrial workers at an active commercial/industrial facility (the assumed exposure area should represent the smallest area over which an individual can be expected to move randomly). In approving an exposure area for an active commercial/industrial facility, the executive director may consider any appropriate site-specific information which documents typical worker activity patterns. If an area larger than 1/2 acre is approved by the executive director, then the person shall comply with the institutional control requirements in §350.111(b), (b)(9) or (11) of this title (relating to Use of Institutional Controls), as applicable. If COCs are relatively homogeneous over an area larger than 1/2 acre, the executive director may allow concentrations to be averaged over this larger area, in which case the institutional control provision would not be required.

(5) The executive director may require a separate assessment of smaller but notable areas of soil contamination (i.e., "hot spots") at sites where site-specific features are present such that there is likely to be preferential exposure to this smaller area (e.g., worker exposures around the physical infrastructure of a work space, soils within a child's play area). The presence of hot spots with respect to ecological risk shall be determined on a site-specific basis.

(m) If a person does not desire to determine a site-specific soil background concentration, then they may use the Texas-specific median background concentrations for metals provided in the following figure. The Texas-specific background concentrations may be used to determine the critical PCL and then used in comparisons to individual measurements of COCs or representative concentrations of COCs in accordance with §350.79(1) or (2)(A) of this title (relating to Comparison of Chemical of Concern Concentrations to Protective Concentration Levels), respectively.
Figure: 30 TAC §350.51(m)

(n) Analytical results, including non-detected analytical results, should be considered whether doing direct comparisons of individual measurements or when using statistical or geostatistical approaches. In cases where there is reason to believe, based on available analytical data, that the COC could be present at that sampling location and that the concentration of the COC is suspected to be near but below the sample detection limit, the full value of the sample detection limit should be used as a proxy for the non-detected result. If there is reason to believe, based on available analytical data, that the COC could be present at that sampling location and that the concentration of the COC is suspected to be below, but not near to, the sample detection limit, then 1/2 the sample detection limit should be used as a proxy for the non-detected result. Other statistically-based approaches for handling non-detected results or assigning proxy values may be appropriate and approved if there is sufficient technical basis. If greater than 15 percent non-detected results are reported for a particular medium, and the exposure area cannot be definitively identified based on documented and verifiable site-specific information, the executive director may require persons to utilize alternative statistical methods for calculating the concentration term.

(o) When required by the executive director, the person shall classify an affected property in accordance with a risk-based system established by the executive director. The classification shall consider all information collected during the affected property assessment, any historical knowledge concerning the conditions at the affected property, and the short-term or long-term potential for human or ecological receptors to be exposed to COCs.

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

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SUBCHAPTER D. DEVELOPMENT OF PROTECTIVE CONCENTRATION LEVELS

30 TAC §§350.71, 350.73 - 350.77, 350.79

STATUTORY AUTHORITY

The amended rules are adopted under the following statutory authority: TWC, §5.103 and §26.011, which provide the commission with authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; TWC, §5.103(c), which states the commission must adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the practice and procedure requirements of the agency, and Texas Health and Safety Code (THSC), Texas Solid Waste Disposal Act, §361.017 and §361.024, which provide the commission the authority to regulate industrial solid waste and municipal hazardous wastes and all other powers necessary or convenient to carry out its responsibilities. In addition, the amended rules are adopted under TWC, §26.039, which states that activities which are inherently or potentially capable of causing or resulting in the spillage or accidental discharge of waste or other substances and which pose serious or significant threats of pollution are subject to reasonable rules establishing safety and preventive measures which the commission may adopt or issue; TWC, §26.121, which prohibits persons from discharging wastes into or adjacent to any water in the state unless authorized to do so and prohibits persons from committing any other act or engaging in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state; TWC, §26.262, which states that it is the policy of this state to prevent the spill or discharge of hazardous substances into the waters in the state and to cause the removal of such spills and discharges without undue delay; and TWC, §26.264, which provides the commission with authority to issue rules necessary and convenient to carry out the policy referenced in TWC, §26.262. Authority to adopt the amended rules is also provided by TWC, §26.341, which states that it is the policy of this state to maintain and protect the quality of groundwater and surface water resources in the state from certain substances in underground and aboveground storage tanks that may pollute groundwater and surface water resources, and requires the use of all reasonable methods, including risk-based corrective action to implement this policy; TWC, §26.345, which provides the commission with the authority to adopt rules necessary to carry out the policy referenced in TWC, §26.341; and TWC, §26.401, which states that it is the policy of this state that discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies be conducted in a manner that will maintain present uses and not impair potential uses of groundwater or pose a public health hazard, and that the quality of groundwater be restored if feasible.

The adopted amendments implement TWC, §§5.103, 26.011, 26.039, 26.262, 26.264, 26.341, 26.345, and 26.401, and THSC, §361.017 and §361.024.

§350.73. Determination and Use of Human Toxicity Factors and Chemical Properties.

(a) In all cases, the toxicity factors used must be protective of human health and the environment. The person shall use the chronic human toxicity factors taken from the following hierarchy of sources (unless otherwise specified in §350.76 of this title (relating to Approaches for Specific Chemicals of Concern to Determine Human Health Protective Concentration Levels)) unless the specific provision contained in subsection (b) of this section applies. The person shall use the source in paragraph (1) of this subsection and only if the relevant chronic human toxicity factor is not available in that source, proceed to the source in paragraph (2) of this section and, only if the toxicity factor is not available in that source, proceed in the same fashion through sources in paragraphs (3) - (7) of this subsection. The chronic human toxicity factors, in order of hierarchy of sources in paragraphs (1) - (7) of this subsection, which are most current as of the submittal date of the SIN or the RAP are presumed to be protective of human health and the environment, unless a person rebuts this presumption by published credible authority. In addition, the executive director may determine during review of the RACR that a change in a toxicity factor since the submittal of the SIN or RAP has been of such a magnitude that the PCLs previously developed for a COC would clearly not be protective of human health and the environment, then the adequacy of the response action must be reevaluated. Likewise, if the executive director determines at any time that a subsequent change in a toxicity factor is of such a magnitude such that the proposed response action is no longer warranted to protect human health and the environment, then a response action based on that previous chronic toxicity factor consideration shall no longer be required.

(1) United States Environmental Protection Agency (EPA) Integrated Risk Information System (IRIS);

(2) EPA Provisional Peer Reviewed Toxicity Values (i.e., Superfund Health Risk Technical Support Center;

(3) EPA Health Effects Assessment Summary Tables;

(4) EPA National Center for Environmental Assessment (i.e., Superfund Technical Support Center);

(5) the TCEQ Chronic Remediation-Specific Effects Screening Levels;

(6) Agency for Toxic Substances and Disease Registry; and

(7) other scientifically valid sources as approved by the executive director.

(b) The executive director may direct a person to use a chronic human toxicity factor from a source other than that selected in accordance with the source hierarchy list provided in subsection (a) of this section in cases where the executive director has determined it to be necessary to use a more scientifically valid chronic human toxicity factor than that from the source identified in accordance with subsection (a) of this section.

(c) If the executive director determines that it is necessary to evaluate COCs which do not have any human chronic toxicity factors provided in the sources listed in subsection (a) of this section, then the executive director will provide chronic toxicity factors. The person may provide toxicological information to the executive director for consideration in the derivation of the chronic toxicity factors. The person shall provide all toxicological data from any toxicological studies conducted for the person when such information is requested by the

executive director. The person shall use the TCEQ Chronic Remediation-Specific Effects Screening Level value as the reference concentration in evaluating the inhalation pathway for both residential and commercial/industrial land use in accordance with §350.75(i)(3), (6) and (8) of this title (relating to Tiered Human Health Protective Concentration Level Evaluation), and all chronic inhalation exposure pathways for which PCLs are established in accordance with §350.75(i)(5) and (11) of this title, but only in cases where neither an EPA unit risk factor nor an EPA reference concentration is available for that COC from the hierarchy list provided in subsection (a) of this section, and the executive director has not directed the person to use a toxicity factor in accordance with subsection (b) of this section.

(d) Unless prior approval is provided by the executive director in accordance with §350.74(j)(2) of this title (relating to Development of Risk-Based Exposure Limits) to use a subchronic exposure duration (i.e., <nyears) for a commercial/industrial property, the person shall not use subchronic toxicity factors.

(e) In the situation where different reference doses have been established for a COC based on water ingestion and food consumption, the person shall use the reference dose for water ingestion for the water ingestion exposure pathway and the reference dose for food consumption for all soil exposure pathways.

(f) The person shall use the COC chemical/physical parameter values for COCs provided in the following figure to calculate PCLs, unless the executive director approves the use of a more representative alternative value in accordance with paragraphs (1) and (2) of this subsection. For those COCs not included in the figure in this subsection, the person may provide chemical/physical information to the executive director for consideration in developing appropriate chemical/physical parameters.
Figure: 30 TAC §350.73(f)

(1) For Tiers 2 and 3, the person may determine property-specific soil pH in order to account for the high pH dependence of the soil-water partition coefficient (K_d) of inorganic compounds and the organic carbon-water partition coefficient (K_{oc}) of ionizing organic compounds. Once the property-specific pH is determined, the person shall apply subparagraphs (A) - (C) of this paragraph as applicable to determine pH-dependent K_d and K_{oc} values unless another appropriate method is approved by the executive director. The executive director may also approve the use of data from appropriately-conducted tests in determining a site-specific K_d or K_{oc}.

(A) For aluminum and lead, the person shall select a K_d from the following figure in accordance with the pH range and the total weight percent of clay, organic matter, iron, and aluminum oxyhydroxide representative of the affected property soils.
Figure: 30 TAC §350.73(f)(1)(A)

(B) The person shall use the following figure to determine the pH-dependent K_{oc} value for the ionizing organic COCs listed.
Figure: 30 TAC §350.73(f)(1)(B)

(C) The person shall use the following figure to determine the pH-dependent K_d value for the inorganic COCs listed.
Figure: 30 TAC §350.73(f)(1)(C)

(2) For Tiers 2 and 3, the person may establish alternate soil-to-plant biotransfer factors (Br_{abg} and Br_{bg}) by establishing the pH of the soil and the soil type, and then identifying a biotransfer factor in the published literature appropriate for those soil conditions. Alternatively, the person can measure the biotransfer factor in accordance with procedures acceptable to the executive director.

§350.74. Development of Risk-Based Exposure Limits.

(a) General requirement. The person shall use the criteria provided in subsections (b) - (j) of this section and the RBEL equations provided in the following figures, as applicable, to establish RBELs appropriate for the type of COC, the complete and reasonably anticipated to be completed exposure pathways, receptors, and land uses. The person shall establish RBELs for carcinogenic COCs and noncarcinogenic COCs using the default exposure factors provided in the following figure for residents and commercial/industrial workers, unless the executive director approves the use of alternate exposure factors in accordance with subsection (j) of this section.
Figure: 30 TAC §350.74(a)

(b) Air inhalation RBEL. The air inhalation RBEL ($^{Air}RBEL_{Inh}$) is the protective concentration of a COC in air at the POE for human inhalation.

(1) Under Tiers 2 and 3 as described in §350.75 of this title (relating to Tiered Human Health Protective Concentration Level Evaluation), the person may use the lower of available eight hour time-weighted average occupational inhalation criteria; (i.e., Occupational Safety and Health Administration Permissible Exposure Limits, or American Conference of Governmental Industrial Hygienists Threshold Limit Values), as $^{Air}RBEL_{Inh}$ for inhalation pathways for commercial/industrial workers within the limits of affected commercial/industrial properties which have a health and safety plan in place. The health and safety plan shall be designed to ensure compliance with the applicable occupational inhalation criteria and require the monitoring of COC levels in the working air environment, and specify actions that will be taken in the event of exceedance of the occupational inhalation criteria. When occupational inhalation criteria are used, the person shall provide documentation of the health and safety plan, certify that the plan is followed, and demonstrate that the off-site receptors are protected as required by §350.71(h) of this title (relating to General Requirements). The use of occupational inhalation criteria as RBELs shall require the person to comply with the institutional control requirements in §350.111(b) and (b)(14) of this title (relating to Use of Institutional Controls).

(2) The air RBELs may not exceed any other applicable federal or state air quality standards.

(c) Soil dermal contact RBEL. The soil dermal contact RBEL ($^{Soil}RBEL_{Derm}$) is the protective concentration of a COC at the POE in soil based upon direct dermal contact to soil by humans. The soil dermal contact RBEL shall also be based on COC-specific values for dermal absorption fraction (ABS.d) and gastrointestinal absorption fraction (ABS_{GI}) provided in the following figure, unless the executive director approves the use of alternate ABS.d and ABS_{GI} values in accordance with subsection (j)(1)(A) and (B) of this section. It is not necessary to calculate a soil dermal contact RBEL for COCs with vapor pressure in mm of Hg greater than or equal to 1.
Figure: 30 TAC §350.74(c) (No change.)

(d) Soil ingestion RBEL. The soil ingestion RBEL ($^{Soil}RBEL_{Ing}$) is protective concentration of a COC at the POE in soil based upon human ingestion.

(e) Vegetable ingestion RBELs. The vegetable RBELs ($^{AbgVeg}RBEL_{Ing}$ and $^{BgVeg}RBEL_{Ing}$) are the protective concentration of a COC in aboveground vegetables and below-ground vegetables, respectively, for ingestion by residents. The person shall establish RBELs for ingestion of aboveground vegetables for all carcinogenic and noncarcinogenic COCs which are metals. In addition, the person shall establish RBELs for ingestion of below-ground vegetables for all carcinogenic and noncarcinogenic COCs with a dimensionless Henry's Law Constant less than 0.03, as shown in the figure in §350.73(f) of this title (relating to Determination and Use of Human Toxicity

Factors and Chemical Properties), when either of the following criteria are met:

(1) the COC is a metal; or

(2) the COC has a logarithmic octanol-water partition coefficient (Log K_{ow}) greater than four as shown in the figure in §350.73(f) of this title (relating to Determination and Use of Human Toxicity Factors and Chemical Properties); or

(f) Groundwater ingestion RBEL.

(1) The groundwater ingestion RBEL ($^{GW}RBEL_{Ing}$) is the protective concentration of a COC at the POE in groundwater based upon human ingestion of groundwater. However, if available, the person shall use the lower of the two values established under paragraphs (2) and (3) of this subsection instead.

(2) The person shall use the primary MCL as provided in 40 Code of Federal Regulations Part 141, as amended, or the most currently available federal action level for drinking water (e.g., lead and copper) as the RBEL when available for the COC.

(3) The person shall use the secondary MCLs established for individual COCs as provided in 40 Code of Federal Regulations Part 143, as amended, as RBELs, or other scientifically valid published criteria in cases where COCs are present at concentrations which present objectionable characteristics such as taste or odor (e.g., methyl tertiary butyl ether) under the following circumstances:

(A) when the COCs are present in class 1 groundwater;

(B) when the COCs are present in class 2 groundwater that is within 1/2 mile of a well used to supply drinking water and is also within or is likely to migrate, based upon the chemical properties of the COCs and the hydrogeology, to the groundwater production zone of such drinking water supply well; or

(C) when the COCs are present in class 2 groundwater and there are no alternative water supplies available.

(g) Class 3 groundwater RBEL. The class 3 groundwater RBEL ($^{GW}RBEL_{Class\ 3}$) is the acceptable concentration of a COC at the POE in class 3 groundwater.

(h) Surface water RBEL. The surface water RBEL ($^{SW}RBEL$) is the protective concentration of a COC at the POE in surface water. To establish $^{SW}RBEL$ for a COC, the person shall determine the lowest value from paragraphs (1) - (5) of this subsection for each COC, unless the person has sufficient surface water quality information specific to the particular surface water body to support an adjustment to the RBEL in accordance with paragraph (6) of this subsection. The $^{SW}RBEL$ value determined pursuant to paragraphs (1) - (6) of this subsection may require modification in response to the requirements of paragraphs (7) and (8) of this subsection. The $^{SW}RBEL$ value for a given COC shall be protective of relevant downgradient water bodies in consideration of the water body use (e.g., designated drinking water supply or sustainable fishery), the water body type (e.g., estuary or perennial freshwater stream), the standards applicable to the type of water body/use, and the fate and transport characteristics of the COC in question at the particular affected property.

(1) The person shall apply the lower of the acute or chronic criteria for fresh or marine waters as applicable, based on the classification of the surface water, to protect aquatic life as provided in §307.6, Table 1 of this title (relating to Toxic Materials), as amended. The person shall determine the applicability of aquatic life criteria related to the water body aquatic life use and flow conditions in accordance with the procedures contained in §307.3, §307.4, and §307.6 of this title (relating to Definitions and Abbreviations, General Criteria, and Toxic Materials, respectively), and the agency's *Implementation Procedures*, as amended, as defined in §350.4 of this title (relating to Definitions and Acronyms), as amended. For fresh waters, the person shall calculate aquatic life criteria for metals with hardness-dependent criteria using the hardness value for the nearest downstream classified segment, as listed in the agency's *Implementation Procedures*, as amended. Where no value is provided in the *Implementation Procedures*, a hardness value of 50 mg/l $CaCO_3$ shall be used. When applicable, the person shall convert total metal concentrations in surface water or groundwater to dissolved concentrations as described in the agency's *Implementation Procedures*, as amended. The person may use the basin-specific pH values provided in §307.6, Table 2 of this title, as amended, relevant to the particular affected property for purposes of determining the appropriate values for the pH dependent criteria. The person shall use the total suspended solids concentration for the nearest classified segment, as listed in the agency's *Implementation Procedures*, as amended.

(2) The person shall apply the human health criteria to protect drinking water and fisheries as provided in Table 3 of §307.6 of this title, as amended. When applicable, the person shall convert total metal concentrations in surface water or groundwater to dissolved concentrations as described in the agency's *Implementation Procedures*, as amended. The person shall determine the applicability of human health criteria according to the water body uses (e.g., public water supply, sustainable fishery, incidental fishery, and contact recreation) in accordance with the procedures contained in §307.3 and §307.6 of this title, as amended, and the *Implementation Procedures*, as amended. When a water body is not being evaluated as a drinking water source, the person must determine the necessity to evaluate exposure pathways associated with contact recreation such as incidental ingestion of surface water and dermal contact with surface water. The person shall use the total suspended solids concentration for the nearest classified segment, as listed in the agency's *Implementation Procedures*, as amended.

(3) The person shall apply the effluent limitations specified in Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG830000, as amended, for any release of groundwater or storm water that has been impacted by petroleum fuel (as defined in the general permit).

(4) The person shall apply United States EPA guidelines or alternate provisions in accordance with §307.6(c)(7) of this title, as amended, when criteria for aquatic life protection are not provided for a COC in §307.6 of this title, Table 1, as amended. In addition, the person shall apply federal guidance criteria (i.e., lower of a federal numerical criterion, MCL, or equivalent state drinking water guideline) or alternate provisions in accordance with §307.6(d)(8) of this title, as amended, when human health criteria for a COC are not provided in Table 3 of §307.6 of this title, as amended.

(5) The person shall apply the numerical criteria, as appropriate, for chlorides, sulfates, total dissolved solids, and pH for classified segments as specified in §307.10(1) of this title (relating to Appendices A - E), as amended.

(6) The person may apply additional provisions where data on surface water quality for a specific surface water body at the affected property is available or can be reasonably obtained.

(A) The person may determine property-specific hardness, based on sampling data, for calculating metals criteria in accordance with the procedures contained in the agency's *Implementation Procedures*, as amended.

(B) The person may determine property-specific total suspended solids, based on sampling data, for estimating "dissolved" metals in accordance with the *Implementation Procedures*, as amended.

(C) The person may determine the actual pH of the particular surface water body at the affected property.

(7) The additional numeric and narrative criteria listed in subparagraphs (A) and (B) of this paragraph may require development of a surface water RBEL (e.g., where a nutrient is a COC) or modification to the surface water RBEL (e.g., lower a RBEL value to minimize foaming on the water's surface) determined pursuant to paragraphs (1) - (5) of this subsection.

(A) General criteria related to aesthetic parameters, nutrient parameters, and salinity in accordance with §307.4(b), (e), and (g) of this title (relating to General Criteria), as amended.

(B) General provisions related to the preclusion of adverse toxic effects on aquatic and terrestrial life, livestock, or domestic animals in accordance with §307.6(b) of this title, as amended.

(8) If the executive director determines that the release has the potential to lower the surface water dissolved oxygen, then the executive director may require the person to apply the dissolved oxygen criteria for classified segments specified in §307.10(1) of this title, as amended, or the dissolved oxygen criteria for unclassified waters specified in §307.10(4) of this title, as amended, §307.4(h) of this title, as amended, and §307.7(b)(3)(A) of this title (relating to Site Specific Uses and Criteria), as amended.

(i) Aesthetics. For COCs for which a RBEL cannot be calculated by the procedures of this section, or the RBEL concentration for the COC otherwise adversely impacts environmental quality or public welfare and safety, presents objectionable characteristics (e.g., taste, odor), or makes a natural resource unfit for use, the person shall comply with paragraphs (1) - (3) of this subsection as appropriate. For response actions which are triggered for an area solely for purposes of this subsection (i.e., there is no other human health or ecological hazard remaining), the executive director will evaluate the seriousness, probable longevity of the matter, and suitability of the proposed remedy with the landowner in order to site-specifically determine whether or not institutional controls and financial assurance are warranted. The person shall provide all information reasonably necessary to support such a determination to the executive director. The default presumption is that financial assurance and institutional controls are required for exposure prevention remedies. If the executive director determines that institutional controls and financial assurance are not warranted, then persons shall not be required to comply with the provisions of §350.31(g), §350.33(e)(2)(C) and §350.111(b)(3) or (6) of this title (relating to General Requirements for Remedy Standards, Remedy Standard B, and Use of Institutional Controls), specifically relating to the physical control matters for the portion of affected property with the aesthetics issue.

(1) In accordance with §101.4 of this title (relating to Nuisance), as amended, the person may be required by the executive director to address COCs which present objectionable odors.

(2) The maximum total soil concentration of COCs which are liquid at standard temperature and pressure shall not exceed 10,000 mg/kg within the soil interval of 0 - 10 feet, unless it can be demonstrated that:

(A) no free liquids (e.g., no mobile NAPL) or sludges exist; or

(B) higher concentrations do not adversely impair surface use of the affected property.

(3) Other scientifically valid published criteria such as, but not limited to, non-COC specific secondary MCLs for water may be required by the executive director to be used as the RBEL.

(j) Requirements for variance to default RBEL exposure factors.

(1) Under Tiers 2 or 3 as provided in §350.75 of this title (relating to Tiered Human Health Protective Concentration Level Evaluation) and with prior executive director approval, the person may vary the following default exposure factors shown in the figures in subsections (a) and (c) of this section based on conditions or exposure levels at a particular affected property and in accordance with the conditions specified. A person shall provide the supporting documentation to justify the use of such alternative factors to the executive director.

(A) Gastrointestinal absorption fraction (ABS_{GI}). A person or the executive director may use an alternative scientifically justifiable gastrointestinal absorption fraction value. Only in cases where the gastrointestinal absorption fraction is less than 50% shall the oral slope factor and oral reference dose be adjusted using equation RBEL-2 as shown in the figure in subsection (a) of this section, as applicable, to calculate the corresponding dermal slope factor and dermal reference dose. The person shall not use the gastrointestinal absorption fraction to modify the oral slope factor or oral reference dose for any exposure pathway other than the dermal exposure pathway. In the event the executive director determines a more scientifically valid gastrointestinal absorption fraction, that fraction shall be presumed to be the appropriate fraction and the person shall use that fraction unless a person rebuts that value with a scientifically valid study or by other credible published authority.

(B) Dermal absorption fraction (ABS.d). A person or the executive director may conduct a scientifically valid study using property-specific soils or may use alternative scientifically justifiable dermal absorption values. In the event the executive director determines a more scientifically valid dermal absorption fraction, that fraction shall be presumed to be the appropriate fraction and the person shall use that fraction unless a person rebuts that fraction with a scientifically valid study using property-specific soils or by other credible published authority.

(C) Relative bioavailability factor (RBAF). A person or the executive director may conduct a scientifically valid bioavailability study using property-specific soils or may conduct mineralogical evaluations of the chemical form of a COC present in soils at the affected property. In the event the executive director determines a more scientifically valid relative bioavailability factor, that factor shall be presumed to be the appropriate relative bioavailability factor and the person shall use that factor unless a person rebuts that factor with a scientifically valid bioavailability study using property-specific soils, mineralogical evaluation of the chemical form of a chemical of concern present in soils at the affected property, or by other credible published authority.

(2) Under Tiers 2 or 3 as provided in §350.75 of this title (relating to Tiered Human Health Protective Concentration Level Evaluation), a person may request that the executive director allow a variance to the following default commercial/industrial exposure factors for the affected property as shown in the figure in subsection (a) of this section: averaging time for noncarcinogens (AT.w), exposure duration (ED.w), and exposure frequency (EF.w). This shall only be allowed for facilities that have or will have, as a condition of the approval of this variance, restricted property access. The executive director shall not delegate this decision to agency staff.

(A) The person shall submit information to the executive director which demonstrates that variance from the default exposure factors is supported by property-specific information; historical, current, and probable future land use; redevelopment potential; and compatibility with surrounding land use. The person shall also provide written concurrence from the landowner for the placement of the

institutional control in the county deed records, as required in subparagraph (L) of this paragraph, unless the property is subject to zoning or governmental ordinance which is equivalent to the deed notice, VCP certificate of completion or restrictive covenant that otherwise would have been required.

(B) The person requesting such variance shall provide public notification as described in subparagraphs (D) and (E) of this paragraph for any request to vary the default exposure factors at the same time that variance-based PCLs are submitted to the executive director for approval. If the natural physical condition of the on-site commercial/industrial area for which the variance is sought essentially prohibits full commercial/industrial use (e.g., marshes and cliffs), and the variance would not necessitate a lesser commercial/industrial use of that area, then the executive director will determine the need for public notice on a site-specific basis for the prohibited use area. The person may request the executive director or his staff to review the variance-based PCLs or the variance request for completeness (e.g., administratively complete, mathematical accuracy, compliance with other PCL development procedures) in advance of initiating the public notification process. The required public notice shall be completed prior to consideration of the variance request for approval by the executive director. The public notice provisions may be performed in conjunction with or as part of another public participation/notification process required for permitting or other applicable state or federal statute or regulation provided the requirements of subparagraph (E) of this paragraph are also met. Additionally, an alternative mechanism that may exist under the other public participation/notification process which effectively provides broad public notice of the variance request, such as notification to an existing citizens' advisory board for the affected property/facility, may substitute for the requirements of subparagraph (D) of this paragraph, provided the completion of the notification is sufficiently documented.

(C) The notice shall contain, at a minimum, the following information:

(i) the name, address and telephone number of the person requesting the variance;

(ii) the address and the physical description for the location of the property and the agency case designation number;

(iii) the modified value(s) the person seeks to use and the associated default exposure factor(s) as shown in the figure in subsection (a) of this section without any statements or other indications that such variance has been approved or otherwise considered favorably by the executive director or the executive director's staff other than that it has been reviewed for completeness;

(iv) a clear and concise explanation as to the effect the variance will have on the future use of the subject property and on surrounding properties;

(v) a statement that more detailed information regarding the variance request is available for review at the agency's central office in Austin, Texas, 8:00 am - 5:00 pm Monday thru Friday; and

(vi) a notice to the public of the opportunity to submit written information, within 30 calendar days after the date of the initial published notice (publish the actual date), to the executive director which demonstrates that the proposal for variance from the default exposure factors would be compatible or incompatible with existing neighboring land uses and preservation of the active and productive land use of the subject property.

(D) The notice shall be published in a newspaper distributed daily, if available, and generally circulated in the county or area where the property is located. The notice shall be published once a week for three weeks, with at least one of the notices appearing in a Sunday edition, if available.

(E) The notice shall be sent to the following persons in clauses (i) - (viii) of this subparagraph by certified mail, return receipt requested:

(i) all adjacent landowners;

(ii) the local municipality planning board or similar governmental unit, if applicable;

(iii) local taxing authorities;

(iv) the mayor and health authorities of the city in which the property is located, if applicable;

(v) the county judge and county health authority of the county in which the property is located;

(vi) the agency's Public Interest Counsel;

(vii) all persons or organizations who have requested the notice or expressed interest; and

(viii) other persons or organizations specified by the executive director.

(F) The person shall provide copies of each notice sent by mail, copies of the published notice, and copies of the signed publisher's affidavit for the initial notice to the agency's Austin office and to the appropriate agency region office within 10 calendar days after the initial publication and mailing. Copies of the signed publisher's affidavits for the subsequent notices shall be provided to the agency's Austin office and to the appropriate agency region office within 10 days of both subsequent notices.

(G) At the executive director's request, and at the expense of the person, the person shall schedule and hold a public meeting at a time and place which are convenient for persons identified in subparagraph (E) of this paragraph. The forum chosen for the meeting shall comply with the Americans with Disabilities Act. Prior to scheduling the public meeting, the person shall coordinate the scheduling of the public meeting with the executive director's office to ensure the availability of agency personnel for the meeting. The person shall confirm with the executive director's office the date, time, and location of the meeting not less than 15 days prior to the meeting. The meeting shall be open to the public to provide information on the request to vary the default exposure factors and to allow for comments by the public. The person shall again confirm with the executive director's office on the time and place of the meeting at least 72 hours prior to the meeting.

(H) In order to inform persons of the public meeting, the person shall, at least 30 calendar days prior to the public meeting, follow the notification process required in subparagraphs (C) - (F) of this paragraph with the following exceptions:

(i) the notice shall be supplemented to include the date, time, and location of the public meeting and to indicate that the meeting is open to the public for the purposes of providing information on the request to vary default exposure factors and to provide the public the opportunity to provide comments on the request;

(ii) the notice shall indicate that the public shall have 15 calendar days after the date of the public meeting to submit written information to the executive director which demonstrates that the proposal for variance from the default exposure factors would be compatible or incompatible with existing neighboring land uses and preservation of the active and productive land use of the subject property; and

(iii) the notice by publication of the public meeting shall only be published once and shall be placed in a Sunday edition, if available.

(I) The executive director's decision on the request for a variance from the default exposure factors shall occur at least 15 calendar days after any public meeting or if no public meeting is held, at least 45 days after the date of the initial published notice. The executive director's decision shall be based upon property-specific data; historical, current, and probable future land use; redevelopment potential; and compatibility with surrounding land use. The executive director shall not consider the costs incurred for any actions taken by the person in anticipation that the variance would be approved by the executive director.

(J) At the same time that the executive director's decision is mailed to the person requesting the variance, a copy of this decision shall also be mailed to all persons identified in subparagraph (E) of this paragraph. The notice of the executive director's decision shall explain the method for submitting a motion for reconsideration of the executive director's decision by the commission.

(K) The person requesting the variance and persons identified in subparagraph (E) of this paragraph may file with the chief clerk a motion for reconsideration of the executive director's decision related to the request for variance, in accordance with §50.39(b) - (f) of this title (relating to Motion for Reconsideration), as amended.

(L) A person who receives a variance from the default exposure factors shall comply with the institutional control requirements in §350.111(b), (b)(12), or (13) of this title (relating to Use of Institutional Controls), as applicable, and provide proof of compliance with the institutional control requirements within 90 days of the approval by the executive director of the RACR.

(3) The person shall not vary the following exposure factors shown in the figure in subsection (a) of this section.

(A) averaging time for residents for noncarcinogens (AT.A.res and AT.C.res) or carcinogens (ATc);

(B) body weight for adults and children (BW.A, BW.C, $BW_{(0<6)}$, $BW_{(6<18)}$, and $BW_{(18<30)}$);

(C) exposure duration for residents (ED.A.res, ED.C.res, $ED_{(0<6)}$, $ED_{(6<18)}$, and $ED_{(18<30)}$);

(D) exposure frequency for residents (EF.res);

(E) ingestion rate for soil, water, or vegetables (IRsoil.AgeAdj.res, IRsoil.C.res, IRsoil.w, IRw.AgeAdj.res, IRw.C.res, IRw.w, IRabg.AgeAdj.res, IRbg.AgeAdj.res, IRabg.C.res, IRbg.C.res);

(F) toxicity modifying factor (MF);

(G) skin surface area (SA.C.res, $SA_{(0<6)}$, $SA_{(6<18)}$, $SA_{(18<30)}$, SA.w);

(H) soil-to-skin adherence factors (AF.C.res, $AF_{(0<6)}$, $AF_{(6<18)}$, $AF_{(18<30)}$, and AF.w).

§350.75. Tiered Human Health Protective Concentration Level Evaluation.

(a) General.

(1) The person shall decide whether to use Tier 1, 2, and/or 3 to determine the PCLs for an affected property, except as provided in paragraph (2) of this subsection and unless required by subsection (b), (c), or (d) of this section.

(2) The executive director may require the person to establish PCLs in accordance with Tier 1, 2, and/or 3 for state-funded response actions at affected properties.

(b) Tier 1 PCLs.

(1) Tier 1 is a risk-based analysis to derive non-site-specific PCLs for complete or reasonably anticipated to be completed exposure pathways. Tier 1 is based on default exposure factors and affected property parameters in the applicable PCL equations provided in the following figure and assumes exposure occurs at, above or below the source area (i.e., no lateral transport).
Figure: 30 TAC §350.75(b)(1)

(2) No lateral transport equations may be used for a Tier 1 evaluation other than to ensure that receptors at off-site POEs are protected when on-site commercial/industrial land use is assumed. The person shall assume a 0.5 acre source area for an affected property with a 0.5 acre or less source area and a 30 acre source area for an affected property with a source area in excess of 0.5 acres. The size of the source area in soil and groundwater shall be determined using the soil or groundwater assessment level calculated for a 0.5 acre source area. The executive director may require that the source area include all areas of the affected property which exceed the assessment level and not just contiguous areas when such assumption is appropriate considering the distribution of the COCs.

(3) The person shall establish PCLs using parameters which are specific to the affected property when use of the Tier 1 default affected property parameters would not be protective or when requested by the executive director. The person shall then establish PCLs in accordance with subsections (c) or (d) of this section.

(4) The person shall establish PCLs in accordance with subsections (c) or (d) of this section for any groundwater, soil, surface water, air, or sediment human health exposure pathway which is complete or reasonably anticipated to be completed at an affected property and for which an equation is not referenced in this subsection.

(c) Tier 2 PCLs.

(1) Tier 2 is a risk-based analysis to derive site-specific PCLs for complete or reasonably anticipated to be completed exposure pathways utilizing site-specific exposure factors, as allowable, and/or affected property parameters and Tier 1 equations. Tier 2 PCLs may also include lateral transport considerations.

(2) The person shall use:

(A) the relevant RBELs appropriate for the type of COC, exposure pathway, receptor, and land use provided in §350.74 of this title (relating to Development of Risk-Based Exposure Limits);

(B) PCL equations provided by the executive director in guidance, in addition to the PCL equations as shown in the figure in subsection (b)(1) of this section;

(C) the Tier 1 default affected property parameters or appropriately collected and representative site-specific affected property parameters in the PCL equations, unless an entry of "No" in the column titled "Change To Tier 1 Default Allowed?" in the figure as shown in subsection (b)(1) of this section indicates that a particular Tier 1 affected property parameter value shall not be modified under a Tier 2 evaluation; and

(D) PCLs established in accordance with subsection (d) of this section for any groundwater, soil, surface water, air, or sediment exposure pathway which is complete or reasonably anticipated to be completed at an affected property and for which an equation is not referenced either in this subsection or in subsection (b)(1) of this section.

(d) Tier 3 PCLs.

(1) Tier 3 is a risk-based analysis to derive site-specific PCLs for complete or reasonably anticipated to be completed exposure pathways. Tier 3 PCLs are based on measured natural attenuation factors and/or natural attenuation factor models/equations other than those provided for Tier 1 or 2; and may also include site-specific exposure factors, as allowable, and/or affected property parameters.

(2) The person shall use:

(A) field measured natural attenuation factors and/or appropriate natural attenuation factor equations/models other than the Tier 1 and 2 PCL equations;

(B) appropriate equations/models for any remaining surface water, air, or sediment human exposure pathway which is complete or reasonably anticipated to be completed at an affected property and for which an equation is not referenced in subsection (b) or (c) of this section; and

(C) the Tier 1 default affected property parameters or appropriately collected and representative site-specific affected property parameters in the PCL equations, unless an entry of "No" in the column titled "Change To Tier 1 Default Allowed?" in the figure as shown in subsection (b)(1) of this section indicates that a particular Tier 1 affected property parameter value shall not be modified under a Tier 3 evaluation.

(e) Natural attenuation factor documentation. The person must document the use of all natural attenuation factor equations/models other than the natural attenuation factor equations/models provided in this subchapter or agency guidance, such that the derivation of the model and its site-specific application can be understood, and the results of the model reproduced by the executive director. The executive director may require the person to obtain prior approval for the use of alternative natural attenuation factor equations/models in a Tier 3 evaluation.

(f) Decay factors. When the person uses decay factors in any cross-media or lateral transport natural attenuation factor equation in either Tier 2 or 3, the person shall use sufficient monitoring data (i.e., vapor, soils and groundwater samples for COCs or other degradation indicators) to verify the COC is degrading.

(g) Verification. When natural attenuation factor modeling outputs are inconsistent with monitoring data for environmental media at an affected property, the person and the executive director shall generally place more weight on the monitoring data. The executive director may require the person to provide sufficient monitoring data to verify that PCLs established under any tier are based on an appropriate understanding of conditions at the affected property.

(h) Data adequacy. The person shall collect any additional data necessary to support the development of PCLs under any of the tiers.

(i) Pathway specific PCL Considerations.

(1) PCLs for ingestion of COCs in class 1 or 2 groundwater ($^{GW}GW_{Ing}$). The person shall establish this PCL using the applicable equation shown in the figure in subsection (b)(1) of this section.

(2) PCLs for COCs in class 3 groundwater ($^{GW}GW_{Class\ 3}$). The person shall establish this PCL using the applicable equation in the figure in subsection (b)(1) of this section.

(3) PCLs for inhalation of volatile emissions in outdoor air from COCs in groundwater-bearing units ($^{Air}GW_{Inh\text{-}V}$). The person shall establish this PCL using the applicable equations as shown in the figure in subsection (b)(1) of this section for Tier 1.

(4) PCLs for COCs in groundwater discharge to surface water (^{SW}GW). The person shall set ^{SW}GW equal to ^{SW}SW divided by the surface water dilution factor. The ^{SW}SW is the lesser of the $^{SW}RBEL$ established in accordance with §350.74(h) of this title and the SW_{Eco} established in accordance with §350.77 of this title (relating to Ecological Risk Assessment and Development of Ecological Protective Concentration Levels). The surface water dilution factor shall be determined in accordance with subparagraph (A) or (B) of this paragraph. The person shall use the PCL equation as shown in the figure in subsection (b)(1) of this section to establish ^{SW}GW. In the case that different surface water dilution factors may be applicable to the $^{SW}RBEL$ and the SW_{Eco}, the person shall first divide the $^{SW}RBEL$ and the SW_{Eco} by their respective surface water dilution factors and set ^{SW}GW equal to the lowest resulting quotient.

(A) The person shall assume a surface water dilution factor of one when the concentration of all COCs in groundwater at the zone of discharge to surface water is less than or equal to the ^{SW}SW for those COCs at the time the affected property assessment required in §350.51 of this title (relating to Affected Property Assessment) is conducted. The person shall also assume a surface water dilution factor of one for those specific COCs which are listed as impairing the nearest classified segment at or downstream of the affected property. Impaired water bodies are provided in the current Clean Water Act, §303(d) list, as amended.

(B) When the concentration of a COC in groundwater at the zone of discharge to surface water exceeds the ^{SW}SW for that COC at the time the affected property assessment required in §350.51 of this title is conducted, the person may establish a surface water dilution factor in accordance with subparagraph (C), (D), or (E) of this paragraph.

(C) The person may use a surface water dilution factor of 0.15 for non-flowing surface waters such as lakes, estuaries, tidal rivers; and fresh water streams and rivers (where the groundwater discharge is clearly less than 15% of the 7Q2 stream flow as defined in §307.3(a)(34) of this title (relating to Definitions and Abbreviations)), as amended. The person shall use the 7Q2 flows as listed in §307.10(2) of this title (relating to Appendices A - E), as amended, for groundwater discharges directly to a classified segment as listed in §307.10(3) of this title, as amended. For groundwater discharges which are not directly to a classified segment, site-specific 7Q2 values must be determined for the water body directly receiving the groundwater discharge.

(D) For freshwater streams and rivers where the groundwater discharge is clearly greater than 15% of the 7Q2 flow, the person shall estimate property-specific surface water dilution factors based on 7Q2 flows for chronic aquatic-life criteria, 25% of 7Q2 flows for acute aquatic-life criteria, and harmonic mean flows as defined in §307.3(a)(19) of this title, as amended, for human health criteria in accordance with the procedures contained in the *Implementation Procedures*, as amended. The person shall divide the ^{SW}SW by the estimated property-specific dilution factor. The person shall use the 7Q2 flows listed in §307.10(2) of this title, as amended, for groundwater discharges directly to a classified segment as listed in §307.10(3) of this title, as amended. For groundwater discharges which are not directly to a classified segment, site-specific 7Q2 values must be determined for the water body directly receiving the groundwater discharge.

(E) As an alternative to using the dilution factor of 0.15 as specified in subparagraph (C) of this paragraph, the person may measure and/or estimate the groundwater dilution in surface water from appropriate models of groundwater plume dispersion, tracer studies, receiving water and sediment sample analyses, analytical calculations, or other techniques upon the executive director's approval using site-spe-

cific base flow conditions for groundwater, 7Q2 conditions for receiving streams, and critical mixing conditions for lakes, estuaries, and tidal streams. The executive director may require a receiving water study to ensure that benthic communities in the sediment are not adversely impacted. In cases where groundwater COCs include bioaccumulative COCs, the executive director may require a receiving water study or empirical analysis to ensure that the release of that particular COC is not causing, or will not result in harmful levels in the tissue of aquatic and terrestrial organisms that feed in the water body.

(F) The person may be required by the executive director to take appropriate action to ensure that discharging groundwater plumes do not result in exceedances of surface water quality standards in significant areas of the potentially affected surface water body.

(5) PCLs for other complete or reasonably anticipated to be completed groundwater exposure pathways. The person shall establish PCLs for exposure pathways other than those listed in paragraphs (1) - (4) of this subsection when, in the executive director's determination, those other exposure pathways are complete or reasonably anticipated to be completed.

(6) PCLs for the combined exposure pathways of inhalation of volatile emissions and particulates from COCs in surface soil, dermal contact with COCs in surface soil, ingestion of COCs in surface soil, and for affected residential properties, ingestion of aboveground and below-ground vegetables grown in surface soil containing COCs ($^{Tot}Soil_{comb}$). The person shall establish this PCL using the applicable equation as shown in the figure in subsection (b)(1) of this section for Tier 1.

(7) PCLs for groundwater protection from leachate containing COCs from surface and subsurface soil ($^{GW}Soil$).

(A) The person shall establish $^{GW}Soil$ for each COC present in the surface and subsurface soil such that soil leachate is protective for:

(i) the critical groundwater PCL established in §350.78 of this title (relating to Determination of Critical Protective Concentration Levels) when the use of a plume management zone is not authorized in §350.33(f)(4) of this title (relating to Remedy Standard B);

(ii) the attenuation action level for the nearest monitoring point when the use of a plume management zone is authorized under §350.33(f)(4) of this title; and/or

(iii) the maximum concentration of COCs in the groundwater source area at the time of RAP submittal when a plume management zone is authorized for class 2 groundwater in response to §350.33(f)(4) of this title.

(B) The person shall establish this PCL using the applicable equations as shown in the figure in subsection (b)(1) of this section for Tier 1.

(C) The person may not be required to establish a soil leachate-to-groundwater PCL in accordance with subparagraphs (A) and (B) of this paragraph when a demonstration can be made with appropriate soil and groundwater monitoring data that the soils will attain the soil response objectives for groundwater protection set forth in Subchapter B of this chapter (relating to Remedy Standards). The determination that the soils are adequately protective shall be based on soil sample data, the concentration trends of groundwater monitoring data over time when groundwater is impacted, probable time since release occurred, adequate identification of the soil source areas, appropriate leachate test results, or other hydrogeologic or property-specific information. The executive director may also require that the change in soil concentrations over time be documented to support this evaluation in a property-specific situation. The executive director may require the person to install a sufficient number of groundwater monitoring wells to demonstrate that groundwater is not affected when soil COC concentration data are inadequate to sufficiently substantiate that groundwater is not affected.

(8) PCLs for inhalation of volatile emissions in outdoor air from COCs in subsurface soils ($^{Air}Soil_{Inh\text{-}V}$). The person shall establish this PCL using the applicable equations as shown in the figure in subsection (b)(1) of this section for Tier 1.

(9) Theoretical soil saturation limit (C_{sat}). The person may establish a property-specific theoretical soil saturation limit for the volatilization exposure pathways required in paragraphs (6) and (8) of this subsection under Tiers 2 or 3. The C_{sat} shall be based on the same property-specific parameters as those used to calculate $^{Air}Soil_{Inh\text{-}V}$. If the property-specific $^{Air}Soil_{Inh\text{-}VP}$ or $^{Air}Soil_{Inh\text{-}V}$ is greater than the property-specific C_{sat}, then that exposure pathway shall not be considered a relevant exposure pathway for that COC.

(10) Residual soil saturation limit ($Soil_{Res}$). The person shall establish the residual saturation level for each organic COC present in surface and subsurface soils which is a liquid at standard temperature and pressure using the applicable equation as shown in the figure in subsection (b)(1) of this section to estimate the mobile NAPL concentration and to determine if NAPL may be present.

(11) PCLs for other complete or reasonably anticipated to be completed surface and subsurface soil exposure pathways. The person shall establish PCLs for surface and subsurface soil exposure pathways other than those listed in paragraphs (6) - (8) of this subsection when, in the executive director's determination, those other exposure pathways are complete or reasonably anticipated to be completed.

(12) Air inhalation exposure pathways ($^{Air}Air_{Inh}$). For air inhalation exposure pathways, the person may be required by the executive director to establish $^{Air}Air_{Inh}$ solely for the purposes of determining the protective concentration that must be met in air at the POE. The person shall use the applicable equation as shown in the figure in subsection (b)(1) of this section to establish $^{Air}Air_{Inh}$.

(13) Surface water exposure pathways (^{SW}SW). The person may be required by the executive director to establish ^{SW}SW when COCs are present in surface water or when COCs will enter into surface water due to a release, and a surface water response action is necessary to protect human or ecological receptors. The person shall use the applicable equation as shown in the figure in subsection (b)(1) of this section to establish ^{SW}SW.

(14) Other air and surface water exposure pathways. The person shall establish PCLs for air and surface water exposure pathways other than those listed in paragraphs (12) and (13) of this subsection when, in the executive director's determination, those other exposure pathways are complete or reasonably anticipated to be completed.

(15) The person shall establish PCLs for complete or reasonably anticipated to be completed sediment exposure pathways when, in the executive director's determination, those exposure pathways are complete or reasonably anticipated to be completed.

(j) The person is not required to combine exposure pathways for a single environmental medium when determining PCLs with the exception of the combined exposure pathway required in subsection (i)(6) of this section, unless otherwise directed by the executive director.

§350.76. Approaches for Specific Chemicals of Concern to Determine Human Health Protective Concentration Levels.

(a) General.

(1) Due to the unique nature of the toxicity and/or exposure, the person shall use the COC-specific approaches described in this section for the following COCs:

(A) cadmium;

(B) lead;

(C) polychlorinated biphenyls;

(D) polychlorinated dibenzodioxins and dibenzofurans;

(E) polycyclic aromatic hydrocarbons; and

(F) total petroleum hydrocarbons.

(2) Except for the specific provisions contained in this section, the person shall establish RBELs and PCLs in accordance with the standard procedures outlined in the previous sections of this subchapter.

(3) This section addresses only those exposure pathways for which PCL equations are provided in this subchapter. When dealing with other exposure pathways as required in §350.71(c) of this title (relating to General Requirements), the executive director will specify how those pathways should be addressed for these COCs using the best available science.

(4) The person shall use the figures as required in subsections (b) - (g) of this section.

(b) Cadmium.

(1) In calculating residential soil PCLs that are protective for noncarcinogenic effects for all tiers, the person shall incorporate age-adjusted exposure assumptions for the soil ingestion, vegetable ingestion, and dermal soil exposure pathways. Accordingly, 30 years of cadmium exposure shall be partitioned into three specific exposure periods: <1- 6 years, 6 - 18 years, and 18 - 30 years. Cadmium intake shall be calculated for each of these periods, based on the period-specific exposure assumptions. The soil PCL for cadmium shall be a function of the final integrated intake estimate, which shall be determined by time-weighting intake from each of the three exposure periods. The age-adjusted RBEL equations and default parameters to be used for cadmium are provided in the following figure. The soil PCL for cadmium shall be calculated by combining the pathway-specific PCLs as outlined in §350.75(i)(6) of this title (relating to Tiered Human Health Protective Concentration Level Evaluation).
Figure: 30 TAC §350.76(b)(1) (No change.)

(2) In calculating residential and commercial/industrial soil PCLs for all tiers, the person shall use the reference dose values for cadmium in food in evaluating exposures to cadmium through the soil ingestion, vegetable ingestion, and dermal soil exposure pathways.

(c) Lead.

(1) The Tier 1 residential soil PCL ($^{Tot}Soil_{Comb}$) for lead is 500 mg/kg.

(2) Subject to prior approval by the executive director, the person may use property-specific data in conjunction with a lead model approved by the executive director (e.g., EPA Integrated Exposure Uptake Biokinetic model for lead in children (version 1.0 from 2005)) to calculate a Tier 3 residential soil PCL ($^{Tot}Soil_{Comb}$) for lead. The person shall submit information to the executive director which demonstrates that variance from default model inputs is supported by property-specific information (e.g., data from a scientifically valid bioavailability study using property-specific soils). Property-specific model input values must be approved by the executive director. Consistent with the development of residential RBELs for COCs without chemical-specific approaches in accordance with §350.74 of this title (Development of Risk-Based Exposure Limits), variance from certain model default exposure factors such as soil/dust ingestion rates and exposure frequency to less conservative (i.e., lower) numerical values shall not be allowed.

(3) The commercial/industrial soil PCL ($^{Tot}Soil_{Comb}$) is based only on the soil ingestion pathway ($^{Soil}Soil_{Ing}$). The person shall use the exposure algorithm and default exposure factors in the following figure for calculating the Tier 1 commercial/industrial $^{Soil}RBEL_{Ing}$ value.
Figure: 30 TAC §350.76(c)(3)

(4) The person may use a different exposure algorithm as presented in the following figure that considers soil and dust separately for calculating the Tier 2 and 3 commercial/industrial $^{Soil}RBEL_{Ing}$ value in cases where the person has adequate direct measurement data on the concentrations of lead in both soil and dust at the affected property. In addition, in calculating Tier 2 or 3 $^{Soil}RBEL_{Ing}$ values, the person may deviate from the default exposure factors as shown in the figure in paragraph (3) of this subsection and the following figure if property-specific or defensible alternative data (e.g., from open literature or privately funded studies) adequately support such an approach. The specific exposure factors for which the person may use property-specific or scientifically defensible alternative values are the following:
Figure: 30 TAC§350.76(c)(4)

(A) individual geometric standard deviation (GSD_i);

(B) baseline blood lead (PbBO);

(C) absolute absorption fraction of lead in soil/dust (Afsd);

(D) absolute absorption fraction of lead in soil (AFs); and

(E) absolute absorption fraction of lead in dust (Afd).

(d) Polychlorinated Biphenyls.

(1) In calculating Tier 1 residential and commercial/industrial soil and groundwater PCLs, the person shall use the upper-reference point of the upper-bound slope factors (2 $(mg/kg\text{-}day)^{-1}$) for the soil ingestion, dermal contact with soil, vegetable ingestion, and inhalation (both vapor and particulate phases) exposure pathways.

(2) For Tiers 2 and 3, the person may use alternative slope factors when the following conditions are met:

(A) The person may use the lower reference point of the upper bound slope factors (0.4 $(mg/kg\text{-}day)^{-1}$) to calculate an inhalation unit risk factor when evaluating inhalation exposures to volatilized polychlorinated biphenyls. The person must still use the upper reference point of the upper bound slope factors (2 $(mg/kg\text{-}day)^{-1}$) to evaluate inhalation exposures to particulate phase polychlorinated biphenyls.

(B) The person may conduct congener or isomer analyses. The person may use the lowest reference point of the upper-bound slope factors (0.07 $(mg/kg\text{-}day)^{-1}$) for the soil ingestion, dermal contact with soil, and inhalation exposure pathways if congener or isomer analyses verify that congeners with more than four chlorines comprise less than one-half percent of total polychlorinated biphenyls in a given exposure medium. The upper reference point of the upper-bound slope factors (2 $(mg/kg\text{-}day)^{-1}$) shall be used for all other exposure pathways regardless of the results of the congener- or isomer-specific analyses. If congener or isomer analyses indicate that congeners with more than four chlorines comprise greater than one-half percent of total polychlorinated biphenyls in a given exposure medium, then the person shall use the upper-reference point of the upper-bound slope factors (2 $(mg/kg\text{-}day)^{-1}$) for all pathways for that specific exposure medium. Fur-

ther, when congener concentrations are available, the contribution of dioxin-like polychlorinated biphenyls to total dioxin equivalents shall be considered. The person shall apply the toxicity equivalency factors specified in the following figure to the measured concentrations for each of the dioxin-like polychlorinated biphenyls. These values shall then be summed to obtain a 2,3,7,8-TCDD toxicity equivalency quotient. Toxicity equivalency quotients for dioxin-like polychlorinated biphenyls shall then be added to those for other dioxin-like compounds as specified in subsection (e) of this section to yield a total toxicity equivalency quotient concentration. This total toxicity equivalency quotients concentration shall then be compared with the critical PCL for TCDD, 2,3,7,8- (dioxin). When addressing dioxin-like polychlorinated biphenyls in this manner, the person shall subtract the concentration of dioxin-like polychlorinated biphenyls from the total polychlorinated biphenyls concentration to avoid overestimating dioxin-like polychlorinated biphenyls by evaluating them twice.
Figure: 30 TAC §350.76(d)(2)(B) (No change.)

(3) In evaluating inhalation exposures under Tiers 2 or 3, the person shall convert the appropriate slope factor to an inhalation unit risk factor, based on the following equation: Inhalation Unit Risk Factor (risk per $\mu g/m^3$)= oral slope factor x 20 m^3/day divided by 70 kg x 10^{-3} mg/μg.

(4) In Tiers 2 and 3, and only when applicable for a specific site, the person may set soil PCLs based on the requirements of the Toxic Substances Control Act, 40 Code of Federal Regulations Parts 750 and 761, as amended. Sites must comply fully with all applicable Toxic Substances Control Act, as amended, requirements when establishing the soil PCL for polychlorinated biphenyls in this manner.

(e) Polychlorinated Dibenzo-p-Dioxins and Dibenzofurans.

(1) In demonstrating attainment of the critical PCL for TCDD, 2,3,7,8- (dioxin), the person shall apply the toxicity equivalency factor as shown in the figure in subsection (d)(2)(B) of this section to the measured concentrations in accordance with the following procedures.

(A) When analytical data are only available for total dioxins/furans, the person shall assume that the mixture consists solely of 2,3,7,8-TCDD, and a toxicity equivalency factor value of 1.0 shall be applied to the measured concentration to yield the 2,3,7,8-TCDD toxicity equivalency quotient concentration for the sample.

(B) When homologue-specific analytical data are available (e.g., tetrachlorodibenzodioxins), the person shall assume that each homologue class is comprised solely of 2,3,7,8-substituted congeners, and the toxicity equivalency factor specified for the 2, 3, 7, 8-substituted congeners in the homologue class shall be applied to the measured concentrations for that homologue class. A toxicity equivalency factor value of 0.5 should be used for the pentachlorodibenzofuran homologue class. The toxicity equivalency quotient concentrations for each homologue class shall be summed to obtain a total toxicity equivalency quotient concentration for the sample.

(C) When congener-specific analytical data are available (e.g., 1, 2, 3, 4, 7, 8-hexachlorodibenzofuran), the person shall apply the toxicity equivalency factor for the 2, 3, 7, 8-substituted congeners to the measured concentrations. The toxicity equivalency quotient concentrations for each 2, 3, 7, 8-substituted congener shall then be summed to obtain a total toxicity equivalency quotient concentration for the sample.

(2) The person shall then compare the total toxicity equivalency quotient concentration established in paragraph (1) of this subsection to the critical PCL for TCDD, 2, 3, 7, 8- (dioxins).

(3) The critical soil PCL for residential properties for all three tiers is 1 part per billion (ppb) and for commercial/industrial properties for all three tiers is 5 ppb.

(f) Polycyclic Aromatic Hydrocarbons.

(1) In calculating residential and commercial/industrial PCLs for all tiers, the person shall evaluate the following seven polycyclic aromatic hydrocarbons as carcinogens:

(A) benzo {a} anthracene;

(B) benzo {b} fluoranthene;

(C) benzo {k} fluoranthene;

(D) benzo {a} pyrene (B {a} P);

(E) chrysene;

(F) dibenzo {a, h} anthracene; and

(G) indeno {1, 2, 3-c, d} pyrene.

(2) The person shall use the relative potency factors outlined in the following figure to estimate cancer slope factors and unit risk estimates for each of the polycyclic aromatic hydrocarbons identified in paragraph (1) of this subsection for all exposure pathways (e.g., the soil ingestion, vegetable ingestion, inhalation, dermal contact with soil, and groundwater ingestion (in the absence of a primary MCL) exposure pathways):
Figure: 30 TAC §350.76(f)(2) (No change.)

(3) The cancer slope factors and inhalation unit risk factors for the seven carcinogenic polycyclic aromatic hydrocarbons, shall be calculated according to the equations set forth in the following figure:
Figure: 30 TAC §350.76(f)(3)

(4) The person shall not apply the relative potency factor for any pathways when evaluating noncarcinogenic endpoints.

(5) For class 1 or 2 groundwater, the person shall establish PCLs according to the procedures in subparagraphs (A) and (B) of this paragraph.

(A) In evaluating residential and commercial/industrial exposures to class 1 and 2 groundwater for all tiers, the person shall use the most currently available primary MCL for benzo{a}pyrene as $^{GW}GW_{Ing}$ for benzo{a}pyrene.

(B) In establishing $^{GW}GW_{Ing}$ for class 1 and 2 groundwater for the six remaining carcinogenic polycyclic aromatic hydrocarbons, the person shall use the higher of the calculated $^{GW}RBEL_{Ing}$ or the primary MCL for B{a}P as $^{GW}GW_{Ing}$ for that specific polycyclic aromatic hydrocarbon. In the event that primary MCLs for the other carcinogenic polycyclic aromatic hydrocarbons become available, those MCLs would serve as $^{GW}GW_{Ing}$ for these compounds.

(g) Total Petroleum Hydrocarbons.

(1) The person shall follow the methodology prescribed by this subsection to establish PCLs for total petroleum hydrocarbons, unless the executive director approves the use of an alternate method.

(2) In order to establish PCLs for total petroleum hydrocarbons, the person shall establish PCLs for each of the aliphatic and aromatic hydrocarbon fractions listed in the following figure (e.g., aliphatic $>C_6$-C_8) for the mandatory and complete or reasonably anticipated to be completed exposure pathways as required in §350.71(c) of this title (relating to General Requirements):
Figure: 30 TAC §350.76(g)(2)

(3) The person shall use the specific toxicity factors for the specific surrogates as shown in the figure in paragraph (2) of this

subsection for a hydrocarbon fraction. If a reference concentration is not available, then the person shall not be required to comply with §350.73(c) of this title (relating to Determination and Use of Human Toxicity Factors and Chemical Properties). The PCLs established under this subsection shall be based on noncarcinogenic effects.

(4) The person shall ensure that the PCLs established for each hydrocarbon fraction comply with the hazard quotient criteria as set forth in §350.72 of this title (relating to Carcinogenic Risk Levels and Hazard Indices for Human Health Exposure Pathways).

(5) The person shall ensure that the PCLs established for the total petroleum hydrocarbons comply with the hazard index criteria as set forth in §350.72 of this title considering only the hydrocarbon fractions as shown in the figure in paragraph (2) of this subsection. The person shall follow the methodology prescribed in §350.72(d) of this title to adjust the hydrocarbon fraction PCLs to meet the hazard index criteria for the total petroleum hydrocarbons.

(6) The person shall use an analytical method approved by the executive director to determine the concentration of the hydrocarbon fractions at the affected property.

(7) When the bulk total petroleum hydrocarbons composition can be assumed to be relatively consistent based on process knowledge, the person may establish mixture-specific (e.g., gasoline, diesel, transformer mineral oil, or other petroleum product) PCLs based on property-specific mixture compositions or mixture compositions considered to be representative of the mixture. The person shall comply with the other provisions of this subsection in the development of the mixture-specific PCLs, but the person shall be allowed to determine compliance with the mixture-specific total petroleum hydrocarbons PCL with a bulk total petroleum hydrocarbons analytical method acceptable to the executive director in lieu of analysis of the concentration of each hydrocarbon fraction.

(8) The PCLs established for each individual aliphatic and aromatic hydrocarbon fraction used to establish the mixture specific PCLs shall not exceed a hazard quotient of 1 and the mixture-specific PCL shall not exceed a hazard index of 10.

§350.77. Ecological Risk Assessment and Development of Ecological Protective Concentration Levels.

(a) General. The person shall evaluate the affected property by conducting an ecological risk assessment in a manner appropriate and consistent with subsections (b), (c), or (d) of this section. The process is discussed in the agency's ecological risk assessment guidance. The purpose of the ecological risk assessment will be to characterize the ecological setting of the affected property, identify complete or reasonably anticipated to be completed exposure pathways and representative ecological receptors, scientifically eliminate COCs that pose no unacceptable risk, and develop PCLs for selected ecological receptors where warranted. The POEs for the selected ecological receptors shall be established on a property-specific basis. However, if the person can show that no unacceptable ecological risk exists due to incomplete or insignificant exposure pathways as specified in subsection (b) of this section, or if all COCs can be eliminated as specified in subsection (c)(1), (6), (7), or (8) of this section, or if, after incorporation of site-specific information, it can be shown that there is either no ecological risk or that it is not apparent as specified in subsection (d) of this section, then the ecological risk assessment process will terminate at that point. Also, if after the ecological risk assessment process specified in subsection (b) of this section, or if at anytime during the ecological risk assessment process specified in subsections (c) or (d) of this section, the person can demonstrate to the satisfaction of the executive director that the implementation of a response action will eliminate the ecological exposure pathway or render it insignificant, or that human health PCLs will be protective of ecological receptors, then no further ecological risk assessment evaluation will be required. In addition, if after the ecological risk assessment process specified in subsection (b) of this section, the person can demonstrate to the satisfaction of the executive director that an expedited stream evaluation can determine that the completed surface water and sediment pathways are insignificant, then no further ecological risk assessment evaluation will be required. If no further ecological risk assessment evaluation is required, then the person shall provide, as appropriate, a reasoned justification and/or an expedited stream evaluation for terminating the ecological risk assessment and place this information in the affected property assessment report as described in §350.91 of this title (relating to Affected Property Assessment Report). Furthermore, after ecological PCLs have been established, the person shall have the option, where determined appropriate, of conducting an ecological services analysis as a means of managing ecological risk at the affected property, in accordance with subsection (f) of this section and §350.33(a)(3)(B) of this title (relating to Remedy Standard B). Subsections (b), (c), and (d) of this section describe a three-tiered approach to conducting an ecological risk assessment, and although there is a logical progression from one tier to the next, the person may begin the ecological evaluation of the affected property at any tier.

(b) Tier 1: exclusion criteria checklist. The person shall conduct a Tier 1 assessment at all affected properties to which this rule is applicable as presented in §350.2 of this title (relating to Applicability), unless the person elects to begin the ecological evaluation at Tier 2 or Tier 3. The person shall use the Tier 1 Exclusion Criteria Checklist provided in the following figure. The person will have fulfilled the ecological risk assessment requirements if the affected property meets the exclusion criteria. However, the person shall re-enter the ecological risk assessment process if changing circumstances result in the affected property not meeting the Tier 1 exclusion criteria. The person is required to continue the ecological risk assessment process as described in subsection (c) or (d) of this section if the affected property fails the exclusion criteria, unless the reasoned justification and/or expedited stream evaluation processes described in subsection (a) of this section are used to demonstrate that no unacceptable ecological risk exists.

Figure: 30 TAC §350.77(b)

(c) Tier 2: screening-level ecological risk assessment. The person shall conduct a screening-level ecological risk assessment to scientifically eliminate COCs that do not pose an ecological risk and to develop PCLs for those COCs that do pose an unacceptable risk to selected ecological receptors. Effect levels and exposure factors from the literature are used as early input, but Tier 2 PCLs are not developed without consideration of realistic assumptions and available site-specific information. The screening-level ecological risk assessment should contain the three following widely-acknowledged phases of an ecological risk assessment: problem formulation, which establishes the goals, breadth, and focus of the assessment; analysis, which consists of the technical evaluation of data on both the exposure of the ecological receptor to a chemical stressor and the potential adverse effects; and risk characterization, where the likelihood of adverse effects occurring as a result of exposure to a chemical stressor is evaluated. In order to develop a screening-level ecological risk assessment which appropriately evaluates ecological risk, the person shall meet the minimum requirements listed in paragraphs (1) - (10) of this subsection. Additional information on these requirements, as well as case examples, are provided in the agency's ecological assessment guidance. The person shall:

(1) use affected property concentrations of non-bioaccumulative COCs to compare to established ecological benchmarks

and/or use approved methodologies to develop benchmarks to determine potential effects and to eliminate COCs that do not pose unacceptable ecological risk (if all COCs are eliminated at this point, the ecological risk assessment process ends and the items listed in paragraphs (2) - (9) of this subsection are not required);

(2) identify communities (e.g., soil invertebrates, benthic invertebrates) and major feeding guilds (e.g., omnivorous mammals, piscivorous birds) and their representative species which are supported by habitats on the affected property for each complete or reasonably anticipated to be completed exposure pathway;

(3) develop a conceptual model which graphically depicts the movement of COCs through media to communities and the feeding guilds;

(4) discuss COC fate and transport and toxicological profiles;

(5) prepare a list of input data which includes values from the literature (e.g., exposure factors, intake equations that account for total exposure, no observed adverse effect level (NOAEL) and lowest observed adverse effect level (LOAEL) values, references), any available site-specific data, and reasonably conservative exposure assumptions, and then calculate the total exposure to selected ecological receptors from each COC not eliminated according to paragraph (1) of this subsection and present these calculations in tables or spreadsheets;

(6) utilize an ecological hazard quotient methodology to compare exposures to the NOAELs in order to eliminate COCs that pose no unacceptable risk (i.e., NOAEL hazard quotient less than or equal to 1); however, when multiple members of a class of COCs are present which exert additive effects, it is also appropriate to utilize an ecological hazard index methodology (if all COCs are eliminated at this point, the ecological risk assessment process ends and the items listed in paragraphs (7) - (9) of this subsection are not required);

(7) justify the use of less conservative assumptions (e.g., a larger home range) to adjust the exposure and repeat the hazard quotient exercise in paragraph (6) of this subsection, once again eliminating COCs that pose no unacceptable risk based on comparisons to the NOAELs and adding another set of comparisons, this time to the LOAELs, for those COCs indicating a potential risk (i.e., NOAEL hazard quotient >1); however, when multiple members of a class of COCs are present which exert additive effects, it is also appropriate to utilize an ecological hazard index methodology (if all COCs are eliminated at this point, the ecological risk assessment process ends and the items listed in paragraphs (8) and (9) of this subsection are not required);

(8) develop an "uncertainty analysis" which discusses the major areas of uncertainty associated with the screening-level ecological risk assessment, including a justification for not developing PCLs for particular COCs/pathways, if appropriate (e.g., NOAEL hazard quotient > 1 > LOAEL hazard quotient, an evaluation of the likelihood of ecological risk, a discussion of the half-life of the COCs, etc.); however, when multiple members of a class of COCs are present which exert additive effects, it is also appropriate to utilize an ecological hazard index methodology (if all COCs are eliminated at this point, the ecological risk assessment process ends and the item listed in paragraph (9) of this subsection is not required);

(9) calculate medium-specific PCLs bounded by the NOAEL and the LOAEL used in paragraph (7) of this subsection for those COCs that are not eliminated as a result of the hazard quotient exercises or the uncertainty analysis; and

(10) make a recommendation for managing ecological risk at the affected property based on the final ecological PCLs, unless proceeding under Tier 3 (may be included as part of the affected property assessment report, self-implementation notice, or the response action plan).

(d) Tier 3: site-specific ecological risk assessment. When any of the Tier 2 PCLs, as described in subsection (c) of this section, are considered by the person to be inappropriate or not reflective of existing conditions at the affected property, or when otherwise elected, the person may conduct a site-specific ecological risk assessment. If the person elects to begin the ecological evaluation of the affected property by proceeding directly to a site-specific ecological risk assessment, applicable components of a Tier 2 screening-level ecological risk assessment shall be incorporated, including subsections (c)(2) - (4), (8), and (10) of this section and other requirements of subsection (c) of this section as determined appropriate by the executive director. The purpose of the optional site-specific ecological risk assessment shall be to incorporate additional information obtained through the performance of site-specific studies designed to provide a more empirical evaluation of ecological risk at the affected property. The result of the site-specific ecological risk assessment will be the development of site-specific Tier 3 PCLs, a determination that there is no ecological risk, or a conclusion that ecological risk is not apparent based on site-specific information. Site-specific studies which may be conducted include but are not limited to:

(1) development of site-specific bioaccumulation factors through the collection and analysis of tissue samples from appropriate ecological receptors.

(2) performance of toxicological testing of the impacted media via exposure to an appropriate test species.

(3) comparison of site data (e.g., macroinvertebrate diversity surveys) to like data from a reference area.

(4) other studies designed to obtain a preponderance or "weight-of-evidence" to draw conclusions about ecological risk.

(e) Cross-media transfers of COCs. In situations where cross-media transfer of a COC from a source medium to a POE within an exposure medium must occur for the receptor to be exposed, then the person shall use the cross-media natural attenuation factor equations as shown in the figure in §350.75(b)(1) of this title (relating to Tiered Human Health Protective Concentration Level Evaluation) to calculate the PCL. In lieu of using the human health RBEL referenced in the figures, the person shall use the ecological PCL established under subsections (c) or (d) of this section.

(f) Ecological risk management options. After the ecological risk has been quantified and PCLs have been established as specified in subsections (c) or (d) of this section and it has been determined that the ecological PCL is the critical PCL, or is the only PCL, the person may either:

(1) take action to remove and/or decontaminate the impacted media and COCs as described in §350.32 of this title (relating to Remedy Standard A); or

(2) remove, decontaminate, and/or control the impacted media and COCs or, when after consultation with the Natural Resource Trustees, it is determined appropriate by the executive director, conduct an ecological services analysis in accordance with §350.33 of this title (relating to Remedy Standard B). The ecological services analysis considers the ecological risks and benefits of the potential response actions available under Remedy Standard B at the affected property and, as appropriate, factors in compensatory ecological restoration in lieu of or in addition to remediation as a means of managing residual ecological risk.

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

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SUBCHAPTER E. REPORTS

30 TAC §§350.90 - 350.96

STATUTORY AUTHORITY

The amended rules are adopted under the following statutory authority: TWC, §5.103 and §26.011, which provide the commission with authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; TWC, §5.103(c), which states the commission must adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the practice and procedure requirements of the agency, and Texas Health and Safety Code (THSC), Texas Solid Waste Disposal Act, §361.017 and §361.024, which provide the commission the authority to regulate industrial solid waste and municipal hazardous wastes and all other powers necessary or convenient to carry out its responsibilities. In addition, the amended rules are adopted under TWC, §26.039, which states that activities which are inherently or potentially capable of causing or resulting in the spillage or accidental discharge of waste or other substances and which pose serious or significant threats of pollution are subject to reasonable rules establishing safety and preventive measures which the commission may adopt or issue; TWC, §26.121, which prohibits persons from discharging wastes into or adjacent to any water in the state unless authorized to do so and prohibits persons from committing any other act or engaging in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state; TWC, §26.262, which states that it is the policy of this state to prevent the spill or discharge of hazardous substances into the waters in the state and to cause the removal of such spills and discharges without undue delay; and TWC, §26.264, which provides the commission with authority to issue rules necessary and convenient to carry out the policy referenced in TWC, §26.262. Authority to adopt the amended rules is also provided by TWC, §26.341, which states that it is the policy of this state to maintain and protect the quality of groundwater and surface water resources in the state from certain substances in underground and aboveground storage tanks that may pollute groundwater and surface water resources, and requires the use of all reasonable methods, including risk-based corrective action to implement this policy; TWC, §26.345, which provides the commission with the authority to adopt rules necessary to carry out the policy referenced in TWC, §26.341; and TWC, §26.401, which states that it is the policy of this state that discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies be conducted in a manner that will maintain present uses and not impair potential uses of groundwater or pose a public health hazard, and that the quality of groundwater be restored if feasible.

The adopted amendments implement TWC, §§5.103, 26.011, 26.039, 26.262, 26.264, 26.341, 26.345, and 26.401, and THSC, §361.017 and §361.024.

§350.90. Spatial and Electronic Information.

(a) When required, the person shall provide accurate spatial coordinates and associated data attributes that are reported in a format approved or required by the executive director.

(b) Reports required by this subchapter shall be submitted in a format, including an electronic format, and according to a schedule established by the executive director.

§350.95. Response Action Completion Report.

(a) For both Remedy Standard A and B, the person shall include in the response action completion report (RACR):

(1) information specified in §350.111(c) of this title (relating to Use of Institutional Controls) whenever an institutional control will be placed in the real property records of the county for an off-site property or leased lands;

(2) all analytical data prepared and presented in accordance with §350.54 of this title (relating to Data Acquisition and Reporting Requirements);

(3) a description of the volume and final disposal or reuse location, and a copy of any waste manifests or other documentation of disposition for waste or environmental media which were removed from the affected property; and

(4) if statistical or geostatistical methods are used to demonstrate attainment of the response objectives, the person shall include the following:

(A) a discussion of the data collection effort from an environmental medium to support this determination (e.g., judgmental samples, random sampling design, etc.);

(B) the statistical or geostatistical methodology applied; and

(C) the assumptions of the statistical or geostatistical method and how those assumptions are met.

(b) When the person selects Remedy Standard A, the RACR shall include information which documents that the requirements for response actions stated in §350.31 and §350.32 of this title (relating to General Requirements for Remedy Standards and Remedy Standard A, respectively) have been fulfilled. When applicable, the report shall also include a copy of the document that the person proposes to use to fulfill the institutional control requirements of §350.31(g) of this title (relating to General Requirements for Remedy Standards) when the affected property has been restored for commercial/industrial land use, the requirements of §350.51(l)(3) or (4) of this title (relating to Affected Property Assessment) when a non-default exposure area has been used, the requirements of §350.74(b)(1) of this title (related to Development of Risk-Based Exposure Limits) when occupational inhalation criteria have been used as RBELs, or the requirements of §350.74(j)(2) of this title (related to Development of Risk-Based Exposure Limits) when non-default RBEL exposure factors have been used.

(c) When the person selects Remedy Standard B, the RACR shall include information which documents that the response actions described in the approved RAP have been completed. The report shall:

(1) include a demonstration that the requirements of §350.31 and §350.33 of this title (relating to General Requirements for Remedy Standards and Remedy Standard B, respectively) have been fulfilled for the affected property based upon concentration of COCs remaining at the property and the application of physical and institutional controls; and

(2) document that any physical control, or combination of physical controls, (e.g., caps, slurry walls, treatment which does not constitute decontamination, and/or landfills) has been constructed or completed and is functioning as described in the approved RAP.

(d) In situations where soils which contain COCs are relocated for reuse in accordance with §350.36 of this title (relating to Relocation of Soils Containing Chemicals of Concern for Reuse Purposes), the person shall also provide:

(1) documentation of the prior written landowner consent required in §350.36(d) of this title (relating to Relocation of Soils Containing Chemicals of Concern for Reuse Purposes) for soil reuse on property not owned by the person; and

(2) documentation that any asphalt mix or road base mix meets the specifications required by the user when requested by the executive director.

(e) The person shall provide any other reasonable information required by the executive director.

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

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SUBCHAPTER F. INSTITUTIONAL CONTROLS

30 TAC §350.111

STATUTORY AUTHORITY

The amended rule is adopted under the following statutory authority: TWC, §5.103 and §26.011, which provide the commission with authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; TWC, §5.103(c), which states the commission must adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the practice and procedure requirements of the agency, and Texas Health and Safety Code (THSC), Texas Solid Waste Disposal Act, §361.017 and §361.024, which provide the commission the authority to regulate industrial solid waste and municipal hazardous wastes and all other powers necessary or convenient to carry out its responsibilities. In addition, the amended rules are adopted under TWC, §26.039, which states that activities which are inherently or potentially capable of causing or resulting in the spillage or accidental discharge of waste or other substances and which pose serious or significant threats of pollution are subject to reasonable rules establishing safety and preventive measures which the commission may adopt or issue; TWC, §26.121, which prohibits persons from discharging wastes into or adjacent to any water in the state unless authorized to do so and prohibits persons from committing any other act or engaging in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state; TWC, §26.262, which states that it is the policy of this state to prevent the spill or discharge of hazardous substances into the waters in the state and to cause the removal of such spills and discharges without undue delay; and TWC, §26.264, which provides the commission with authority to issue rules necessary and convenient to carry out the policy referenced in TWC, §26.262. Authority to adopt the amended rules is also provided by TWC, §26.341, which states that it is the policy of this state to maintain and protect the quality of groundwater and surface water resources in the state from certain substances in underground and aboveground storage tanks that may pollute groundwater and surface water resources, and requires the use of all reasonable methods, including risk-based corrective action to implement this policy; TWC, §26.345, which provides the commission with the authority to adopt rules necessary to carry out the policy referenced in TWC, §26.341; and TWC, §26.401, which states that it is the policy of this state that discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies be conducted in a manner that will maintain present uses and not impair potential uses of groundwater or pose a public health hazard, and that the quality of groundwater be restored if feasible.

The adopted amendment implements TWC, §§5.103, 26.011, 26.039, 26.262, 26.264, 26.341, 26.345, and 26.401, and THSC, §361.017 and §361.024.

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SUBCHAPTER G. ESTABLISHING A FACILITY OPERATIONS AREA

30 TAC §350.134

STATUTORY AUTHORITY

The amended rule is adopted under the following statutory authority: TWC, §5.103 and §26.011, which provide the commis-

sion with authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; TWC, §5.103(c), which states the commission must adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the practice and procedure requirements of the agency, and Texas Health and Safety Code (THSC), Texas Solid Waste Disposal Act, §361.017 and §361.024, which provide the commission the authority to regulate industrial solid waste and municipal hazardous wastes and all other powers necessary or convenient to carry out its responsibilities. In addition, the amended rules are adopted under TWC, §26.039, which states that activities which are inherently or potentially capable of causing or resulting in the spillage or accidental discharge of waste or other substances and which pose serious or significant threats of pollution are subject to reasonable rules establishing safety and preventive measures which the commission may adopt or issue; TWC, §26.121, which prohibits persons from discharging wastes into or adjacent to any water in the state unless authorized to do so and prohibits persons from committing any other act or engaging in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state; TWC, §26.262, which states that it is the policy of this state to prevent the spill or discharge of hazardous substances into the waters in the state and to cause the removal of such spills and discharges without undue delay; and TWC, §26.264, which provides the commission with authority to issue rules necessary and convenient to carry out the policy referenced in TWC, §26.262. Authority to adopt the amended rules is also provided by TWC, §26.341, which states that it is the policy of this state to maintain and protect the quality of groundwater and surface water resources in the state from certain substances in underground and aboveground storage tanks that may pollute groundwater and surface water resources, and requires the use of all reasonable methods, including risk-based corrective action to implement this policy; TWC, §26.345, which provides the commission with the authority to adopt rules necessary to carry out the policy referenced in TWC, §26.341; and TWC, §26.401, which states that it is the policy of this state that discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies be conducted in a manner that will maintain present uses and not impair potential uses of groundwater or pose a public health hazard, and that the quality of groundwater be restored if feasible.

The adopted amendment implements TWC, §§5.103, 26.011, 26.039, 26.262, 26.264, 26.341, 26.345, and 26.401, and THSC, §361.017 and §361.024.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 58. OYSTERS AND SHRIMP
SUBCHAPTER B. STATEWIDE SHRIMP FISHERY PROCLAMATION

31 TAC §58.161

The Texas Parks and Wildlife Commission adopts an amendment to §58.161, concerning Shrimping in Outside Waters, with changes to the proposed text as published in the December 22, 2006, issue of the *Texas Register* (31 TexReg 10247).

The change would impose a maximum 60-day limit on any closure of the summer Gulf shrimping season implemented by order of the executive director.

Parks and Wildlife Code, Chapter 77, authorizes the Parks and Wildlife Commission (Commission) to regulate the take, attempted take, possession, purchase, and sale of shrimp resources from the salt waters of Texas.

Under Parks and Wildlife Code, §77.062, the Commission is authorized to delegate to the Executive Director the authority to open and close the summer Gulf shrimp season in the outside waters of the state. Prior to the Commission adoption of the Shrimp Fishery Management Plan (SFMP) in 1989, the Commission had been authorized by the Shrimp Management Act of 1959 to alter the gulf closed season to provide for an earlier, later, or longer season not to exceed 60 days, and was authorized to delegate that authority to the Executive Director, provided the openings and closures were based on sound biological data. Historically, Texas state waters have been managed by the mechanism of delegated authority. In 1981, a coordinated effort to close both state and federal waters became known as the "Texas Closure" and since that time, such closures also have been implemented via delegation of authority.

Prior to the adoption of the SFMP and since the adoption of the plan, the Executive Director has exercised delegated rulemaking authority under Parks and Wildlife Code, Chapter 77, and the applicable provisions of the SFMP.

The delegation of authority by rule is consistent with Commission practice. For example, under Parks and Wildlife Code, Chapter 64, the Commission is authorized to delegate rulemaking authority to the Executive Director with respect to regulations concerning migratory game birds. The delegation of this rulemaking authority is explicitly set forth in Title 31, Chapter 65, Subchapter N, of the Texas Administrative Code. The department believes that the delegation of regulatory authority by rule aids the public in understanding the workings of the department and should be used at every opportunity; therefore, the proposed amendment explicitly codifies the delegated rulemaking authority of the Executive Director to open and close the summer shrimp season in the outside state waters of the Gulf of Mexico.

The amendment will function by delegating authority to the Executive Director of the department to open and close the summer shrimp season in the outside waters of the Gulf of Mexico.

One commenter opposed adoption of the proposed amendment and stated that the department's statement in the proposal preamble that the amendment will not result in direct costs for persons to comply with the rule was "totally wrong," and further, that it would result in a great loss of income for small businesses. The commenter did not elaborate. The department disagrees with the comment and responds that the rule as adopted does not introduce or modify any regulatory effects; it simply authorizes the executive director to act on behalf of the commission in performing a function that is already provided for by statute. No changes were made as a result of the comment.

Five commenters opposed adoption of the proposed rule if it contained the potential for a 75-day rather than a 60-day closure by order of the executive director. The department agrees with the comments and has made changes accordingly.

The department received one comment supporting adoption of the proposed amendment.

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 77, which authorizes the commission delegate to the director the duties and responsibilities of opening and closing the shrimping season under Chapter 77.

§58.161 Shrimping in Outside Waters.

(a) Gulf net restrictions.

(1) Except as otherwise provided in this section, no trawls may have a mesh size smaller than 8-3/4 inches in length between the two most widely separated knots in any consecutive series of five stretched meshes after the trawl has been used.

(2) Except as otherwise provided in this section, the presence of a shrimp trawl (excluding doors) not stored within the confines of the hull of a vessel in outside water during the closed periods provided by subsection (d) of this section is prima facie evidence of a violation of this section.

(3) Electro-trawls. In outside waters beyond 5 nautical miles, an electro-trawl having an applied voltage of no more than three volts may be used for taking shrimp.

(4) Number of trawls:

(A) There are no restrictions on the number of trawls that may be used in outside waters except as provided in this section;

(B) No more than two trawls may be used in the outside waters from shoreline out to three nautical miles except as provided in this section.

(5) Except as otherwise provided in this section, in the outside waters from shoreline out to three nautical miles, the main trawl:

(A) must have doors at least 3 feet long as measured along the door centerline from leading tip to the trailing edge of the door; and

(B) must not exceed any of the following dimensions, as measured along an uninterrupted corkline from leading tip of door to leading tip of door including any and all add-on devices or attachments to the corkline:
Figure: 31 TAC §58.161(a)(5)(B) (No change.)

(b) Bag and possession limits. During the gulf open season there are no bag and possession limits on shrimp.

(c) Size limits. Shrimp of any size may be retained when caught lawfully in the outside waters.

(d) Gulf shrimping seasons. The outside waters are open to shrimping except:

(1) The Southern Shrimp Zone from the shoreline out to 5 nautical miles is closed to shrimping from February 16 to the start date of the summer Gulf closure.

(2) Night: The outside waters from the shoreline out to 5 nautical miles is closed to night shrimping (30 minutes after sunset to 30 minutes before sunrise).

(3) Summer closed season:

(A) The outside waters are closed from 30 minutes after sunset on May 15 to 30 minutes after sunset July 15.

(B) The commission may change the opening and closing dates to provide an earlier, later, or longer closed season not to exceed 75 days, and delegates to the executive director the authority to open and close the season as provided in Parks and Wildlife Code, §77.062, not to exceed 60 days.

(C) The department will provide 72 hours public notice prior to a change in the closing date, and 24 hours public notice prior to reopening the season.

(4) The outside waters from the shoreline out to 5 nautical miles are closed from December 1 through February 15 the following year unless taking seabobs in the Northern Zone.

(5) Seabob season:

(A) Seabobs may be taken:

(i) during daylight hours only (30 minutes before sunrise to 30 minutes after sunset);

(ii) during the gulf open season; and

(iii) during the winter closed season (in the North Zone only).

(B) No person catching seabobs may catch or have on board a boat any other species of shrimp which exceed 10%, in weight or number, of the entire catch.

(C) Not more than one trawl may be used for taking Seabobs, except a try net may also be used.

(D) Net restrictions.

(i) Try nets.

(I) A trawl used as a try net may not exceed 12 feet in width as measured from the trailing edge of one door to the trailing edge of the other door.

(II) Try net trawl doors may not exceed 450 square inches each.

(ii) Main trawl

(I) Trawl width may not exceed any of the following dimensions, as measured along an uninterrupted corkline from leading tip of door including any and all add-on devices or attachments to the corkline:
Figure: 31 TAC §58.161(d)(5)(D)(ii)(I) (No change.)

(II) Mesh size: trawls used for seabobs must have a mesh size of 6-1/2 inches in length between the two most widely separated knots in a consecutive series of five stretched meshes after the trawl has been used.

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 March 1, 2007.

TRD-200700818
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: March 21, 2007
Proposal publication date: December 22, 2006
For further information, please call: (512) 389-4775

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CHAPTER 65. WILDLIFE
SUBCHAPTER T. SCIENTIFIC BREEDER'S PERMITS

31 TAC §65.610, §65.611

The Texas Parks and Wildlife Commission adopts amendments to §65.610 and §65.611, concerning Scientific Breeder's Permits, without changes to the proposed text as published in the December 15, 2006, issue of the *Texas Register* (31 TexReg 10083).

The amendments correct an inaccurate provision regarding who may receive deer from a scientific breeder on a temporary basis and a reference to a permit that no longer exists.

Current §65.610(b) stipulates that a scientific breeder may transfer deer temporarily for breeding or nursing purposes only to another scientific breeder. In a comprehensive revision of the subchapter adopted in the May 19, 2006, issue of the *Texas Register* (31 TexReg 4227), the department intended to restrict the temporary transfer of scientific breeder deer for breeding purposes but did not intend to prevent anyone from temporarily holding deer for nursing purposes. The proposed amendment is necessary to allow this to occur.

Current §65.611, concerning Prohibited Acts, provides that no person may sell deer to another person unless either the purchaser or the seller possesses a purchase permit. The extensive revision of the subchapter earlier this year eliminated both the purchase permit and transport permits and replaced them with a single permit called a transfer permit. The proposed amendment is necessary to eliminate obsolete terminology and to prevent confusion.

The amendment to §65.610 will function by allowing a scientific breeder to transfer scientific breeder deer to persons other than scientific breeders to be temporarily held for nursing purposes.

The amendment to §65.611 will function by eliminating obsolete terminology.

The department received four comments opposing adoption of the proposed rules. Of the four comments, three provided a rationale or elaboration for opposition. Those comments follow, accompanied by the agency's response to each.

Two commenters opposed the practice of keeping deer in captivity for breeding purposes, rather than the specific proposed rule changes. The department disagrees with the comments and responds that under Parks and Wildlife Code, §43.352, the department is required to issue a permit to a qualified person to possess white-tailed deer or mule deer for propagation, management, and scientific purposes. As this is a statutory requirement, the commission does not possess the authority to prohibit the practice or discontinue the program. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the fee for a scientific breeder's permit should be between $10,000 and $50,000. The department disagrees with the comment and responds that the commission policy with respect to the issuance of scientific breeder permits is to establish fees in an amount that allows the department to recoup the costs of permit processing, issuance, and enforcement. The department received four comments supporting adoption of the proposed amendments.

The Texas Deer Association commented in support of adoption of the proposed amendments.

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which provides the Commission with authority to promulgate regulations governing the possession of white-tailed deer and mule deer for scientific, management, and propagation purposes.

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 March 1, 2007.

TRD-200700819
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: March 21, 2007
Proposal publication date: December 15, 2006
For further information, please call: (512) 389-4775

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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 353. INTRODUCTORY PROVISIONS
SUBCHAPTER H. COLLECTING DELINQUENT OBLIGATIONS

31 TAC §353.122

The Texas Water Development Board (board) adopts an amendment to 31 TAC §353.122 concerning Procedures for Collecting a Delinquent Obligation without changes to the proposed text as published in the December 1, 2006, issue of the *Texas Register* (31 TexReg 9684) and will not be republished. Amendment to this section corrects a clerical error. This rulemaking has been undertaken as a result of the board's review of its rules in 31 TAC Chapter 353, as required by Government Code §2001.039.

The amendment of §353.122(a) corrects a clerical error. Section 353.122 incorrectly references §353.122, rather than §353.121, and is corrected accordingly.

There were no comments received on the amendment.

The amendment is adopted under the authority of the Texas Water Code §6.101, which provides the Texas Water Development

Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and the Texas Government Code, Chapter 2107.

The amendment implements Texas Government Code Chapter 2107 and 1 TAC §59.2 and §59.3.

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 February 28, 2007.

TRD-200700796
Wendall Corrigan Braniff
General Counsel
Texas Water Development Board
Effective date: March 20, 2007
Proposal publication date: December 1, 2006
For further information, please call: (512) 475-2052

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER E. RESIDENT RIGHTS

40 TAC §19.419

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §19.419 in Chapter 19, governing Nursing Facility Requirements for Licensure and Medicaid Certification, without changes to the proposed text published in the December 22, 2006, issue of the *Texas Register* (31 TexReg 10259).

The amendment is adopted to comply with Senate Bill 1188, 79th Texas Legislature, Regular Session, 2005, which added §531.083 to the Texas Government Code. Section 531.083 requires HHSC to ensure that all Medicaid recipients who reside in a nursing facility are provided information about end-of-life care options and the importance of planning for end-of-life care. HHSC delegated this responsibility to DADS, and DADS staff convened a workgroup to develop educational material related to advance care planning for use by nursing facilities. The adopted amendment will provide HHSC a means to ensure that it meets the statutory mandate, as DADS will require a nursing facility to provide the educational material related to advance care planning to a resident, or other appropriate person as described in the rule, and to document in the resident's clinical record that the material was provided.

The amendment is also adopted to update and clarify terminology used in the rule.

DADS received no comments regarding adoption of the amendment.

The amendment is adopted 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 Government Code, §531.083, which requires HHSC to ensure that all Medicaid recipients who reside in a nursing facility in Texas are provided information about end-of-life care options and the importance of planning for end-of-life care.

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 March 2, 2007.

TRD-200700821
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: April 1, 2007
Proposal publication date: December 22, 2006
For further information, please call: (512) 438-4162

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CHAPTER 92. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§92.3, 92.10, 92.12, 92.15, 92.41, and 92.559 in Chapter 92, governing Licensing Standards for Assisted Living Facilities, without changes to the proposed text published in the December 22, 2006, issue of the *Texas Register* (31 TexReg 10267).

The amendments to §§92.3, 92.10, 92.12, and 92.15 are adopted to comply with House Bill 1558 and Senate Bill 1055, 79th Texas Legislature, Regular Session, 2005, which added §247.032 to the Texas Health and Safety Code. Section 247.032 requires DADS to accept an accreditation survey of an assisted living facility (facility) conducted by an accreditation commission instead of an initial or annual licensing survey of the facility conducted by DADS staff, under specified circumstances. The statute requires, in part, that the accreditation commission have standards that meet or exceed the state requirements for licensing found in Title 40, Chapter 92 of the Texas Administrative Code. The statute does not require a facility to obtain accreditation by an accreditation commission; it simply offers an accreditation survey conducted by an accreditation commission as an option instead of the initial or annual licensing survey conducted by DADS staff.

A new licensing standard and an associated administrative penalty concerning accreditation status are adopted at

§92.41(q) and §92.559 to require a facility using an accreditation survey of an accreditation commission, instead of an initial or annual licensing survey conducted by DADS staff, to notify DADS if the accreditation commission changes the facility's accreditation status. By requiring this notification, DADS will learn if a facility is no longer accredited. DADS can then investigate the problem that caused the facility to lose its accreditation and schedule a licensure visit, as appropriate.

DADS received no comments regarding adoption of the amendments.

SUBCHAPTER A. INTRODUCTION

40 TAC §92.3

The amendment is adopted 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 Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities.

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 March 2, 2007.

TRD-200700822
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: April 1, 2007
Proposal publication date: December 22, 2006
For further information, please call: (512) 438-4162

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SUBCHAPTER B. APPLICATION PROCEDURES

40 TAC §§92.10, 92.12, 92.15

The amendments are adopted 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 Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities.

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 March 2, 2007.

TRD-200700823
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: April 1, 2007
Proposal publication date: December 22, 2006
For further information, please call: (512) 438-4162

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SUBCHAPTER C. STANDARDS FOR LICENSURE

40 TAC §92.41

The amendment is adopted 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 Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities.

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 March 2, 2007.

TRD-200700824
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: April 1, 2007
Proposal publication date: December 22, 2006
For further information, please call: (512) 438-4162

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SUBCHAPTER H. ENFORCEMENT DIVISION 9. ADMINISTRATIVE PENALTIES

40 TAC §92.559

The amendment is adopted 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 Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities.

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 March 2, 2007.

TRD-200700825
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: April 1, 2007
Proposal publication date: December 22, 2006
For further information, please call: (512) 438-4162

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 2. ENVIRONMENTAL POLICY
SUBCHAPTER D. PUBLIC PARTICIPATION PROGRAMS

43 TAC §2.67

The Texas Department of Transportation (department) adopts new §2.67, concerning the Landscape Partnership Program. New §2.67 is adopted without changes to the proposed text as published in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10750) and will not be republished.

EXPLANATION OF ADOPTED NEW SECTION

New §2.67, Landscape Partnership Program, allows local governments or private entities to support the aesthetic improvement of the state highway system by donating 100% of the development, establishment, and maintenance of a landscape project on the right of way. The section also specifies the eligibility and signage requirements for the program.

The language in subsection (a) explains the purpose of the Landscape Partnership Program. The program improves the aesthetics on state highway right of way by allowing other entities to participate in landscaping projects on state owned right of ways.

Subsection (b) maximizes the use of taxpayer revenue by providing that a local government, a private business, or a civic organization may participate in the program. Private businesses or civic organizations can participate by providing donations to a local government participating in the program or by donations directly to the department. All donations will be processed under Title 43 Chapter 1, Subchapter G, Texas Administrative Code including the acceptance process and the donation agreement. As an incentive to participate in the program, the rule allows a sign to be erected at the project site announcing the entity's participation in the program. The sign must be erected and maintained by the donor for the duration of the project agreement.

Subsection (c) provides the application requirements. Applications must be submitted to the local district engineer and shall include the date, donor contact information, the location of the proposed site, and a project concept plan containing sketches, drawings, specifications, and descriptive text as necessary for the department to consider the application.

Subsection (d) provides the general conditions each project must meet for consideration in the program. The language provides that if the project is approved, the work will be performed by the local government or donor. This exception to allow other entities access and authority to perform work on state right of way maximizes the effectiveness of the program.

In order to protect the safety of the traveling public and the integrity of the state highway system, the language provides that the department will only consider sites that are not scheduled for future construction, contain sufficient space to permit the project without raising safety concerns, that do not have drainage issues and that do not contain utilities, driveways, pavement, sidewalks, highway signs or other highway system fixtures. The design project must be acceptable to the department and must not contain flagpoles, pennant poles, fountains, water features, statuary, sculptures, or other art objects. In addition, the plant material or fixtures cannot require an intense level of continued establishment or maintenance nor can the design elements incorporate a logo or other advertisement.

For public safety purposes, subsection (e) provides the department the authority to consider additional factors such as width of the right of way, congestion, sight distance, and maintenance requirements in approving a proposed project. This subsection also states that the sign used to recognize the local government or donor entity shall be four feet by four feet and shall conform to all requirements of the Texas Manual on Uniform Traffic Control Devices. It also provides that the donor or local government shall pay all costs associated with the sign. In addition, this subsection also states that the program is independent and cannot be combined with any other landscape-related programs sponsored by the department.

In order for the department to maintain adequate control over its right of way, subsection (f) provides that a written agreement must be signed prior to initiating any work on the project. The agreement shall be in a form prescribed by the department and shall be for a period not less than two years. A donation schedule shall be included in the agreement if it is applicable to the particular project.

Subsection (g) outlines the procedure for modifying or terminating the agreement. The department has sole discretion on any modifications to the agreement. The language provides that if the project is not installed within one year, the agreement is void. It also provides that the department can remove the project if the local government or donor fails to maintain the project according to the agreement.

COMMENTS

No comments on the proposed new section were received.

STATUTORY AUTHORITY

The new section is adopted 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

None.

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 March 1, 2007.

TRD-200700815

Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: March 21, 2007
Proposal publication date: December 29, 2006
For further information, please call: (512) 463-8683

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Employees Retirement System of Texas

Title 34, Part 4

TRD-200700813

Filed: February 28, 2007

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Proposed Rule Reviews

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Title 4, Part 3

In accordance with the Texas Government Code §2001.039 regarding Agency Review of Existing Rules and requiring state agencies and other governmental bodies to review their rules every four years, Texas Feed and Fertilizer Control Service (TFFCS)/Office of the Texas State Chemist (OTSC) files an intent to review Title 4, Part 3, Chapter 61, Commercial Feed Rules during April, May and June of 2007.

All comments or questions regarding the notice of intention to review may be submitted in writing within 30 days following the publication of notice in the *Texas Register* and should be directed to Dr. Tim Herrman, State Chemist and Director, Office of the Texas State Chemist, at P.O. Box 3160, College Station, Texas 77841-3160; fax at (979) 845-1389; or via e-mail at tjh@otsc.tamu.edu. Any proposed amendments or repeal of any rule as a result of the review will be published in the "Proposed Rules" section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal. Any questions/comments should also be directed to Dr. Herrman as above.

TRD-200700859

Dr. Timothy J. Herrman

State Chemist and Director

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Filed: March 5, 2007

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In accordance with the Texas Government Code §2001.039 regarding Agency Review of Existing Rules and requiring state agencies and other governmental bodies to review their rules every four years, Texas Feed and Fertilizer Control Service (TFFCS)/Office of the Texas State Chemist (OTSC) files an intent to review Title 4, Part 3, Chapter 63, Commercial Pet Food Rules during April, May and June of 2007.

All comments or questions regarding the notice of intention to review may be submitted in writing within 30 days following the publication of notice in the *Texas Register* and should be directed to Dr. Tim Herrman, State Chemist and Director, Office of the Texas State Chemist, at P.O. Box 3160, College Station, Texas 77841-3160; fax at (979) 845-1389; or via e-mail at tjh@otsc.tamu.edu. Any proposed amendments or repeal of any rule as a result of the review will be published in the "Proposed Rules" section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal. Any questions/comments should also be directed to Dr. Herrman as above.

TRD-200700860

Dr. Timothy J. Herrman

State Chemist and Director

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Filed: March 5, 2007

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In accordance with the Texas Government Code §2001.039 regarding Agency Review of Existing Rules and requiring state agencies and other governmental bodies to review their rules every four years, Texas Feed and Fertilizer Control Service (TFFCS)/Office of the Texas State Chemist (OTSC) files an intent to review Title 4, Part 3, Chapter 65, Commercial Fertilizer Rules during April, May and June of 2007.

All comments or questions regarding the notice of intention to review may be submitted in writing within 30 days following the publication of notice in the *Texas Register* and should be directed to Dr. Tim Herrman, State Chemist and Director, Office of the Texas State Chemist, at P.O. Box 3160, College Station, Texas 77841-3160; fax at (979) 845-1389; or via e-mail at tjh@otsc.tamu.edu. Any proposed amendments or repeal of any rule as a result of the review will be published in the "Proposed Rules" section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal. Any questions/comments should also be directed to Dr. Herrman as above.

TRD-200700861

Dr. Timothy J. Herrman

State Chemist and Director

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Filed: March 5, 2007

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Adopted Rule Reviews

Employees Retirement System of Texas

Title 34, Part 4

Pursuant to the notice of proposed rule review that was published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9367), the Employees Retirement System of Texas (ERS) has reviewed 34 Texas Administrative Code (TAC), Chapter 61, Terms and Phrases, pursuant to Texas Government Code §2001.039, to determine whether the reasons for adopting these rules continue to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reasons for adopting these rules continue to exist, and therefore, the Board readopts Chapter 61. This completes ERS' review of 34 TAC Chapter 61, Terms and Phrases.

TRD-200700807
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: February 28, 2007

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Pursuant to the notice of the proposed rule review that was published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9368), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC), Chapter 63, Board of Trustees, pursuant to Texas Government Code §2001.039, to determine whether the reasons for adopting these rules continue to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reasons for adopting these rules continue to exist, and therefore, the Board readopts Chapter 63. This completes ERS' review of 34 TAC Chapter 63, Board of Trustees.

TRD-200700808
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: February 28, 2007

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Pursuant to the notice of proposed rule review that was published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9368), the Employees Retirement System of Texas (ERS) has reviewed 34 Texas Administrative Code (TAC), Chapter 65, Executive Director, pursuant to Texas Government Code §2001.039, to determine whether the reasons for adopting these rules continue to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reasons for adopting these rules continue to exist, and therefore, the Board readopts Chapter 65. It is anticipated, however, that as a result of the review, amendments to Chapter 65 will be proposed at a later date. This completes ERS' review of 34 TAC Chapter 65, Executive Director.

TRD-200700809
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: February 28, 2007

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Pursuant to the notice of proposed rule review that was published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9368), the Employees Retirement System of Texas (ERS) has reviewed 34 Texas Administrative Code (TAC), Chapter 67, Hearings on Disputed Claims, pursuant to Texas Government Code §2001.039, to determine whether the reasons for adopting these rules continue to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reasons for adopting these rules continue to exist, and therefore, the Board readopts Chapter 67. This completes ERS' review of 34 TAC Chapter 67, Hearings on Disputed Claims.

TRD-200700810
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: February 28, 2007

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Pursuant to the notice of proposed rule review that was published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9368), the Employees Retirement System of Texas (ERS) has reviewed 34 Texas Administrative Code (TAC), Chapter 85, Flexible Benefits, pursuant to Texas Government Code §2001.039, to determine whether the reasons for adopting these rules continue to exist.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reasons for adopting these rules continue to exist, and therefore, the Board readopts Chapter 85. It is anticipated, however, that as a result of the review, amendments to Chapter 85 will be proposed at a later date.

No comments were received concerning the proposed review.

This completes ERS' review of 34 TAC Chapter 85, Flexible Benefits.

TRD-200700811
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: February 28, 2007

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Pursuant to the notice of proposed rule review that was published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9368), the Employees Retirement System of Texas (ERS) has reviewed 34 Texas Administrative Code (TAC), Chapter 87, Deferred Compensation, pursuant to Texas Government Code §2001.039, to determine whether the reasons for adopting these rules continue to exist.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reasons for adopting these rules continue to exist, and therefore, the Board readopts Chapter 87. It is anticipated, however, that as a result of the review, amendments to Chapter 87 will be proposed at a later date.

No comments were received concerning the proposed review.

This completes ERS' review of 34 TAC Chapter 87, Deferred Compensation.

TRD-200700812
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: February 28, 2007

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Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy adopts the review of Chapter 291, Subchapter A, §§291.1 - 291.27, concerning All Classes of Pharmacies, pursuant to the Texas Government Code, §2001.039, regarding Agency Review of Existing Rules. The proposed review was published in the December 15, 2006, issue of the *Texas Register* (31 TexReg 10107).

No comments were received.

The agency finds the reason for adopting the rules continues to exist.

TRD-200700849
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: March 5, 2007

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The Texas State Board of Pharmacy adopts the review of Chapter 291, Subchapter E, §§291.91 - 291.94, concerning Clinic Pharmacy pursuant to Texas Government Code, §2001.039, regarding Agency Review of Existing Rules. The proposed review was published in the December 15, 2006, issue of the *Texas Register* (31 TexReg 10107).

No comments were received.

The agency finds the reason for adopting the rules continues to exist.

TRD-200700852
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: March 5, 2007

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Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) readopts Texas Administrative Code (TAC), Chapter 26, Substantive Rules Applicable to Telecommunications Service Providers, pursuant to the Texas Government Code, Administrative Procedure Act (APA), §2001.039, Agency Review of Existing Rules. The notice of intention to review Chapter 26 was published in the *Texas Register* on September 8, 2006 (31 TexReg 7580). Project Number 33043 is assigned to this proceeding. This concludes the review of Chapter 26 pursuant to APA §2001.039.

APA §2001.039 requires that each state agency review its rules every four years and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to the Texas Government Code, Chapter 2001. Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rules continues to exist. The commission requested specific comments on whether the reason for adopting the substantive rules in Chapter 26 continues to exist.

The commission finds that the reasons for adopting Chapter 26 continue to exist. However, the commission also finds that certain sections need amendments and other sections are obsolete due to changes in the telecommunications industry or the passage of time. Separate rulemaking proceedings will be initiated to amend or repeal these sections as discussed further in this preamble.

The commission received written comments from Southwestern Bell Telephone, LP, doing business as AT&T Texas (AT&T Texas); Central Telephone Company of Texas, Incorporated, doing business as Embarq, and United Telephone Company of Texas, Incorporated, doing business as Embarq (collectively Embarq); John Staurulakis, Incorporated (JSI); Texas Statewide Telephone Cooperative, Incorporated (TSTCI); Texas Telephone Association (TTA); and Verizon Southwest, MCImetro Access Transmission Services LLC, doing business as Verizon Access Transmission Services, and MCI Communications Services, Incorporated, doing business as Verizon Business Services (hereinafter collectively Verizon).

Reply comments were received from DialToneServices, LP (DTS).

General comments

Verizon argued that the reduction of business regulation, the degree of competition for business services and the effectiveness of market forces indicate that regulations related to business customers are no longer necessary and that this is consistent with the provisions of Public Utility Regulatory Act (PURA) §51.001(a). In addition to specific sections that will be addressed in the analysis of comments that follows, Verizon's position is applicable to §26.1, Purpose and Scope of Rules, §26.23, Refusal of Service, §26.24, Credit Requirements and Deposits, §26.27, Bill Payment and Adjustments, §26.28, Suspension or Disconnection of Service, §26.30, Complaints, §26.51, Continuity of Service, §26.54, Service Objectives and Performance Benchmarks, §26.55, Monitoring of Service, and §26.81, Service Quality Reports. Each of these sections, Verizon argued, should be revised or repealed with regard to its application for business customers to reflect the current competitive telecommunications market.

Although other responding parties did not argue for the complete elimination of regulation that applies to business customers, several parties made similar arguments regarding the effect of the competitive market upon existing regulations. Those arguments will be examined as they pertain to each applicable section.

Commission response

The commission believes that the current market conditions justify the continued application of the majority of its rules. The rules provide strong customer protections while allowing the flexibility necessary to encourage increased competition. The commission's rules serve to enhance competition by adjusting regulation to match the degree of competition in the marketplace. The rules thereby reduce the cost and burden of regulation to the extent warranted by market conditions and protect markets that are not sufficiently competitive. In this way, the commission's rules implement the state's telecommunications policy as stated in PURA §51.001(b) to: "(1) promote diversity of telecommunications providers and interconnectivity; (2) encourage a fully competitive telecommunications marketplace; and (3) maintain a wide availability of high quality, interoperable, standards-based telecommunications services at affordable rates." The commission continues to monitor the market and will make appropriate changes to these rules when necessitated by future market conditions. As a result of its evaluation of parties' comments, and discussed in more detail below, the commission will undertake amendments in subsequent rulemaking proceedings where appropriate.

Comments on specific rule sections

Subchapter A, General

Comments on §26.1, Purpose and Scope of Rules

Verizon argued that the reduction of business regulation, the degree of competition for business services and the effectiveness of market forces indicate that regulations related to business customers are no

longer necessary and that this is consistent with the provisions of PURA §51.001(a). Verizon's position regarding this section appeared to be that the section contents must be revised to reflect the repeal and amendment of sections discussed in its comments and particularly to reflect the current competitive telecommunications market.

Commission response

The commission does not believe that this section requires amendment at this time. The *Purpose and Scope of Rules* states generally the intention of the commission's rules. The amendments and revisions incorporated as a result of this project do not substantially affect the section. Should future rulemakings result in a substantive change that alters this section, the commission will consider revision or amendment of the section at that time.

Comments on §26.2, Cross-Reference Reference Transition

JSI and TTA recommended the repeal of this section, and noted that it had been created for use during the interim between the commission's change from Chapter 23 to Chapter 26. JSI and TTA also noted that Chapter 26 still contains references to Chapter 23 and recommended they be eliminated in this proceeding as well. Such references will be discussed in connection with the sections in which they are located.

Commission response

The commission agrees with JSI and TTA that this section has expired and will propose its repeal in a separate rulemaking proceeding. The commission will also propose amendments and revisions to correct inappropriate cross references, such as those in this instance referring to Chapter 23, in a separate rulemaking proceeding.

Comments on §26.5, Definitions

AT&T and Verizon recommended this section be amended to revise definitions and to eliminate inconsistencies between PURA Chapter 65 deregulated or transitioning companies and those telecommunications providers regarded as "dominant carriers." AT&T particularly noted definitions (66), dominant carrier (DCTU), and (139), non-dominant certificated telecommunications utility (NCTU), require re-definition as a result of the transition from rate-of-return regulation to incentive regulation and deregulation.

Commission response

The commission believes that the parties have a valid point because the definitions section does not reflect the adoption of PURA Chapter 65 deregulated or transitioning companies. The commission notes that the new §26.230 was only recently adopted to address Chapter 65 applications. However, an in-depth review of this section will require a separate rulemaking project, which will be initiated by the commission at a future date.

Comments on §26.8, Relief for Victims of Hurricanes Katrina and Rita

AT&T, JSI and TTA recommended the repeal of this section and stated that it had expired on January 29, 2006, pursuant to its own terms.

Commission response

The commission notes that this rule expired on January 29, 2006 and has been eliminated. Therefore, no action is required.

Subchapter B, Customer Service and Protection

Comments on §26.21, General Provisions of Customer Service and Protection Rules and §26.22, Request for Service

Verizon reiterated its position that any Chapter 26 section that applied to business customers should be re-examined in light of the current competitive telecommunications market, but noted that such action would require amendment to PURA §51.003 to add business as an entity for which the title did not apply.

Commission response

The commission agrees with Verizon's conclusion that the elimination of its rules pertaining to business customers would require an amendment of PURA. Therefore, the commission does not believe this proceeding is the appropriate venue for the revisions Verizon seeks related to incumbent local exchange carriers' (ILECs') obligations to business customers. Therefore, the commission will take no action on this issue at this time. The commission notes that Verizon raised this same issue regarding PURA §51.003, in relationship to the following sections: §§26.23, 26.24, 26.27, 26.28, 26.30, 26.51, 26.54, 26.55, and 26.81. In each instance the commission concludes that action is not appropriate unless statutory changes have occurred.

Comments on §26.23, Refusal of Service

AT&T recommended amendment of subsection (a)(1) to include a definition of "applicant" that should also be included as a new definition in §26.5. This proposed definition would require persons applying for telecommunications services to provide minimum verifiable identification for name and address. AT&T argued that §26.23(a)(1)(D) intends to insure an applicant is not seeking service for another customer and that the inclusion of a commission approved definition will insure providers provide notice of refusal of service correctly and also reduce the incidence of identity theft.

Commission response

The commission is not persuaded that the definition sought by AT&T in the context of this section and §26.5 resolves the concerns it raised. The commission believes that the section as currently written addresses the concerns as far as the commission's authority provides. The commission does not prevent telecommunications providers from seeking verifiable identification from applicants and does not believe that the action requested would significantly reduce the incidence of notice problems and identity theft discussed. Therefore, the commission will not take the requested action.

Comments on §26.26, Foreign Language Requirement

Verizon argued that this section should not apply to business customers and stated that the elimination of this requirement would require revision of legislative action to amend PURA §64.004(a)(3) to remove application to business customers.

Commission response

The commission agrees that PURA §64.004(a)(3) would require revision to eliminate the necessity for Verizon's compliance with this requirement. Such action has not been taken, and therefore the commission does not have the authority to consider such a revision at this time.

Comments on §26.29, Prepaid Local Telephone Service (PLTS)

Embarq, JSI and TTA argued that the PLTS offering is no longer a valid obligation because customers have multiple service options available in the current competitive telecommunications market. All of the parties stated that PLTS distorts the marketplace and places the incumbent local exchange carriers (ILECs) at a competitive disadvantage. Embarq argued further that the requirement should at least be eliminated for Chapter 65 electing providers.

AT&T recommended the commission amend subsection (c)(1) and (2) to shorten the customer notice and provide the customer with alternative service options in those cases where service disconnection is imminent. AT&T argued that the detail required in the notice, coupled with the small number of customers receiving the PLTS service, makes it unlikely that the notice is understandable to the customers.

Commission response

The commission notes that the provisions of PURA §55.013 required the establishment of requirements protecting customers' basic local service and that these provisions have not changed. Therefore, the commission believes that the argument of Embarq, JSI and TTA lacks merit. Concerning AT&T's argument regarding the complexity of the required notice, the commission does not believe that a thorough review of the notice provisions for PLTS may be accomplished in this proceeding. In addition, the commission is not inclined to reduce the information provided to customers and does not believe that anything in the section prevents a telecommunications provider from providing the information AT&T recommends, regarding alternative services, should the customer contact the provider as a follow-up to the notice. Therefore, the commission will not take the requested action.

Comments on §26.31, Disclosures to Applicants and Customers

JSI and AT&T recommended that the notice requirements of this section be streamlined into one annual notice and argued that providers should be required to provide all necessary notice at the time that service is initially implemented and at the time of any move or change in service. Further, they argued that subsection (a) is not necessary for business customers with fewer than 5 access lines and that the current cycle of frequent bill inserts and bill messages results in customers' disregarding notices generally.

Commission response

The current notice requirements were adopted to guarantee that all customers are adequately alerted to important matters related to their service on a frequent basis. Customers cannot be expected to retain all of the necessary information inherent in these notices over prolonged periods. Therefore, the commission will not take the requested action.

Comments on §26.32, Protection Against Unauthorized Billing Charges

Verizon argued that PURA §64, Subchapters C and D, should be amended to remove the application of obligations to business customers, again noting the impact of the competitive marketplace.

Commission response

The commission will not address this issue unless statutory changes are made.

Comments on §26.34, Telephone Prepaid Calling Services

Verizon recommended legislative review of PURA §55.253 to repeal the application of this section to business customers, again noting the impact of the competitive marketplace.

Commission response

The commission will not address this issue unless statutory changes are made.

Subchapter C, Quality of Service

Comments on §26.51, Continuity of Service

JSI and TTA noted the out-dated references to the "Year 2000 compliance" in subsections (a), (b) and (g) and also suggested that subsection (g) material be moved to §26.52, related to Emergency Operations.

Commission response

The commission agrees and notes that a consolidated rulemaking for §26.51 and §26.52 will be conducted, during which it will examine the issues raised by comments in this project as well as other matters of interest to the commission.

Comments on §26.52, Emergency Operations

JSI and TSTCI recommended amendment of subsection (a) to include all ETPs as opposed to just DCTUs. TSTCI noted that such a change would be consistent with §26.417(c)(1)(D) ETP requirements. JSI and TSTCI also recommended that the material in §26.51(g) be moved to this section because it pertains to emergency operations.

DTS replied that the application of this rule to technologies other than landline, such as DTS' satellite services or cellular services, has been addressed in the commission's rulings in other proceedings. DTS argued that if this rule is amended, it should be made clear that these requirements apply to non-wireline providers only to the extent that their facilities are the same or analogous to networks of wireline providers. In the alternative, DTS recommended that the commission establish standards specific to facilities of non-wireline providers.

Commission response

The commission notes that the revisions recommended by JSI and TSTCI, with regard to the inclusion of §26.51(g) provisions in this section, and the inclusion of all ETPs as obligated telecommunications carriers, require a thorough evaluation of the section as a whole. Further, as noted by the reply comments received from DTS, the matter of expanding the obligations of this section to ETPs generally, including carriers using technology other than landline services, is one which requires an appropriate review and examination of the technological and competitive impacts. Though the commission will not take the requested action, the commission notes that a consolidated rulemaking for §26.51 and §26.52 will be conducted, during which it will examine the issues raised by comments in this project as well as other matters of interest to the commission.

Comments on §26.53, Inspections and Tests

JSI, TSTCI and TTA recommended this section be repealed, stating that the commission no longer performs central office testing. However, parties noted that, if the rule is retained, subsection (a) should be modified to include all ETPs, not just the DCTUs and that subsection (c) should be modified to require all providers to release test termination numbers to the commission upon request. TTA also argued that an amendment that states "upon request of the commission" should be considered at a minimum.

DTS replied that the application of this rule to technologies other than landline, such as DTS' satellite services or cellular services, has been addressed in the commission's rulings in other proceedings. DTS argued that if this rule is amended, it should be made clear that these requirements apply to non-wireline providers only to the extent that their facilities are the same or analogous to networks of wireline providers. In the alternative, DTS recommended that the commission establish standards specific to facilities of non-wireline providers.

Commission response

As previously stated, the commission does not believe that this is the appropriate project for a broad review of the section's requirements as recommended by JSI, TSTCI and TTA, and the examination of competitive and technological impacts, as noted by DTS, requires a comprehensive review. The commission will not act upon the parties' recommendations, and notes that current testing occurs only as required in exchanges that are fully regulated.

Comments on §26.54, Service Objectives and Performance Benchmarks

JSI, TTA and TSTCI recommended this section be amended, noting that the recommendations in Project Number 32460, *Project to Review and Evaluate Telecommunications Carriers' Reporting Requirements and Provide Recommendations Pursuant to Senate Bill (SB) 408 Section 13, 79th Legislative Session*, included elimination of the sub-

section (b)(2) reporting requirements, because all telecommunications providers have now complied with the requirement of the section. JSI and TTA also argued that the obligation to support analog data equipment should be eliminated, and that providers should be allowed the option of either 14.4 kilobits per second or the high speed alternative. TSTCI noted that it is difficult to measure and enforce the current standards for facsimile machines. JSI and TSTCI also argued that this rule should apply to all ETPs, not just the DCTUs.

DTS replied that the application of this rule to technologies other than landline, such as DTS' satellite services or cellular services, has been addressed in the commission's rulings in other proceedings. DTS argued that if this rule is amended, it should be made clear that these requirements apply to non-wireline providers only to the extent that their facilities are the same or analogous to networks of wireline providers. In the alternative, DTS recommended that the commission should establish standards specific to facilities of non-wireline providers.

Commission response

The commission expects to conduct a rulemaking to include §26.77 and §26.98, as well as this section, §26.54, to address matters discussed in its legislative report pursuant to SB 408. In addition, as previously noted, DTS' reply comments raise the issue of the application of commission infrastructure standards to non-wireline carriers' technologies, which will require a complete review and evaluation in an appropriate venue. Therefore, the commission will not act upon parties' recommendations.

Comments on §26.55, Monitoring of Service

JSI and TTA recommended that this section be repealed because it is inappropriate and vague with regard to the monitoring, by telecommunications providers, of employee telephone calls.

Commission response

The commission does not agree with the conclusions of JSI and TTA and believes that the current requirement insures that notice of monitoring activities is provided to affected employees. Therefore, the commission will not repeal this section at this time.

Subchapter D, Records, Reports, and Other Required Information

Comments on §26.71, General Procedures, Requirements, and Penalties

JSI and TTA recommended that the commission amend subsection (f) to eliminate the reporting requirement cross references, pursuant to the commission's conclusions in Project Number 32460 regarding the elimination of certain financial reports.

Commission response

The commission notes that Project Number 33401, *Rulemaking to Amend and/or Repeal Commission Rules Related to the Filing of Financial Reports as Recommended in Project Number 32460*, pending, addresses the elimination and revision of financial reporting requirements contained in §§26.73, 26.77, 26.84 and 26.98 pursuant to the conclusions contained in its legislative report submitted in Project Number 32460. Therefore, the commission believes the elimination of these cross references, as recommended by JSI and TTA, is premature at this time. The commission will make appropriate adjustments to these cross references at the conclusion of Project Number 33401 in a separate rulemaking proceeding.

Comments on §26.73, Financial and Operating Reports

JSI and TTA recommended that the commission amend this section to eliminate reporting requirements, pursuant to the commission's conclusions in Project Number 32460.

Commission response

As stated previously, Project Number 33401 is currently addressing the financial reporting requirements contained in §§26.73, 26.77, 26.84 and 26.98, pursuant to the commission's evaluation and conclusions in Project Number 32460. Therefore, the commission will not address this issue in this proceeding.

Comments on §26.75, Reports on Sale of 50% or More of Stock

JSI and TTA recommended this section be repealed because §26.101(c) already requires the commission's approval of any certificate of convenience and necessity (CCN) transfer, and the sale of 50% of stock would constitute a sale, transfer or merger requiring a §26.101 amendment application. Therefore, JSI and TTA argued that §26.75 is duplicative.

Commission response

The commission is not persuaded that the requirements in this section are duplicative of those in §26.101(c). Because it is important for the commission to maintain accurate records of telecommunications' providers' ownership, the commission will not take the requested action.

Comments on §26.77, Payments, Compensation, and other Expenditures

JSI and TTA recommended that the commission repeal this section pursuant to the commission's conclusions in Project Number 32460, regarding the elimination of the reporting requirements.

Commission response

In Project Number 33401, the commission is addressing the financial reporting requirements contained in §§26.73, 26.77, 26.84 and 26.98, pursuant to the commission's evaluation and conclusions in Project Number 32460. Therefore, the commission will not address this issue in this proceeding.

Comments on §26.78, State Agency Utility Account Information

JSI recommended the commission streamline the reporting requirements in this section pursuant to its conclusions in Project Number 32460.

Commission response

As noted in the commission's legislative report pursuant to SB 408 (the result of Project Number 32460), the commission will examine this section's requirements in a separate rulemaking proceeding following the 80th legislative session (2007).

Comments on §26.80, Annual Report on Historically Underutilized Businesses

JSI recommended the repeal of this section, or alternately the consolidation of this reporting requirement with that in §26.85, relating to Workforce Diversity, pursuant to the commission's discussion in Project Number 32460.

Commission response

The commission notes that in its evaluation of this section for the legislative report, produced as a result of Project Number 32460, it recommended the 80th legislature review the PURA requirements. Depending upon the legislature's action, the commission may consider a separate rulemaking to either implement statutory changes or consolidate and revise reporting requirements.

Comments on §26.81, Service Quality Reports

JSI and TTA recommended the commission repeal this section, stating that the commission has not developed a uniform reporting requirement and that §26.54(c) contains a better reporting requirement.

Commission response

The commission is not persuaded that this section should be repealed. The information collected in these reports is used to evaluate providers' service provisions and to address consumer complaints in exchanges that are regulated. Therefore, the commission will not eliminate these requirements.

Comments on §26.82, Construction Reports

JSI and TTA recommended, pursuant to the commission's conclusions in Project Number 32460, that this section be repealed to eliminate the reporting requirement.

Commission response

The commission intends to establish a separate rulemaking project to examine the repeal and revision of infrastructure reports pursuant to its evaluation in Project Number 32460. Therefore, the commission will not take action at this time.

Comments on §26.84, Annual Report of Affiliate Transactions of DCTUs

JSI and TTA recommended, pursuant to the commission's conclusions in Project Number 32460, that this section be repealed to eliminate the reporting requirement.

Commission response

The commission's current Project Number 33401 addresses financial reporting requirements contained in §§26.73, 26.77, 26.84 and 26.98 that were determined, in Project Number 32460, to be obsolete. Therefore, the commission will not address this issue in this proceeding.

Comments on §26.87, Infrastructure Reports

JSI and TTA recommended, pursuant to the commission's conclusions in Project Number 32460, that this section be repealed to eliminate the reporting requirement.

Commission response

The commission intends to establish a separate rulemaking project to examine the repeal and revision of infrastructure reports that were evaluated in Project Number 32460. Therefore, the commission will not take action at this time.

Comments on §26.88, Traffic Usage Studies

AT&T, JSI, and TSTCI recommended this section be repealed because the Federal Communications Commission (FCC) froze interstate traffic factors and intrastate factors in 2001, making the reporting requirement obsolete.

Commission response

The commission agrees that this section is obsolete, because the original reasons for collecting the traffic usage data no longer exist and because the telecommunications traffic composition has changed dramatically since the time this section was adopted. The commission will initiate a separate rulemaking proceeding to accomplish this repeal.

Comments on §26.89, Information Regarding Rates and Services of Nondominant Carriers

JSI and TTA recommended amendment of this section, stating that because non-dominant carriers already update information pursuant to subsection (a), the requirement in subsection (b), to report annually regarding any changes, is not necessary.

Verizon re-stated its position regarding the legislative review of PURA §52.103(b).

Commission response

The commission believes that the annual filings serve a useful purpose by consolidating provider information for the public record. Therefore, the commission will not take the requested action.

The commission will not act upon Verizon's recommendation because statutory changes have not occurred.

Comments on §26.98, Cost Allocation Manual

TTA recommended the repeal of this section pursuant to the commission's conclusion, in Project Number 32460, that the report is no longer necessary in competitive markets.

Commission response

Project Number 33401 currently addresses the financial reporting requirements contained in §§26.73, 26.77, 26.84 and 26.98. Therefore, the commission will not address this issue in this proceeding.

Subchapter E, Certification

Comments on §26.101, Certification Criteria

AT&T, JSI and TTA recommended amending this section. JSI and TTA recommended the elimination of subsection (b)(2)(D), referencing §26.89 pursuant to the commission's conclusion in Project Number 32460. AT&T requested the addition of procedures for service area boundary changes and a process for filing applications with affected carriers. AT&T also noted that several subsections appear to date back to 1975 and should be reconsidered, such as subsection (e), regarding application forms. AT&T also referred the commission to its comments in Project Number 29077, *Rulemaking Regarding P.U.C. Substantive Rules, Chapter 26 Subchapter E*, filed on January 12, 2004.

Commission response

The commission notes that Project Number 33401 is addressing the repeal and revision of financial reporting requirements. Therefore action pertaining to cross references is premature at this time. The commission will not act upon the recommendations of parties regarding the cross reference in subsection (b)(2)(D) until Project Number 33401 has concluded.

Project Number 29077 will address the issues raised by AT&T as well as matters of cross reference correction.

Comments on §26.102, Registration of Pay Telephone Service Providers

JSI, TTA and TSTCI recommended amendment of this section to allow Pay Telephone Service (PTS) providers to submit changes in registration information within 30 days of the change's occurrence and eliminate the requirement in subsection (d) for an annual filing or registration even when no change has occurred.

Commission response

The PTS providers' annual reports provide a valuable consolidated public record. Therefore the commission will not eliminate the requirement.

Comments on §26.107, Registration of Interexchange Carriers, Prepaid Calling Services Companies, and Other Nondominant Telecommunications Carriers

JSI and TTA recommended the elimination of the requirement in subsection (d) for annual notification even when no change has occurred. Both parties noted that providers already keep information current pursuant to subsection (c).

Commission response

The commission again notes the usefulness of the consolidated annual record provided by the reports. Therefore, the commission will not eliminate this requirement at this time.

Comments on §26.109, Standards for Granting Certificates of Operating Authority (COAs)

AT&T recommended that this section be amended with an eye to safeguards for preventing applicants from failing to disclose affiliate relationships and situations where the applicant is an "alter ego" or principal of another carrier. AT&T suggested that the safeguards should be more stringent financial and liquidity prerequisites, and deposits and bonding requirements, and the commission should examine the procedures of other states. AT&T also recommended that the voluminous information for applicants of public utilities such as AT&T (§26.113) be eliminated. AT&T also suggested revision of the commission's amendment form for COA and SPCOA holders so that it more closely matches the CCN form used by the commission. AT&T again referred the commission to its comments in Project Number 29077, filed on January 12, 2004.

JSI and TTA recommended elimination of the affidavit requirement in subsection (f)(1), stating that it is not necessary. TTA also noted that the commission has indicated it does not want to receive the subsection (f)(1) affidavits. Because many small competitive carriers take more than 12 months to initiate customer service, the parties recommended that the language in subsection (g)(1) and (3) be updated to reflect the annual reporting format on the commission's website instead of the necessity for a paper filing.

Commission response

Project Number 29077 will address the parties' concerns.

Comments on §26.111, Standards for Granting Service Provider Certificates of Operating Authority (SPCOAs)

JSI and TTA recommended that this section be amended to mirror the changes recommended in §26.109, with regard to elimination of affidavit requirements and reflect annual reporting format available on the commission's website.

Commission response

Project Number 29077 will address this issue.

Comments on §26.113, Amendment of Certificate of Operating Authority (COA) or Service Provider Certificates of Operating Authority (SPCOAs)

TTA recommended amendment to include a reference to the commission's prescribed forms for certificate amendments, available at the commission's website.

Commission response

The commission recognizes the value of this recommendation and will address the addition of the website references in a separate proceeding, if it is not accomplished in Project Number 29077.

Subchapter F, Regulation of Telecommunications Service

Comments on §26.121, Privacy Issues

JSI and TTA recommended amendments to remove Chapter 23 citations and replace, where appropriate, with Chapter 26 citations.

Verizon again recommended amendment to eliminate application of this section to business customers. Again, Verizon argued that this is consistent with the reduction of business regulation and that PURA §51.001(a), the degree of competition for business services and the effectiveness of market forces indicate that regulations related to business customers are no longer necessary.

Commission response

The commission will include this section in a separate rulemaking project for the purpose of addressing inappropriate cross references.

The commission will not act upon Verizon's recommendation, because statutory changes have not occurred.

Comments on §26.122, Customer Proprietary Network Information (CPNI)

Embarq recommended the repeal of this section, noting that PURA Chapter 62, Subchapter B, was repealed in SB 5 in 2005.

Verizon again recommended the elimination of the section's application to business customers, arguing, as before, that the reduction of business regulation, the impact of PURA §51.001(a), the degree of competition for business services and the effectiveness of market forces indicate that regulations related to business customers are no longer necessary.

Commission response

The commission agrees with Embarq's reasoning and will include this section in a separate rulemaking project for the purpose of repealing obsolete sections.

The commission will not act upon Verizon's recommendation, because statutory changes have not occurred.

Comments on §26.123, Caller Identification Services

JSI, TTA and TSTCI recommended the elimination of the requirement in subsection (b)(3) and (5) to report to the Caller ID Consumer Education Panel. The parties noted that PURA §55.108 expired on September 1, 1999. The same parties also recommended the elimination of the requirement in subsection (b)(5)(E) to provide existing and future Caller ID information to the Commission and each panel member. The parties noted that the information related to Caller ID is provided to customers at the time of service initiation and in local directories, and argued it is not necessary to provide additional notice. Further, the parties argued that any Caller ID blocking failures should be reported only to the customers affected.

TSTCI noted that PURA §55.108 needs to be updated and Verizon noted that legislative action is required to amend PURA Chapter 55, Subchapter E.

Commission response

The commission will initiate a separate rulemaking proceeding to address the removal of references to the Caller ID Consumer Education Panel as recommended by JSI, TTA and TSTCI. However, the commission is not persuaded by the parties' arguments regarding annual notice to consumers. Customers are saturated with information at the time of service initiation and directories are not always available; therefore, additional notice is prudent. The commission also believes it should continue to be notified when Caller ID blocking failures occur, in addition to any customers affected, in order to keep an accurate overview of technical problems.

The commission will not act upon TSTCI's or Verizon's recommendations, because statutory changes have not occurred.

Comments on §26.124, Pay-Per-Call Information Services Call Blocking

Verizon again recommended the elimination of this section's application to business customers.

The commission will not act upon Verizon's recommendation, because statutory changes have not occurred.

Comments on §26.125, Automatic Dialing Announcing Devices

TTA recommended this section be amended and stated that it believes this requires changes to PURA §55.130 to reflect legislative changes to the Business and Commerce Code. TTA also argued that annual renewals should not be required of ADAD providers or, at a minimum, this renewal requirement should be changed to every five years.

Commission response

The commission believes that annual renewals serve a useful purpose by updating and consolidating the commission's public records. However, the current section does not provide for third-party ownerships, a common occurrence. Therefore, the commission will initiate a separate rulemaking to address the issue of third party ownership.

Comments on §26.126, Telephone Solicitation

AT&T, JSI, TSTCI and TTA recommended the repeal of this section. JSI advised that the Legislature repealed PURA Chapter 55 Subchapter G in 2001 and stated that the requirements of this rule have been met through changes to the Business and Commerce Code--Texas Telemarketing Disclosure and Privacy Act. AT&T and TSTCI noted that the repeal of PURA §55.151 and replacement with Texas No-Call Legislation, reflected in §26.37, address the concerns and requirements of this section.

Commission response

The commission will include this section in its rulemaking proceeding for repealing obsolete sections.

Comments on §26.128, Telephone Directories

JSI, TTA and TSTCI recommended the amendment of this section. They argued for the deletion of the requirement to publish long distance rate samples in subsection (e)(5), stating that these rates fluctuate too much in the current market. They also recommended the deletion of all references to the General Services Commission (GSC) and State of Texas Telephone Directory because neither exists today. In addition, JSI argued that the absence of the GSC and the state directory means that there is no longer a point of contact for providers to acquire state government listings; therefore, JSI recommended a rulemaking be initiated to gather accurate government listings contacts and re-define the directory process. TSTCI noted that the requirements are too vague (listing state public services for example) and that meeting the formatting requirements of §26.128(b)(4) annually is very difficult for small carriers.

Commission response

The commission generally agrees with the arguments of the parties and will initiate a rulemaking proceeding to address these issues.

Comments on §26.130, Selection of Telecommunications Utilities

Embarq argued that this section should be amended to allow customers to freeze their local service providers, as allowed under current FCC regulations. Embarq noted that such freezes are valuable anti-slamming tools.

AT&T, JSI, TSTCI and TTA recommended that subsection (g)(3) be revised to advise customers to contact their authorized carrier in case of slamming, not the unauthorized carrier as it now appears. TSTCI stated that this error in language occurred during revisions adopted in Project Number 28324, *P.U.C. Rulemaking Proceeding to Amend P.U.C. Substantive Rules §26.32 and §26.130*.

Verizon again argued that legislative action is required to amend PURA §64.004 to remove the application of these obligations for business customers.

Commission response

The commission will initiate a separate rulemaking proceeding in which it will correct the error in subsection (g)(3) noted by the parties in this proceeding.

Embarq's comments raise an issue that is too important to address in this project because of its implications for the developing competitive market. Therefore the commission will not act upon Embarq's recommendation at this time.

The commission will not act upon Verizon's recommendation, because statutory changes have not occurred.

Subchapter G, Advanced Services

Comments on §26.141, Distance Learning, Information Sharing Programs, and Interactive Multimedia Communications

JSI, TTA and TSTCI recommended the commission eliminate the reporting requirement in subsection (h), pursuant to the commission's conclusions in Project Number 32460. Parties also recommended elimination of all Chapter 23 citations. TTA and TSTCI noted that Project Number 31925, *Commission Review and Evaluation of Distance Learning Discounts and Private Network Services for Certain Entities, related to Distance Learning, may accomplish these amendments*.

Commission response

Project Number 31925 did not affect subsection (h) of this section. However, as noted in the legislative report filed pursuant to SB 408, the commission has determined that a rulemaking project to evaluate the elimination of the annual report is warranted, and the project will be initiated later.

Comments on §26.142, Integrated Services Digital Network (ISDN)

AT&T, JSI and TTA recommended this section be repealed, stating ISDN has been surpassed by other technologies since 1999 and §26.143, regarding advanced services in rural areas, is better suited to this purpose. AT&T also noted that PURA §55.014(c) and §26.143 require urban carriers to provide comparable services in rural areas on a bona fide request basis.

TSTCI recommended an amendment to this section to make ISDN optional instead of mandatory.

Verizon again argued for legislative action to amend PURA §58.203 to eliminate the requirement for business customers.

Commission response

The commission agrees that the technological changes of the last five years and the existence of §26.143 indicate a re-evaluation is due. However, the commission does not believe that the section should be repealed without assurances that all Texas incumbents are providing high speed internet access to their customers via digital subscriber line service in lieu of ISDN. All of the state's incumbent providers receive Texas Universal Service Fund support for their networks with the purpose of providing customers with basic services. The current marketplace requires the availability of internet access, and the commission encourages the deployment of advanced services.

Comments on §26.143, Provision of Advanced Services in Rural Areas

Verizon argued for legislative action to amend PURA §55.014 for the removal of this section's application to business customers.

Commission response

The commission will not act upon Verizon's recommendation, because statutory changes have not occurred.

Subchapter I, Alternative Regulation

Comments on §26.171, Small Incumbent Local Exchange Company Regulatory Flexibility

JSI, TTA and TSTCI stated that legislative action is required with regard to PURA §53.301 to accomplish the streamlining of effective dates and notice requirements so that they parallel those allowed for informational filings in other sections of the rules. TSTCI also noted that partially deregulated cooperatives are excluded in this section and argued that PURA §53.351(a) specifically allows the same regulatory flexibility to the partially deregulated cooperatives.

Commission response

The commission will not act upon these recommendations because statutory changes have not occurred.

Comments on §26.175, Reclassification of Telecommunications Services for Electric Incumbent Local Exchange Companies (ILECs)

Verizon again argued for legislative review of PURA §58.024 to remove the application of this section to business services.

Commission response

The commission will not act upon Verizon's recommendation, because statutory changes have not occurred.

Subchapter J, Costs, Rates and Tariffs

Comments on §26.202, Adjustment for House Bill 11, Acts 72nd Legislature, First Called Special Session

JSI and TSTCI recommended the repeal of this section but noted that such action would require legislative review and the amendment or repeal of PURA §53.202. Parties argued that 15 years has passed since House Bill (HB) 11's passage in 1991 and the original intention of the legislation, regarding pre-HB 11 and post-HB 11 tax calculations, has been fulfilled. The parties believed that the franchise tax changes enacted in 2005 through HB 3 should now eliminate the need for this rule. TSTCI also noted that it takes roughly two years to finalize the HB 11 tax adjustments for a given year and the filing requirements are disproportionate to the small amount of revenue for small providers.

Commission response

The commission will not act upon this recommendation, because statutory changes have not occurred.

Comments on §26.207, Form and Filing of Tariffs

Embarq recommended the elimination of paper copies of tariffs and noted that this will require amendment of the commission's procedural rules as well. Embarq argued that four of the 18 states in which it files tariffs no longer require paper copies and that the elimination of such copies is more cost effective for providers and commissions.

AT&T and TTA recommended a revision to subsection (h) to allow customers and the public to review all tariffs online.

JSI recommended an amendment to subsection (i) to state that the effective dates are not applicable to informational notices filed, arguing that this was consistent with other rules.

TTA recommended amendments to the public notice requirements in subsections (c) and (e), the removal of references to §26.212, which has been repealed, and amendments to subsection (i) to include Chapter 65 companies and appropriate consideration of one-day and ten-day filings.

Finally, Verizon again argued that the application of this section to business customers should be eliminated consistent with the reduction of regulation, competition and the effectiveness of market forces.

Commission response

The commission is persuaded by the arguments of the parties that this section should be reviewed for appropriate revisions as a result of changes that have occurred since its last publication. Therefore, the commission will initiate a rulemaking for that purpose separate from this project. The commission notes that the requirements applicable to ten-day and one-day informational filings are addressed in P.U.C. Substantive Rule §§26.224 - 26.230.

The commission will not act upon Verizon's recommendation, because statutory changes have not occurred.

Comments on §26.208, General Tariff Provisions

JSI, TTA and TSTCI recommended this section be amended, stating that regulations regarding service withdrawals are unwarranted in the current competitive market. They argued that the language in subsection (h), requiring docketing, should be eliminated or, as an alternative, withdrawal of service should be allowed with the filing of informational notices effective in either one or ten days.

Verizon argued that the section should not apply to business customers.

Commission response

The commission believes that the current provisions regarding the withdrawal of services serve a useful purpose. The commission notes that these provisions apply only to the incumbent telecommunications providers and that they insure that adequate notice is provided to customers and that the commission is aware of the impact of the withdrawal upon the company's revenues and upon consumers. Therefore, the commission will not take the requested action.

The commission will not act upon Verizon's recommendation, because statutory changes have not occurred.

Comments on §26.209, New and Experimental Services

JSI and TTA recommended the deletion of subsection (g), requiring reporting of new and experimental service revenues, arguing that this constitutes a burdensome and unnecessary obligation that hinders providers' willingness to offer the services.

Verizon argued again that the sections application to business customers should be eliminated.

Commission response

The commission uses the information gathered to gauge the impact of the new and experimental services introduced and therefore will not take the requested action.

The commission will not act upon Verizon's recommendation, because statutory changes have not occurred.

Comments on §26.210, Promotional Rates for Local Exchange Company Services

JSI and TTA recommended the deletion of subsection (h), requiring reporting of promotional services' revenues, demand, expenses and investment, and argued that the obligation is burdensome and unjustified for temporary promotional offerings.

Commission response

The commission appreciates JSI and TTA's reasoning regarding the reporting of promotional services. The commission may consider such a review at a later date but will not act at this time.

Comments on §26.211, Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges

Verizon argued that the application of this section to business customers should be eliminated.

Commission response

The commission will not act upon Verizon's recommendation, because statutory changes have not occurred.

Comments on §26.214, Long Run Incremental Cost (LRIC) Methodology for Services Provided by Certain Incumbent Local Exchange Carriers (ILECs)

AT&T recommended that this section be amended to modify or eliminate the procedures for the filing and approval of cost studies for basic network functions (BNFs). AT&T argued that the need for these studies is obsolete in the current competitive and transitioning market. AT&T noted that the original requirement drafted in 1992, and now in §26.215, was created to provide 3000 plus BNFs to be used for retail tariff filings but that these BNFs were never used due to the conflict between their component parts and the company's rate structure. AT&T proposed keeping LRIC on an as needed basis and removing the BNF and service cost studies from the rule.

Commission response

The changes recommended by AT&T are inappropriate for the limited scope of this proceeding and would require an extensive review in a separate rulemaking. The commission may consider such a review at a later date but will not act at this time.

Comments on §26.224, Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies

AT&T advised that this section must be amended because the rate cap referenced in the section has expired for most, if not all, of the electing companies (on September 1, 2005) and this affects several subsections of the rule.

Verizon again argued that this section should not apply to business customers.

Commission response

AT&T is correct; this section needs to be re-evaluated in a separate proceeding, which the commission will undertake at a later date.

The commission will not act upon Verizon's recommendation, because statutory changes have not occurred.

Comments on §26.225, Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies

Verizon again recommended the elimination of this section's application to business customers and noted that legislative action to amend PURA §58.002 is required.

Commission response

The commission will not act upon Verizon's recommendation, because statutory changes have not occurred.

Comments on §26.226, Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies

Verizon again recommended the elimination of this section's application to business customers and noted that legislative action to amend PURA §58.002 is required.

Commission response

The commission will not act upon Verizon's recommendation, because statutory changes have not occurred.

Comments on §26.227, Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies

Verizon again recommended the elimination of this section's application to business customers and noted that legislative action to amend PURA §58.002 is required.

Commission response

The commission will not act upon Verizon's recommendation, because statutory changes have not occurred.

Comments on §26.228, Requirements Applicable to Chapter 52 Companies

JSI, TTA and TSTCI argued that legislative action is required regarding PURA §52.0584(a) to lessen notification requirements for new services. JSI questioned the need to notify COAs within the ILEC territory, stating that the commission does not maintain a public database of COA and SPCOA holders and areas they serve and competitive carriers obtain certification for the entire state. Therefore, JSI argued that using the outdated information results in nearly 505 of such notices being returned as undeliverable. Further, JSI does not believe that COAs typically monitor small ILEC informational filings.

Commission response

Legislative review of PURA §52.0584(a) has not yet occurred. However, the commission has recently updated its public database to reflect the actual service areas of the state's COA and SPCOA holders. The updated database, available online as of December, 2006, will be of assistance in directing notice to the appropriate competitive carriers. Therefore, the commission will take no further action regarding the parties' recommendations.

Subchapter L, Wholesale Market Provisions

Comments on §26.271, Expanded Interconnection

AT&T recommended this section be amended or repealed. AT&T argued that sections §26.271, related to Expanded Interconnection, §26.272, related to Interconnection, and §26.276, related to Unbundling, should be re-evaluated in light of recent FCC orders and rules to insure consistency with federal limitations on the unbundling obligations of ILECs.

Commission response

The changes recommended by AT&T are inappropriate for the limited scope of this proceeding and would require an extensive review in a separate rulemaking. The commission may consider such a review at a later date but will not act at this time.

Comments on §26.272, Interconnection

AT&T again recommended this section be amended or repealed. AT&T argued that sections §26.271, related to Expanded Interconnection, §26.272, related to Interconnection, and §26.276, related to Unbundling, should be re-evaluated in light of recent FCC orders and rules to insure consistency with federal limitations on the unbundling obligations of ILECs.

Embarq recommended the amendment of subsection (d)(4), stating that it does not clearly specify that reciprocal compensation is tied to jurisdiction based upon physical end points of called and calling parties as articulated in the commission's decision in Docket Number 28821 (the

Mega Arbitration) and Docket Number 24015 (the Foreign Exchange Arbitration).

Commission response

The changes recommended by AT&T and Embarq are inappropriate for the limited scope of this proceeding and would require a review in a separate rulemaking. The commission may consider such a review at a later date but will not act at this time.

Comments on §26.274, Imputation

AT&T argued that this section must be updated. AT&T reasoned that imputation, originally adopted pursuant to PURA 95, must now reflect the availability of resale services at wholesale rates and the more recent deregulation provisions in PURA Chapter 65.

TTA recommended this section be amended to clarify the application of imputation; when it is necessary and to which companies it applies. TTA also argued that the section's application to PURA Chapter 65 companies should be eliminated entirely.

Commission response

The changes recommended by AT&T and TTA are inappropriate for the limited scope of this proceeding and would require a review in a separate rulemaking. The commission may consider such a review at a later date but will not act at this time.

Comments on §26.275, IntraLATA Equal Access

Embarq, JSI, TSTCI and TTA recommended that this section be repealed. All of the parties stated that this section expired on December 31, 2002 (see subsection (i)) and that it is no longer applicable. The parties noted that IntraLATA dialing parity is already required under federal toll dialing parity rules (47 C.F.R. 51.209).

Commission response

The commission concurs and will repeal this section in a separate rulemaking proceeding.

Comments on §26.276, Unbundling

AT&T recommended this section be amended or repealed. AT&T argued that §26.271, related to Expanded Interconnection, §26.272, related to Interconnection, and §26.276, related to Unbundling, should be re-evaluated in light of recent FCC orders and rules to insure consistency with federal limitations on the unbundling obligations of ILECs.

Embarq noted that this section reflects the FCC's Open Network Architecture and LRIC and has been moribund since the unbundling developed in FTA §251 and §252. Embarq also noted that this section, and Subchapter L generally, has many technically obsolete, inaccurate or incomplete cross references.

TTA also argued that the section should not apply to Chapter 65 electing providers.

Commission response

The changes recommended by AT&T, Embarq and TTA are inappropriate for the limited scope of this proceeding and would require a review in a separate rulemaking. The commission may consider such a review at a later date but will not act at this time.

Comments on §26.283, Infrastructure Sharing

TTA recommended this section be amended to exclude its application to Chapter 65 electing companies.

Commission response

The commission does not believe that the change requested by TTA is appropriate at this time, while competitive markets are still developing, and will not act upon this recommendation.

Subchapter O, Numbering

Comments on §26.375, Reclamation of Codes and Thousand-Blocks and Petitions for Extension of Code and Thousands-Block Activation

JSI and TTA recommended the elimination of the subsection (g)(1) reporting obligations because they are burdensome and unnecessary. The parties noted that the commission may obtain code holder information from www.nanpa.com or www.nationalpooling.com when needed.

Commission response

Although the commission agrees that the information requested in the formal filing is a snapshot of that available on the mentioned websites, the commission does not agree with the reasoning of the parties that the obligation to make a filing should be eliminated. The commission notes that public filings provide a historical record and inform commission staff so that appropriate action may be taken. Therefore, the commission will not make the requested change.

Subchapter P, Texas Universal Service Fund

Comments on §26.403, Texas High Cost Universal Service Plan (THCUSP)

JSI and TTA recommended the elimination of the annual reporting requirement obligating ETPs to notify the TUSF administrator that they are qualified for THCUSP (see subsection (f)(2)). The parties argued that the monthly report provided by the carriers pursuant to subsection (f)(1) and the annual affidavits required by PURA §56.0303 and §26.417(i) should be sufficient.

Commission response

This report appropriately addresses the evaluation of eligibility for THCUSP support. Therefore, the commission will take no action.

Comments on §26.404, Small and Rural Incumbent Local Exchange Company Universal Service Plan

JSI and TTA recommended the elimination of the requirement in subsection (g)(2) for an annual report to the TUSF administrator regarding eligibility to participate in the small and rural ILEC USF Plan. Again, the parties argued that the monthly report filed pursuant to subsection (g)(1) and annual reports filed pursuant to PURA §56.0303 and §26.417(i) should be sufficient.

Commission response

This report appropriately addresses the evaluation of eligibility for THCUSP support. Therefore, the commission will take no action.

Comments on §26.417, Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)

JSI, TTA and TSTCI reasoned that this section should be amended because the current effective dates in the rule make docketed proceedings difficult due to expedited timelines. The parties argued that recent contested ETP cases have seen parties file their testimony prior to the establishment of an agreed procedural schedule from the State office of Administrative Hearings (SOAH). This strategy has made it difficult for SOAH, the commission's staff and the other parties to conclude the case and produce a Proposal for Decision for the commission's final determination in time to meet the Commissioners' Open Meeting schedule and the effective date deadline. JSI recommended extending the effective date of docketed ETP designations to a date 180 days after the applicant has filed direct testimony and exhibits or 155 days after the proposed effective date, whichever is later.

DTS replied that the current section allows an unopposed application to be approved in approximately 65 days. If the ETP application is contested that period increases to 185 days after the initial filing or 155 days after the applicant's testimony is filed, whichever is later. DTS argued that this schedule is more than adequate, particularly because the applicant carries the burden of proof. DTS further reasoned that the change suggested by the parties erects additional barriers to companies providing competitive alternatives by delaying market entry and adding legal expenses, which favor incumbents.

Commission response

The changes recommended by JSI, TTA and TSTCI are inappropriate for the limited scope of this proceeding and would require review in a separate rulemaking. The commission may consider such a review at a later date but will not act at this time.

Comments on §26.418, Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds

JSI, TTA and TSTCI reiterated their arguments related to the current effective dates in this section, which mirror those in §26.417. JSI again recommended extending the effective date of docketed ETP designations to a date 180 days after the applicant has filed direct testimony and exhibits or 155 days after the proposed effective date, whichever is later.

Commission response

The changes recommended by JSI, TTA and TSTCI are inappropriate for the limited scope of this proceeding and would require review in a separate rulemaking. The commission may consider such a review at a later date but will not act at this time.

Comments on §26.420, Administration of Texas Universal Service Fund

JSI and TTA recommended the elimination of all references to Tel-Assistance, a program that has been grandfathered, and an amendment to add reference to the Audio Newspaper Assistance Program where appropriate.

Commission response

The commission agrees that the Tel-Assistance references must be addressed and will undertake a separate rulemaking proceeding to correct inappropriate and obsolete references and to add the appropriate references for the Audio Newspaper Assistance Program.

Subchapter Q, 9-1-1 Issues

Comments on §26.433, Roles and Responsibilities of 9-1-1 Service Providers AT&T recommended the section be amended to reflect technological changes affecting the provisions of 911 services.

Commission response

A separate rulemaking would be required to thoroughly examine the effect of technological changes in the provision of 911 services. The commission is currently engaged in discussions with the Commission on State Emergency Communications (CSEC) and will consider a separate rulemaking at a later date to address this issue.

Subchapter R, Provisions Relating to Municipal Regulation and Rights-of-Way Management

Comments on §26.467, Rates, Allocation, Compensation, Adjustments, and Reporting

JSI and TTA recommended that this section be revised, pursuant to the commission's conclusions in Project Number 32460, to eliminate the quarterly reporting requirement for providers with zero access line counts.

Commission response

The commission believes that the change requested by JSI and TTA may be accomplished by making appropriate changes in the commission's web-based Municipal Access Reporting System (MARS) and, if necessary, in a rulemaking proceeding and will take appropriate action.

Comments on §26.468, Procedures for Standardized Access Line Reports and Enforcement Relating to Quarterly Reporting

JSI and TTA recommended that this section be revised, pursuant to the commission's conclusions in Project Number 32460, to eliminate the quarterly renewal requirement for providers with an exempt status (see subsection (e)(2)).

Commission response

As in the case with the requirement of §26.467, the commission believes that the change requested by JSI and TTA may be accomplished by making appropriate changes in the commission's web-based Municipal Access Reporting System (MARS). The commission will review this concern and make appropriate changes to the MARS database if necessary.

Additional results of the commission's rule review

In reviewing the rules, the commission determined that there are rule sections that need non-substantive amendments, e.g., to update references from rules in Chapter 23, now repealed, to the current rules in Chapter 26; to correct cross-references that have changed as a result of rule amendments; remove language which has become obsolete due to the passage of time; to correct typographical errors, etc. In addition, some rules may require more substantive amendments to clarify policy and procedures. Separate projects will be initiated to implement additional changes as needed.

Rules in Chapter 26 in need of repeal

Section 26.2, which was created as an interim section for cross-referencing purposes at the time that the commission transitioned from chapter 23 to chapter 26, is obsolete and may be repealed. Section 26.82 contains a reporting requirement that has been determined to be obsolete and may therefore be eliminated. Section 26.88 is also obsolete; changes in traffic usage and FCC regulations have eliminated its usefulness, and it may be repealed. Section 26.122 is also obsolete due to the repeal of PURA Chapter 62, Subchapter B, and may also be repealed. Section 26.126 is also obsolete due to statutory changes and the repeal of PURA Chapter 55, Subchapter G, and may also be repealed. Finally, §26.275 expired on December 31, 2002 and may also be repealed.

All of the above repeals will be proposed in a consolidated rulemaking to be undertaken at the close of this proceeding.

Rules in Chapter 26 in need of administrative corrections

Section 26.121 and §26.141 reference Chapter 23 and require correction, and §26.101 contains an obsolete cross-reference that must be corrected. The commission will propose these corrections in a separate consolidated rulemaking at the close of this proceeding,

Section 26.71 and §26.101 also contain cross references that may be obsolete at the conclusion of Project Number 33401. At that project's conclusion, if the cross-references in question are incorrect, a separate rulemaking will be proposed to correct those cross-references.

Section 26.130 must be amended to reflect the appropriate procedure for reports of slamming.

Rules in Chapter 26 that require separate rulemaking proceedings

A number of the sections require separate rulemakings to thoroughly examine the contents of the requirements and the impact of technological, competitive and regulatory changes that have occurred since their adoption. The commission will initiate separate rulemaking proceedings for §§26.5, 26.51, 26.52, 26.54, 26.77, 26.78, 26.80, 26.82, 26.87, 26.98, 26.125, 26.128, 26.130, 26.141, 26.207, 26.224 and 26.420.

The commission readopts Chapter 26 pursuant to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2006), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and Texas Government Code §2001.039, which requires each state agency to review and readopt its rules every four years.

Cross Reference to Statutes: Texas Utilities Code Annotated, Title II, Public Utility Regulatory Act, Subtitles A and C; and Title IV, Chapter 162, Chapter 181, Subchapter E, Chapter 182 and Chapter 183.

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§26.101. Certification Criteria.

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§26.107. Registration of Interexchange Carriers, Prepaid Calling Services Companies, and Other Nondominant Telecommunications Carriers.

§26.109. Standards for Granting of Certificates of Operating Authority (COAs)

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TRD-200700830
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 2, 2007

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Figure: 30 TAC §350.51(m)

Texas-Specific Soil Background Concentrations milligrams per kilogram (mg/kg)[1]	
Metal	Median Background Concentration (mg/kg)
Aluminum	30,000
Antimony	1
Arsenic	5.9
Barium	300
Beryllium	1.5
Boron	30
Total Chromium	30
Cobalt	7
Copper	15
Fluoride	190
Iron	15,000
Lead	15
Manganese	300
Mercury	0.04
Nickel	10
Selenium	0.3
Strontium	100
Tin	0.9
Titanium	2,000
Thorium	9.3
Vanadium	50
Zinc	30

[1] Source: "Background Geochemistry of Some Rocks, Soils, Plants, and Vegetables in the Conterminous United States", by Jon J. Connor, Hansford T. Shacklette, *et al.*, Geological Survey Professional Paper 574-F, US Geological Survey.

Figure: 30 TAC §350.73(f)

No	COMPOUND	Physical State	CAS number	Type	M.W. (g/mole)	H ' (cm^3-H_2O/cm^3-air)	$LogK_{oc}$	Log K_d	D_{air} (cm^2/s)	D_{wat} (cm^2/s)	Solubility (mg/l)	Vapor Pressure (mm Hg)	Log K_{ow}	Br_{Abg} (g soil/g D.W.)	Br_{Bg} (g soil/g D.W.)
1	Acenaphthene	s	83-32-9	O	154.21	6.44E-03	3.60	----	4.21E-02	7.69E-06	4.24E+00	3.75E-03	4.15		
2	Acenaphthylene	s	208-96-8	O	152.20	4.74E-03	3.84	----	4.39E-02	7.07E-06	3.93E+00	2.90E-02	3.94		
3	Acetaldehyde	g	75-07-0	O	44.05	2.75E-03	0.42	----	1.24E-01	1.23E-05	1.00E+06	9.00E+02	0.43		
4	Acetone	l	67-64-1	O	58.08	1.61E-03	-0.24	----	1.24E-01	1.14E-05	6.00E+05	2.27E+02	-0.24		
5	Acetone cyanohydrin	l	75-86-5	O	85.11	1.34E-04	-0.22	----	8.12E-02	9.09E-06	1.83E+06	8.00E-01	-0.03		
6	Acetonitrile	l	75-05-8	O	41.05	1.21E-03	-0.33	----	1.28E-01	1.45E-05	2.05E+05	9.00E+01	-0.34		
7	Acetophenone	l	98-86-2	O	120.15	4.45E-04	1.56	----	6.00E-02	8.73E-06	5.50E+03	3.95E-01	1.67		
8	Acifluorfen, sodium	s	62476-59-9	O	383.64	< 8.31E-13	2.05	----	1.45E-02	4.40E-06	> 2.50E+05	< 9.75E-09	0.37		
9	Acrolein	l	107-02-8	O	56.06	1.83E-04	-0.28	----	1.05E-01	1.12E-05	2.00E+05	2.65E+02	-0.10		
10	Acrylamide	s	79-06-1	O	71.08	1.33E-08	-0.66	----	9.70E-02	1.28E-05	2.20E+06	7.00E-03	-0.81		
11	Acrylic acid	l	79-10-7	O	72.06	1.32E-05	0.05	----	9.08E-02	1.06E-05	1.00E+06	3.72E+00	0.44		
12	Acrylonitrile	l	107-13-1	O	53.06	4.57E-03	0.04	----	1.22E-01	1.34E-05	7.50E+04	1.10E+02	0.21		
13	Alachlor	s	15972-60-8	O	269.77	8.62E-07	2.28	----	1.94E-02	5.83E-06	2.40E+02	2.20E-05	3.37		
14	Aldicarb	s	116-06-3	O	190.27	5.82E-08	1.20	----	3.05E-02	7.20E-06	6.00E+03	2.90E-05	1.36		
15	Aldicarb sulfone	s	1646-88-4	O	222.27	1.10E-07	0.23	----	5.55E-02	5.79E-06	8.00E+03	9.00E-05	-0.67		
16	Aldrin	s	309-00-2	O	364.91	7.07E-03	4.68	----	1.32E-02	4.86E-06	7.84E-02	1.67E-05	6.75		
17	Allyl alcohol	l	107-18-6	O	58.08	2.08E-04	0.51	----	1.14E-01	1.10E-05	3.20E+05	2.63E+01	0.17		
18	Allyl chloride	l	107-05-1	O	76.53	4.57E-01	1.43	----	9.80E-02	1.08E-05	3.40E+03	3.60E+02	1.93		
19	Aluminum	s	7429-90-5	M	26.98	0.00E+00		2.55	0.00E+00	0.00E+00	0.00E+00	0.00E+00	0.33	1.5E-03	6.50E-04
20	Aminopyridine, 4-	s	504-24-5	O	94.12	2.44E-07	-0.32	----	8.02E-02	1.08E-05	7.66E+04	2.00E-03	-0.11		
21	Ammonia	g	7664-41-7	I	17.03	1.36E-02	0.49	----	2.59E-01	6.93E-05	5.31E+05	7.47E+03	0.23		
22	Ammonium sulfamate	s	7773-06-0	I	114.13	0.00E+00	------	CE	9.81E-02	1.04E-05	2.00E+06	0.00E+00	-4.34		
23	Aniline	l	62-53-3	O	93.13	5.82E-05	0.96	----	7.00E-02	8.30E-06	3.60E+04	6.69E-01	1.08		
24	Anthracene	s	120-12-7	O	178.23	4.61E-03	4.37	----	3.24E-02	7.74E-06	4.34E-02	2.55E-05	4.35		
25	Antimony		7440-36-0	M	121.75	0.00E+00	------	1.65	0.00E+00	0.00E+00	0.00E+00	0.00E+00	0.00	7.0E-02	3.00E-02
26	Aramite	l	140-57-8	O	334.86	CE	4.00	----	4.23E-02	4.45E-06	CE	1.23E-04	4.82		
27	Aroclor 1016	l	12674-11-2	O	257.55	2.27E-02	4.87	----	2.05E-02	6.80E-06	4.20E-01	7.12E-04	5.69		

No	COMPOUND	Physical State	CAS number	Type	M.W. (g/mole)	H' (cm^3-H_2O/cm^3-air)	$LogK_{oc}$	Log K_d	D_{air} (cm^2/s)	D_{wat} (cm^2/s)	Solubility (mg/l)	Vapor Pressure (mm Hg)	Log K_{ow}	Br_{Abs} (g soil/g D.W.)	Br_{Bs} (g soil/g D.W.)
28	Aroclor 1254	L	11097-69-1	O	327.00	1.12E-01	5.72	------	CE	5.60E-06	3.45E-02	8.82E-05	5.61		
29	Arsenic	s	7440-38-2	M	74.92	0.00E+00	--------	1.40	0.00E+00	0.00E+00	0.00E+00	0.00E+00	0.68	1.00E-02	8.00E-03
30	Arsine	g	7784-42-1	I	77.95	2.41E-01	--------	CE	CE	CE	2.00E+05	1.13E+04	CE		
31	Asbestos	s	1332-21-4	I	varies	0.00E+00	-------	5.00	CE	CE	0.00E+00	0.00E+00	CE		
32	Atrazine	s	1912-24-9	O	215.69	1.09E-07	2.20	------	5.64E-02	5.58E-06	3.00E+01	3.00E-07	2.82		
33	Barium	s	7440-39-3	M	137.33	0.00E+00	-------	1.04	0.00E+00	0.00E+00	0.00E+00	0.00E+00	0.00	4.9E-02	1.50E-02
34	Barium cyanide	s	542-62-1	I	189.37	CE	-------	1.78	CE	CE	8.00E+05	CE	CE	4.9E-02	1.50E-02
35	Benzene	l	71-43-2	O	78.11	2.27E-01	1.82	------	8.80E-02	9.80E-06	1.77E+03	9.50E+01	1.99		
36	Benzenethiol	l	108-98-5	O	110.18	1.83E-02	1.32	------	7.60E-02	8.68E-06	7.60E+02	2.40E+00	2.69		
37	Benzidine	s	92-87-5	O	184.24	1.62E-09	1.32	------	3.40E-02	1.50E-05	5.20E+02	8.36E-08	1.34		
38	Benzo-a-anthracene	s	56-55-3	O	228.29	1.39E-04	5.55	------	5.10E-02	9.00E-06	1.00E-02	1.54E-07	5.52		
39	Benzo-a-pyrene	s	50-32-8	O	252.32	4.70E-05	5.98	------	4.30E-02	9.00E-06	1.62E-03	4.89E-09	6.11		
40	Benzo-b-fluoranthene	s	205-99-2	O	252.32	4.99E-04	6.08	------	2.26E-02	5.56E-06	1.50E-03	8.06E-08	6.11		
41	Benzo-j-fluoranthene	s	205-82-3	O	252.32	4.63E-04	5.72	------	4.15E-02	5.48E-06	2.50E-03	8.39E-08	6.11		
42	Benzo-k-fluoranthene	s	207-08-9	O	252.32	4.45E-07	6.09	------	2.26E-02	5.56E-06	5.50E-04	9.59E-11	6.11		
43	Benzo-(g,h,i)-perylene	s	191-24-2	O	276.34	5.82E-06	6.20	------	4.90E-02	5.65E-05	2.60E-04	1.00E-10	6.70		
44	Benzoic acid	s	65-85-0	OA	122.12	1.39E-05	-0.30	------	5.36E-02	7.97E-06	3.50E+03	6.51E-03	1.87		
45	Benzotrichloride	l	98-07-7	O	195.48	2.03E-02	3.16	------	5.91E-02	7.02E-06	1.00E+02	1.90E-01	3.90		
46	Benzyl alcohol	l	100-51-6	O	108.14	1.62E-05	1.08	------	8.00E-02	8.00E-06	4.00E+04	1.06E-01	1.08		
47	Benzyl chloride	l	100-44-7	O	126.59	1.66E-02	2.26	------	7.50E-02	7.80E-06	4.93E+02	1.20E+00	2.79		
48	Beryllium	s	7440-41-7	M	9.01	0.00E+00	-------	1.36	0.00E+00	0.00E+00	0.00E+00	0.00E+00	0.57	3.60E-03	1.50E-03
49	Biphenyl, 1,1-	s	92-52-4	O	154.21	1.25E-02	3.71	------	5.73E-02	6.71E-06	7.50E+00	2.94E-02	3.76		
50	Bis (2-chloro-ethyl) ether	l	111-44-4	O	143.01	8.90E-04	1.19	------	6.92E-02	7.53E-06	1.02E+04	1.34E+00	1.56		
51	Bis (2-chloroisopropyl) ether	l	108-60-1	O	171.07	4.16E-03	2.50	------	6.00E-02	6.40E-06	1.70E+03	8.50E-01	2.58		
52	Bis (2-chloromethyl) ether	l	542-88-1	O	114.96	4.99E-03	0.08	------	8.32E-02	9.59E-06	3.80E+04	3.00E+01	0.58		
53	Bis (2-ethyl-hexyl) phthalate	l	117-81-7	O	390.56	4.57E-04	5.83	------	3.51E-02	3.66E-06	3.00E-01	6.45E-06	8.39		

No	COMPOUND	Physical State	CAS number	Type	M.W. (g/mole)	H' (cm^3-H_2O/cm^3-air)	Log K_{ec}	Log K_d	D_{air} (cm^2/s)	D_{wat} (cm^2/s)	Solubility (mg/l)	Vapor Pressure (mm Hg)	Log K_{ow}	Br_{Abz} (g soil/g D.W.)	Br_{Bz} (g soil/g D.W.)
54	Bis (tri-n-butyltin) oxide	l	56-35-9	O	596.11	2.08E-03	CE	------	CE	CE	1.80E+01	6.91E-05	5.80		
55	Bromodichloromethane	l	75-27-4	O	163.83	1.32E-01	1.74	------	2.98E-02	1.06E-05	4.50E+03	5.84E+01	1.61		
56	Bromoform	l	75-25-2	O	252.73	2.56E-02	1.94	------	1.49E-02	1.03E-05	3.20E+03	5.60E+00	1.79		
57	Bromomethane	g	74-83-9	O	94.94	5.90E-01	1.02	------	7.28E-02	1.21E-05	1.52E+04	1.64E+03	1.18		
58	Butadiene, 1,3-	g	106-99-0	O	54.09	2.61E+00	2.11	------	1.79E-01	1.02E-05	7.35E+02	2.11E+03	2.03		
59	Butanol, n-	l	71-36-3	O	74.12	3.55E-04	0.77	------	8.00E-02	9.30E-06	7.47E+04	6.54E+00	0.84		
60	Butylate	l	2008-41-5	O	217.38	3.50E-03	2.10	------	4.89E-02	5.14E-06	4.60E+01	1.30E-02	3.85		
61	Butyl benzyl phthalate	l	85-68-7	O	312.37	7.94E-05	4.14	------	1.74E-02	4.83E-06	2.90E+00	1.20E-05	4.84		
62	Cacodylic acid	s	75-60-5	O	138.00	0.00E+00	0.38	------	CE	CE	2.00E+06	0.00E+00	0.00		
63	Cadmium	s	7440-43-9	M	112.41	0.00E+00	------	1.18	0.00E+00	0.00E+00	0.00E+00	0.00E+00	-0.07	1.40E-01	6.40E-02
64	Calcium cyanide	s	592-01-8	I	92.11	CE	------	CE	CE	CE	CE	CE	-2.41		
65	Captan	s	133-06-2	O	300.59	2.99E-04	3.81	------	1.83E-02	4.90E-06	5.00E-01	7.50E-06	1.84		
66	Carbaryl	s	63-25-2	O	201.22	5.32E-07	2.37	------	2.78E-02	5.60E-06	3.00E+01	1.36E-06	2.35		
67	Carbazole	s	86-74-8	O	167.21	3.38E-03	3.39	------	3.90E-02	7.03E-06	7.21E-01	2.66E-04	3.23		
68	Carbofuran	s	1563-66-2	O	221.26	1.62E-07	1.46	------	5.35E-02	5.40E-06	7.00E+02	8.30E-06	2.30		
69	Carbosulfan	l	55285-14-8	O	380.55	2.15E-05	4.41	------	3.76E-02	3.88E-06	3.00E-01	3.10E-07	5.57		
70	Carbon disulfide	l	75-15-0	O	76.14	6.13E-01	1.72	------	1.04E-01	1.00E-05	2.30E+03	3.40E+02	1.94		
71	Carbon tetrachloride	l	56-23-5	O	153.82	1.20E+00	2.27	------	7.80E-02	8.80E-06	8.05E+02	1.12E+02	2.44		
72	Chloral	l	75-87-6	O	147.39	2.66E-05	0.80	------	3.85E-02	9.70E-06	8.30E+06	3.50E+01	1.19		
73	Chlordane	s	57-74-9	O	409.78	2.02E-03	5.08	------	1.18E-02	4.37E-06	5.60E-02	1.00E-05	6.60		
74	Chlorfenvinphos	l	470-90-6	O	359.57	2.31E-08	3.11	------	CE	CE	1.45E+02	1.70E-07	4.15		
75	Chlorine	g	7782-50-5	I	70.91	2.86E+00	------	CE	1.20E-01	1.48E-05	7.00E+03	5.17E+03	0.85		
76	Chlorine cyanide	g	506-77-4	O	61.47	1.12E-01	------	CE	1.20E-01	1.39E-05	3.00E+04	1.00E+03	-0.38		
77	Chloroanaline, p-	s	106-47-8	O	127.57	4.86E-05	1.82	------	4.83E-02	1.01E-05	3.90E+03	2.35E-02	1.72		
78	Chlorobenzene	l	108-90-7	O	112.56	1.82E-01	2.33	------	7.30E-02	8.70E-06	5.02E+02	1.21E+01	2.64		
79	Chlorobenzilate	s	510-15-6	O	325.19	3.78E-06	2.90	------	8.00E-02	8.00E-06	1.30E+01	2.20E-06	3.99		
80	Chloro-1,3-butadiene, 2-	l	126-99-8	O	88.54	1.33E+00	2.00	------	1.00E-01	1.00E-05	6.30E+02	2.12E+02	2.53		
81	Chlorodifluoromethane	g	75-45-6	O	86.47	1.22E+00	0.79	------	1.13E-01	1.32E-05	2.90E+03	7.83E+03	0.89		
82	Chloroethane	l	75-00-3	O	64.51	2.12E-01	1.25	------	1.50E-01	1.18E-05	2.00E+04	1.20E+03	1.58		
83	Chloroform	l	67-66-3	O	119.38	1.53E-01	1.67	------	1.04E-01	1.00E-05	7.92E+03	1.98E+02	1.52		

No	COMPOUND	Physical State	CAS number	Type	M.W. (g/mole)	H' (cm^3-H_2O/cm^3-air)	$LogK_{oc}$	Log K_d	D_{air} (cm^2/s)	D_{wat} (cm^2/s)	Solubility (mg/l)	Vapor Pressure (mm Hg)	Log K_{ow}	Br_{Abz} (g soil/g D.W.)	Br_{Bz} (g soil/g D.W.)
84	Chloromethane	g	74-87-3	O	50.49	1.44E+00	0.78	——	1.26E-01	6.50E-06	7.25E+03	3.77E+03	1.09		
85	Chloronaphthalene, 2-	s	91-58-7	O	162.62	2.54E-02	3.93	——	6.18E-02	6.98E-06	6.74E+00	1.70E-02	3.81		
86	Chlorophenol, 2-	l	95-57-8	OA	128.56	7.40E-04	2.46	——	5.01E-02	9.46E-06	2.80E+04	1.42E+00	2.16		
87	Chlorotoluene, 2-	l	95-49-8	O	126.59	1.35E-01	2.61	——	7.01E-02	———	1.54E+02	3.9E-03	3.20		
88	Chlorpyrifos	s	2921-88-2	O	350.59	1.73E-04	3.70	——	4.85E-02	5.11E-06	9.00E-01	1.87E-05	4.66		
89	Chromium (III)/Chromium (total)	s	7440-47-3	M	52.00	0.00E+00	———	3.08	0.00E+00	0.00E+00	0.00E+00	0.00E+00	0.00	5.20E-03	4.50E-03
90	Chromium (VI)	s	18540-29-9	M	52.00	0.00E+00	———	1.15	0.00E+00	0.00E+00	0.00E+00	0.00E+00	0.00	5.20E-03	4.50E-03
91	Chrysene	s	218-01-9	O	228.29	5.03E-05	5.49	———	2.48E-02	6.21E-06	2.00E-03	7.80E-09	5.52		
92	Cobalt	s	7440-48-4	M	58.93	0.00E+00	———	1.65	0.00E+00	0.00E+00	0.00E+00	0.00E+00	0.00	1.00E-02	7.00E-03
93	Copper	s	7440-50-8	M	63.55	0.00E+00	———	1.60	0.00E+00	0.00E+00	0.00E+00	0.00E+00	-0.57	2.90E-01	2.50E-01
94	Copper cyanide	s	544-92-3	I	115.58	CE	———	1.54	CE	CE	0.00E+00	0.00E+00	-1.49	2.90E-01	2.50E-01
95	Cresol, m-	l	108-39-4	O	108.14	3.62E-05	1.94	——	7.40E-02	1.00E-05	2.30E+04	1.40E-01	2.06		
96	Cresol, o-	s	95-48-7	O	108.14	6.65E-05	1.99	——	7.40E-02	8.30E-06	2.04E+04	3.20E-01	2.06		
97	Cresol, p-	s	106-44-5	O	108.14	3.99E-05	1.91	——	7.40E-02	1.00E-05	2.30E+04	1.30E-01	2.06		
98	Crotonaldehyde	l	123-73-9	O	70.09	8.15E-04	0.21	——	9.37E-02	1.02E-05	1.60E+05	1.90E+01	0.60		
99	Cumene	l	98-82-8	O	120.19	6.07E-01	3.54	——	6.50E-02	7.10E-06	5.00E+01	4.60E+00	3.45		
100	Cyanide	CE	57-12-5	I	26.02	CE	———	1.00	5.21E-01	2.28E-05	1.00E+05	1.38E+01	-0.69		
101	Cyanogen	g	460-19-5	O	52.04	2.06E-01	0.13	——	2.04E-01	1.37E-05	1.00E+04	3.88E+03	0.07		
102	Cyanogen bromide	s	506-68-3	O	105.92	4.41E+02	-0.49	——	6.24E-02	1.13E-05	1.31E+00	1.00E+02	-0.29		
103	Cyclohexanone	l	108-94-1	O	98.14	4.99E-04	0.74	——	7.72E-02	8.73E-06	2.30E+04	4.00E+00	1.13		
104	Cyclotrimethylenetrinitramine	s	121-82-4	O	222.12	4.99E-04	1.80	——	6.65E-02	6.39E-06	3.87E+01	1.00E-09	0.87		
105	DDD	s	72-54-8	O	320.05	1.66E-04	4.93	——	1.69E-02	4.76E-06	9.00E-02	8.66E-07	5.87		
106	DDE	s	72-55-9	O	241.93	8.73E-04	5.04	——	1.44E-02	5.87E-06	6.50E-02	5.66E-06	6.00		
107	DDT	s	50-29-3	O	354.49	2.23E-03	5.14	——	1.37E-02	4.95E-06	3.10E-03	3.93E-07	6.79		
108	Di-n-butyl phthalate	l	84-74-2	O	278.35	5.94E-05	4.53	——	4.38E-02	7.86E-06	1.12E+01	4.25E-05	4.61		
109	Di-n-octyl phthalate	l	117-84-0	O	390.56	2.78E-03	7.92	——	1.51E-02	3.90E-06	2.00E-02	4.47E-06	8.54		
110	Diallate	s	2303-16-4	O	270.22	1.58E-04	3.28	——	8.00E-02	8.00E-06	1.40E+01	1.50E-04	4.08		
111	Diazinon	l	333-41-5	O	304.35	4.70E-06	2.12	——	1.80E-02	4.90E-06	4.00E+01	8.40E-05	3.86		

No	COMPOUND	Physical State	CAS number	Type	M.W. (g/mole)	H' (cm^3-H_2O/cm^3-air)	LogK_{oc}	Log K_d	D_{air} (cm^2/s)	D_{wat} (cm^2/s)	Solubility (mg/l)	Vapor Pressure (mm Hg)	Log K_{ow}	Br_{Abz} (g soil/g D.W.)	Br_{Bz} (g soil/g D.W.)
112	Dibenz-a,h-anthracene	s	53-70-3	O	278.35	4.66E-07	6.28	----	2.00E-02	5.18E-06	5.00E-04	2.10E-11	6.70		
113	Dibromo-3-chloropropane, 1,2-	l	96-12-8	O	236.33	8.31E-03	2.23	----	8.00E-02	8.00E-06	1.00E+03	7.60E-01	2.68		
114	Dibromochloromethane	l	124-48-1	O	208.28	3.25E-02	1.80	----	1.96E-02	1.05E-05	5.25E+03	1.50E+01	1.70		
115	Dicamba	s	1918-00-9	O	209.03	3.28E-07	0.34	----	6.02E-02	6.69E-06	5.60E+03	9.70E-05	2.14		
116	Dichlorobenzene, 1,2-	l	95-50-1	O	147.00	8.73E-02	2.84	----	6.90E-02	7.90E-06	1.50E+02	1.36E+00	3.28		
117	Dichlorobenzene, 1,3-	l	541-73-1	O	147.00	1.95E-01	2.23	----	6.80E-02	8.13E-06	1.10E+02	2.30E+00	3.28		
118	Dichlorobenzene, 1,4-	s	106-46-7	O	147.00	1.17E-01	2.81	----	6.90E-02	7.90E-06	7.38E+01	1.06E+00	3.28		
119	Dichlorobenzidine, 3,3-	s	91-94-1	O	253.13	8.65E-07	2.86	----	1.94E-02	6.74E-06	3.11E+00	2.20E-07	3.21		
120	Dichloro-2-butene, 1,4	l	764-41-0	O	125.00	1.24E-02	2.26	----	7.43E-02	8.62E-06	6.91E+03	1.26E+01	2.60		
121	Dichlorodifluoromethane	l	75-71-8	O	120.91	1.67E+01	2.11	----	5.20E-02	1.05E-05	2.80E+02	4.80E+03	1.82		
122	Dichloroethane, 1,1-	l	75-34-3	O	98.96	2.39E-01	1.50	----	7.42E-02	1.05E-05	5.50E+03	2.28E+02	1.76		
123	Dichloroethane, 1,2-	l	107-06-2	O	98.96	5.32E-02	1.24	----	1.04E-01	9.90E-06	8.70E+03	8.13E+01	1.83		
124	Dichloroethylene, 1,1-	l	75-35-4	O	96.94	1.06E+00	1.81	----	9.00E-02	1.04E-05	2.40E+03	5.91E+02	2.12		
125	Dichloroethylene, cis-1,2-	l	156-59-2	O	96.94	1.87E-01	1.46	----	7.35E-02	1.13E-05	4.93E+03	1.75E+02	1.86		
126	Dichloroethylene, trans-1,2	l	156-60-5	O	96.94	3.90E-01	1.70	----	7.07E-02	1.19E-05	6.30E+03	3.52E+02	2.07		
127	Dichlorophenol, 2,4-	s	120-83-2	OA	163.00	1.31E-04	1.86	----	3.46E-02	8.77E-06	4.50E+03	7.15E-02	2.80		
128	Dichlorophenoxyacetic acid, 2,4-	s	94-75-7	O	221.04	5.82E-09	2.95	----	5.90E-02	6.50E-06	8.90E+02	2.40E-05	2.62		
129	Dichloropropane, 1,2	l	78-87-5	O	112.99	1.17E-01	1.77	----	7.82E-02	8.73E-06	2.80E+03	5.00E+01	2.25		
130	Dichloro-1-propanol, 2,3-	l	616-23-9	O	128.99	3.97E-05	1.53	----	4.84E-02	9.84E-06	2.95E+05	5.82E-01	0.78		

No	COMPOUND	Physical State	CAS number	Type	M.W. (g/mole)	H' (cm^3-H_2O/cm^3-air)	LogK$_{oc}$	Log K$_d$	D$_{air}$ (cm^2/s)	D$_{wat}$ (cm^2/s)	Solubility (mg/l)	Vapor Pressure (mm Hg)	Log K$_{ow}$	Br$_{Abs}$ (g soil/g D.W.)	Br$_{Bio}$ (g soil/g D.W.)
131	Dichloropropene, 1,3-	l	542-75-6	O	110.97	1.23E-01	1.72	----	6.26E-02	1.00E-05	1.55E+03	3.12E+01	1.75		
132	Dichloropropene, 1,3-cis	l	10061-01-5	O	110.97	9.15E-02	1.65	----	7.94E-02	8.00E-06	2.70E+03	3.70E+01	1.53		
133	Dichloropropene, 1,3-trans	l	10061-02-6	O	110.97	9.15E-02	1.65	----	7.94E-02	9.20E-06	2.80E+03	3.00E+01	1.53		
134	Dichlorvos	l	62-73-7	O	220.98	3.98E-05	9.59	----	2.32E-02	7.80E-06	1.60E+04	5.27E-02	1.40		
135	Dieldrin	s	60-57-1	O	380.91	1.11E-04	4.33	----	1.25E-02	4.74E-06	1.95E-01	9.96E-07	5.45		
136	Diethylhexyl adipate	l	103-23-1	O	370.57	9.78E-01	5.58	----	3.56E-02	3.72E-06	1.71E-03	8.25E-05	8.12		
137	Diethyl phthalate	l	84-66-2	O	222.24	1.87E-05	2.18	----	2.56E-02	6.35E-06	1.08E+03	1.65E-03	2.65		
138	Diethylstilbestrol	s	56-53-1	O	268.36	2.62E-13	4.88	----	4.43E-02	8.00E-06	1.30E+04	1.06E-09	5.64		
139	Dimethoate	s	60-51-5	O	229.26	2.58E-09	0.63	----	8.00E-02	8.00E-06	2.50E+04	5.09E-06	0.28		
140	Dimethoxybenzidine, 3,3'-	s	119-90-4	O	244.29	1.66E-08	1.78	----	2.42E-02	5.50E-06	2.40E+02	2.50E-07	2.08		
141	Dimethylbenzidine, 3,3'-	s	119-93-7	O	212.29	5.40E-09	2.30	----	5.10E-02	8.00E-06	2.40E+02	3.70E-07	3.02		
142	Dimethylhydrazine, 1,1-	l	57-14-7	O	60.10	4.16E-06	-0.70	----	1.06E-01	1.04E-05	1.24E+08	1.57E+02	-1.19		
143	Dimethylhydrazine, 1,2-	l	540-73-8	O	60.10	1.72E-04	0.59	----	1.04E-01	1.10E-05	1.18E+07	6.63E+01	-0.54		
144	Dimethyl phenol, 2,4-	s	105-67-9	O	122.17	8.31E-05	2.07	----	5.84E-02	8.69E-06	6.20E+03	1.26E-01	2.61		
145	Dimethyl phthalate	l	131-11-3	O	194.19	2.40E-05	1.50	----	5.68E-02	6.30E-06	4.19E+03	9.12E-03	1.66		
146	Dinitrobenzene, 1,3-	s	99-65-0	O	168.11	4.57E-06	1.48	----	2.80E-01	7.60E-06	5.40E+02	2.49E-04	1.63		
147	Dinitrobenzene, 1,4-	s	100-25-4	O	168.11	4.44E-06	1.42	----	6.15E-02	7.18E-06	1.00E+02	4.83E-05	1.63		
148	Dinitrophenol, 2,4-	s	51-28-5	OA	184.11	2.01E-07	-2.00	----	2.73E-02	9.06E-06	5.80E+03	1.14E-04	1.73		
149	Dinitrotoluene, 2,4-	s	121-14-2	O	182.14	3.60E-05	1.71	----	2.03E-01	7.06E-06	2.85E+02	1.74E-04	2.18		
150	Dinitrotoluene, 2,6-	s	606-20-2	O	182.14	3.11E-05	1.62	----	3.27E-02	7.26E-06	1.82E+02	5.70E-04	2.18		
151	Dinoseb	s	88-85-7	O	240.22	2.08E-02	3.08	----	2.25E-02	6.25E-06	5.20E+01	7.52E-02	3.67		
152	Dioxane, 1,4-	l	123-91-1	O	88.11	2.04E-04	-0.27	----	2.30E-01	1.00E-05	9.00E+05	3.80E+01	-0.32		
153	TCDDioxins, 2,3,7,8-	s	1746-01-6	O	321.97	1.47E-03	7.15	----	4.70E-02	8.00E-06	1.93E-05	7.40E-10	7.02		
154	TCDDioxins, 1,2,3,7-	s	67028-18-6	O	321.97	3.16E-04	5.98	----	4.80E-02	5.28E-06	4.20E-05	5.25E-08	6.91		

No	COMPOUND	Physical State	CAS number	Type	M.W. (g/mole)	H' (cm^3-H_2O/cm^3-air)	LogK_{oc}	Log K_d	D_{air} (cm^2/s)	D_{wat} (cm^2/s)	Solubility (mg/l)	Vapor Pressure (mm Hg)	Log K_{ow}	Br_{Abg} (g soil/g D.W.)	Br_{Bg} (g soil/g D.W.)
155	TCDDioxins, 1,3,6,8-	s	33423-92-6	O	321.97	2.91E-04	4.36	----	4.80E-02	5.28E-06	3.20E-04	5.25E-09	7.20		
156	TCDDioxins, 1,2,3,4-	s	30746-58-8	O	321.97	1.55E-03	CE	----	4.80E-02	5.28E-06	4.70E-04	4.73E-08	7.18		
157	PeCDDioxins, 1,2,3,7,8-	s	40321-76-4	O	356.42	1.08E-04	5.70	----	4.64E-02	5.07E-06	1.20E-04	9.48E-10	7.56		
158	PeCDDioxins, 1,2,3,4,7-	s	39227-61-7	O	356.42	1.08E-04	5.80	----	4.64E-02	5.07E-06	1.20E-04	7.50E-10	7.56		
159	HxCDDioxins, 1,2,3,4,7,8-	s	39227-28-6	O	390.86	1.85E-03	6.02	----	4.49E-02	4.87E-06	4.42E-06	8.80E-11	8.21		
160	HpCDDioxins, 1,2,3,4,6,7,8-	s	35822-46-9	O	425.31	3.12E-04	7.00	----	4.35E-02	4.70E-06	2.40E-06	3.21E-11	8.85		
161	OCDDioxins	s	3268-87-9	O	459.75	2.80E-04	7.08	----	4.30E-02	4.54E-06	4.00E-07	8.25E-13	9.50		
162	Diphenylamine	s	122-39-4	O	169.23	1.83E-04	2.54	----	6.80E-02	6.30E-06	3.00E+02	4.26E-03	3.29		
163	Diphenylhydrazine, 1,2-	s	122-66-7	O	184.24	1.42E-07	2.82	----	5.62E-02	5.70E-06	1.84E+03	2.60E-05	3.06		
164	Diquat dibromide	s	85-00-7	O	344.05	2.69E-12	2.31	----	5.52E-02	5.52E-06	7.00E+05	1.00E-07	-2.82		
165	Disulfoton	s	298-04-4	O	274.41	2.58E-04	3.95	----	8.00E-02	8.00E-06	1.60E+01	2.30E-04	3.86		
166	Diuron	s	330-54-1	O	233.10	3.04E-08	2.63	----	5.40E-02	5.30E-06	4.20E+01	1.00E-07	2.67		
167	Endosulfan	s	115-29-7	O	406.93	4.66E-04	2.87	----	1.15E-02	4.55E-06	5.10E-01	9.96E-06	3.84		
168	Endothall	s	145-73-3	O	230.13	1.08E-08	1.93	----	CE	CE	1.00E+05	1.80E-04	1.89		
169	Endrin	s	72-20-8	O	380.91	4.95E-05	3.97	----	1.25E-02	4.74E-06	2.50E-01	5.84E-07	5.45		
170	Epichlorohydrin	l	106-89-8	O	92.53	1.37E-03	0.30	----	8.60E-02	9.80E-06	6.60E+04	1.67E+01	0.63		
171	Ethion	l	563-12-2	O	384.48	2.87E-05	4.19	----	CE	CE	1.20E+00	1.50E-06	4.75		
172	Ethoxy ethanol, 2-	l	110-80-5	O	90.12	1.04E-05	2.10E-01	----	7.77E-02	8.30E-06	5.29E+05	1.12E+00	1.66E-01		
173	Ethoxyethanol acetate, 2-	l	111-15-9	O	132.16	3.77E-05	0.20	----	6.10E-02	7.29E-06	2.30E+05	2.00E+00	0.59		
174	Ethyl acetate	l	141-78-6	O	88.11	5.57E-03	0.72	----	7.30E-02	9.70E-06	7.90E+04	9.41E+01	0.86		
175	Ethyl acrylate	l	140-88-5	O	100.12	1.06E-02	2.03	----	7.40E-02	8.68E-06	2.00E+04	2.95E+01	1.22		
176	Ethyl benzene	l	100-41-4	O	106.17	3.28E-01	2.31	----	7.50E-02	7.80E-06	1.69E+02	9.60E+00	3.03		
177	S-Ethyl dipropylthiocarbamate	l	759-94-4	O	189.32	4.57E-03	2.38	----	5.35E-02	5.65E-06	3.70E+02	1.60E-01	3.02		
178	Ethyl ether	l	60-29-7	O	74.12	2.70E-02	0.88	----	7.40E-02	9.30E-06	6.10E+04	5.40E+02	1.05		
179	Ethyl methacrylate	l	97-63-2	O	114.14	6.65E-03	1.57	----	8.00E-02	8.00E-06	1.90E+04	1.75E+01	1.77		

No	COMPOUND	Physical State	CAS number	Type	M.W. (g/mole)	H' (cm^3-H_2O/cm^3-air)	$LogK_{oc}$	Log K_d	D_{air} (cm^2/s)	D_{wat} (cm^2/s)	Solubility (mg/l)	Vapor Pressure (mm Hg)	Log K_{ow}	Br_{Abs} (g soil/g D.W.)	Br_{Bz} (g soil/g D.W.)
180	Ethyl-2-methylbenzene, 1-	l	611-14-3	O	120.19	2.19E-01	3.03	----	6.76E-02	7.29E-06	7.46E+01	2.48E+00	3.53		
181	Ethyl-4-methylbenzene, 1-	l	622-96-8	O	120.19	3.27E-01	3.07	----	6.70E-02	7.18E-06	9.49E+01	2.95E+00	3.58		
182	Ethylenediamine	l	107-15-3	O	60.10	7.19E-08	0.67	----	1.53E-01	1.12E-05	7.95E+06	1.10E+01	-1.62		
183	Ethylene dibromide	l	106-93-4	O	187.86	2.93E-02	1.73	----	2.17E-02	1.90E-05	4.32E+03	1.10E+01	2.01		
184	Ethylene glycol	l	107-21-1	O	62.07	2.49E-06	-0.90	----	1.08E-01	1.22E-05	1.00E+06	7.00E-02	-1.20		
185	Ethylene oxide	g	75-21-8	O	44.05	4.92E-03	0.34	----	1.04E-01	1.45E-05	3.83E+05	1.32E+03	-0.05		
186	Ethylene thiourea	s	96-45-7	O	102.16	4.99E-05	-0.66	----	7.15E-02	1.02E-05	1.20E+04	8.36E-02	-0.49		
187	Fluoranthene	s	206-44-0	O	202.26	3.88E-04	4.69	----	3.02E-02	6.35E-06	2.60E-01	8.13E-06	4.93		
188	Fluorene	s	86-73-7	O	166.22	2.64E-03	3.88	----	3.63E-02	7.88E-06	1.98E+00	3.24E-03	4.02		
189	Fluorine (soluble Fluoride)	g	7782-41-4	I	38.00	CE	----	2.18	CE	CE	NA/reacts	7.60E+02	0.22		
190	Formaldehyde	g	50-00-0	O	30.03	1.37E-05	0.34	----	1.80E-01	2.00E-05	5.50E+05	3.88E+03	0.35		
191	Formic acid	l	64-18-6	O	46.03	1.79E-04	-0.54	----	7.90E-02	1.40E-06	1.00E+06	4.10E+01	-0.46		
192	TCDFurans, 2,3,7,8-	s	51207-31-9	O	305.98	6.16E-04	5.20	----	4.86E-02	5.41E-06	4.19E-04	1.50E-08	6.29		
193	PeCDFuran, 1,2,3,7,8-	s	57117-41-6	O	340.42	2.11E-04	6.73	----	4.69E-02	5.18E-06	2.40E-04	2.72E-09	6.94		
194	PeCDFuran, 2,3,4,7,8-	s	57117-31-4	O	340.42	2.44E-04	7.40	----	4.69E-02	5.18E-06	2.36E-04	2.63E-09	6.94		
195	HxCDFurans, 1,2,3,4,7,8-	s	70648-26-9	O	374.87	5.97E-04	7.40	----	4.50E-02	4.97E-06	8.25E-06	2.40E-10	7.92		
196	HxCDFurans, 1,2,3,6,7,8-	s	57117-44-9	O	374.87	2.54E-04	7.55	----	4.50E-02	4.97E-06	1.77E-05	2.20E-10	7.92		
197	HxCDFurans, 2,3,4,6,7,8-	s	60851-34-5	O	374.87	1.70E-03	7.54	----	4.50E-02	4.97E-06	1.30E-05	2.00E-10	7.92		
198	HpCDFurans, 1,2,3,4,6,7,8-	s	67562-39-4	O	409.31	1.54E-03	6.37	----	4.30E-02	4.79E-06	1.35E-06	3.82E-10	8.23		
199	HpCDFurans, 1,2,3,4,7,8,9-	s	55673-89-7	O	409.31	1.58E-03	5.00	----	4.30E-02	4.79E-06	1.40E-06	1.07E-10	6.90		
200	OCDFurans	s	39001-02-0	O	443.76	7.90E-05	6.75	----	4.27E-02	4.62E-06	1.20E-06	3.75E-12	8.87		
201	Furan	l	110-00-9	O	68.08	2.24E-01	1.32	----	1.04E-01	1.20E-05	1.00E+04	6.00E+02	1.36		
202	Fufural	l	98-01-1	O	96.09	1.25E-04	0.44	----	8.72E-02	1.12E-05	8.60E+04	2.00E+00	0.83		
203	Glycidylaldehyde	l	765-34-4	O	72.06	1.08E-05	0.96	----	9.64E-02	1.16E-05	8.55E+07	2.70E+01	-0.12		
204	Heptachlor	s	76-44-8	O	373.32	2.44E-02	4.07	----	1.12E-02	5.69E-06	1.80E-01	3.26E-04	6.21		
205	Heptachlor epoxide	s	1024-57-3	O	389.32	3.45E-04	3.86	----	1.32E-02	4.23E-06	2.75E-01	4.34E-06	4.91		

No	COMPOUND	Physical State	CAS number	Type	M.W. (g/mole)	H ' (cm^3-H_2O/cm^3-air)	LogK_{oc}	Log K_d	D_{air} (cm^2/s)	D_{wat} (cm^2/s)	Solubility (mg/l)	Vapor Pressure (mm Hg)	Log K_{ow}	Br_{Abs} (g soil/g D.W.)	Br_{Bio} (g soil/g D.W.)
206	Hexachlorobenzene	s	118-74-1	O	284.78	2.22E-02	4.45	——	5.42E-02	5.91E-06	6.00E-03	1.23E-05	5.86		
207	Hexachloro-1,3-butadiene	l	87-68-3	O	260.76	9.94E-01	3.84	——	5.61E-02	6.16E-06	2.55E+00	1.77E-01	4.72		
208	Hexachlorocyclohexane, techn	CE	608-73-1	O	290.83	5.99E-05	3.38	——	1.42E-02	7.34E-06	4.35E+01	1.64E-04	4.26		
209	Hexachlorocyclohexane, alpha	s	319-84-6	O	290.83	2.82E-04	3.12	——	1.42E-02	7.34E-06	2.00E+00	4.26E-05	4.26		
210	Hexachlorocyclohexane, beta	s	319-85-7	O	290.83	1.44E-05	3.14	——	1.42E-02	7.34E-06	5.42E-01	4.90E-07	4.26		
211	Hexachlorocyclohexane, gamma	s	58-89-9	O	290.83	1.41E-04	3.04	——	1.42E-02	7.34E-06	5.75E+00	3.72E-05	4.26		
212	Hexachlorocyclopentadiene	l	77-47-4	O	273.78	7.15E-01	3.98	——	1.61E-02	7.21E-06	1.80E+00	7.32E-02	4.63		
213	Hexachloroethane	s	67-72-1	O	236.74	1.62E-01	3.26	——	2.50E-03	6.80E-06	5.00E+01	4.72E-01	4.03		
214	Hexachlorophene	s	70-30-4	O	406.91	2.54E-09	7.30	——	8.00E-02	8.00E-06	3.00E-03	2.74E-12	6.92		
215	Hexane, n-	l	110-54-3	O	86.18	4.66E+01	2.68	——	2.00E-01	7.77E-06	1.30E+01	1.52E+02	3.29		
216	Hexazinone	s	51235-04-2	O	252.32	8.62E-11	1.57	——	5.08E-02	5.11E-06	3.30E+04	2.03E-07	2.15		
217	Hydrazine	l	302-01-2	O	32.05	7.20E-08	-1.00	——	4.16E-01	1.90E-05	3.41E+08	1.40E+01	-1.47		
218	Hydrogen chloride	g	7647-01-0	I	36.46	9.30E-02	———	CE	1.67E-01	2.05E-05	6.60E+05	3.08E+04	0.54		
219	Hydrogen cyanide	g	74-90-8	I	27.03	5.40E-03	———	CE	1.73E-01	1.96E-05	1.00E+06	6.20E+02	-0.69		
220	Hydrogen sulfide	g	7783-06-4	I	34.08	9.56E-01	———	CE	1.76E-01	1.61E-05	4.13E+03	1.52E+04	0.23		
221	Indene	l	95-13-6	O	116.16	2.08E-02	2.50	——	6.82E-02	7.97E-06	3.90E+02	1.30E+00	2.80		
222	Indeno-(1,2,3-cd)-pyrene	s	193-39-5	O	276.34	2.85E-06	6.54	——	1.90E-02	5.66E-06	3.75E-03	1.40E-10	6.70		
223	Isobutyl alcohol	l	78-83-1	O	74.12	4.99E-04	0.75	——	8.60E-02	8.00E-06	9.49E+04	1.00E+01	0.77		
224	Isophorone	l	78-59-1	O	138.21	2.57E-04	1.48	——	6.23E-02	6.76E-06	1.20E+04	4.10E-01	2.62		
225	Kepone	s	143-50-0	O	490.64	1.04E-06	4.43	——	4.22E-02	4.30E-06	7.60E+00	2.25E-07	4.91		
226	Lead	s	7439-92-1	M	207.20	0.00E+00	———	1.00	0.00E+00	0.00E+00	0.00E+00	0.00E+00	0.73		
227	Malathion	l	121-75-5	O	330.36	9.98E-07	2.46	——	1.50E-02	4.40E-06	1.45E+02	7.90E-06	2.29		
228	Maleic anhydride	s	108-31-6	O	98.06	8.31E-06	1.41	——	9.50E-02	1.11E-05	8.65E+02	1.34E-03	1.62		
229	Maleic hydrazide	s	123-33-1	O	112.09	< 1.03E-10	1.40	——	8.75E-02	8.75E-06	6.00E+03	< 7.50E-08	-0.89		
230	Malononitrile	s	109-77-3	O	66.06	1.97E-07	0.69	——	9.97E-02	1.09E-05	6.96E+06	3.79E-01	-0.18		
231	Manganese	s	7439-96-5	M	54.94	0.00E+00	———	1.70	0.00E+00	0.00E+00	0.00E+00	0.00E+00	0.00	1.00E-01	5.00E-02
232	Mercury	l	7439-97-6	M	200.59	4.74E-01	———	-1.40	3.07E-02	6.30E-06	3.00E-02	1.30E-03	-0.47	5.50E-03	1.40E-02
233	Methacrylonitrile	l	126-98-7	O	67.09	3.03E-03	0.53	——	8.00E-02	8.00E-06	2.50E+04	6.80E+01	0.76		

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234	Methanol	l	67-56-1	O	32.04	1.94E-04	-0.74	----	1.50E-01	1.64E-05	1.00E+06	1.22E+02	-0.63		
235	Methomyl	s	16752-77-5	O	162.21	7.48E-09	2.20	----	4.07E-02	7.20E-06	5.80E+04	5.00E-05	0.61		
236	Methoxychlor	s	72-43-5	O	345.65	6.57E-04	4.89	----	1.56E-02	4.46E-06	4.50E-02	1.23E-06	5.67		
237	Methoxyethanol	l	109-86-4	O	76.10	1.28E+00	0.93	----	9.15E-02	1.02E-05	2.01E+01	6.20E+00	-0.91		
238	Methoxyethanol acetate	l	110-49-6	O	118.13	1.28E+00	1.40	----	7.22E-02	8.10E-06	3.52E+01	7.00E+00	0.10		
239	Methyl ethyl ketone	l	78-93-3	O	72.11	1.94E-03	0.28	----	8.08E-02	9.80E-06	2.40E+05	9.10E+01	0.26		
240	Methyl isobutyl ketone	l	108-10-1	O	100.16	5.82E-03	1.18	----	7.50E-02	7.80E-06	1.90E+04	1.45E+01	1.16		
241	Methyl mercury	CE	22967-92-6	I	215.62	CE	----	CE	CE	CE	CE	CE	0.08		
242	Methyl methacrylate	l	80-62-6	O	100.12	1.33E-02	1.36	----	7.70E-02	8.60E-06	1.60E+04	3.80E+01	1.28		
243	Methyl naphthalene, 1-	s	90-12-0	O	142.20	1.64E-02	3.36	----	6.31E-02	7.13E-06	2.80E+01	6.62E-02	3.72		
244	Methyl naphthalene, 2-	s	91-57-6	O	142.20	1.85E-02	3.64	----	6.29E-02	7.20E-06	2.54E+01	6.75E-02	3.72		
245	Methyl parathion	s	298-00-0	O	263.21	5.82E-06	2.81	----	8.00E-02	8.00E-06	5.00E+01	1.52E-05	2.75		
246	Methylene-bis (2-chloroaniline), 4,4'-	s	101-14-4	O	267.16	1.40E-05	3.90	----	1.99E-02	5.80E-06	7.24E+01	6.94E-05	3.47		
247	Methylene bromide	l	74-95-3	O	173.83	3.49E-02	2.26	----	8.00E-02	8.00E-06	1.10E+04	4.56E+01	1.52		
248	Methylene chloride	l	75-09-2	O	84.93	9.10E-02	1.07	----	1.01E-01	1.17E-05	1.54E+04	4.55E+02	1.34		
249	Molinate	l	2212-67-1	O	187.31	5.25E-05	1.70	----	5.65E-02	6.00E-06	9.00E+02	5.60E-03	2.91		
250	Molybdenum	s	7439-98-7	M	95.94	0.00E+00	----	1.30	0.00E+00	0.00E+00	0.00E+00	0.00E+00	0.00	1.00E-01	6.00E-02
251	MTBE	l	1634-04-4	O	88.15	2.44E-02	1.15	----	7.92E-02	9.41E-05	4.80E+04	2.49E+02	1.43		
252	Naled	l	300-76-5	O	380.78	2.71E-03	2.12	----	CE	6.80E-06	1.50E+00	2.00E-04	1.60		
253	Naphthalene	s	91-20-3	O	128.17	2.00E-02	3.19	----	5.90E-02	7.50E-06	3.14E+01	8.89E-02	3.17		
254	Nickel and compounds (soluble salts)	s	7440-02-0	M	58.69	0.00E+00	----	1.20	0.00E+00	0.00E+00	0.00E+00	0.00E+00	-0.57	2.50E-02	8.00E-03
255	Nickel, refinery dust	CE	No CASNUM	I	CE	CE	----	CE	CE	CE	CE	CE	CE	2.50E-02	8.00E-03
256	Nitrate	CE	14797-55-8	I	62.00	CE	----	CE	CE	CE	CE	CE	0.21		
257	Nitrite	CE	14797-65-0	I	46.01	CE	----	CE	CE	CE	CE	CE	0.06		
258	Nitroaniline 2-	s	88-74-4	O	138.13	2.08E-05	1.43	----	5.99E-02	7.18E-06	1.26E+03	4.75E-03	2.02		

No	COMPOUND	Physical State	CAS number	Type	M.W. (g/mole)	H ' (cm^3-H_2O/cm^3-air)	$LogK_{oc}$	Log K_d	D_{air} (cm^2/s)	D_{wat} (cm^2/s)	Solubility (mg/l)	Vapor Pressure (mm Hg)	Log K_{ow}	Br_{Abs} (g soil/g D.W.)	Br_{Re} (g soil/g D.W.)
259	Nitrobenzene	l	98-95-3	O	123.11	8.56E-04	2.12	——	7.60E-02	8.60E-06	1.90E+03	2.44E-01	1.81		
260	Nitropropane, 2-	l	79-46-9	O	89.09	5.15E-03	0.54	——	9.23E-02	1.01E-05	1.70E+04	1.82E+01	0.87		
261	Nitroso-n-ethylurea, n-	s	759-73-9	O	117.11	1.05E-04	1.51	——	8.08E-02	8.25E-06	4.85E+04	7.97E-01	-0.02		
262	Nitroso-n-methylurea, n-	CE	684-93-5	O	103.08	1.08E-06	1.23	——	7.06E-02	1.02E-05	4.21E+06	8.04E-01	-0.52		
263	Nitroso-methyl-ethyl-amine, n-	CE	10595-95-6	O	88.11	3.70E-05	1.32	——	8.00E-02	8.00E-06	3.00E+05	2.28E+00	-0.15		
264	Nitrosodi-n-butylamine, n-	CE	924-16-3	O	158.24	3.58E-03	2.36	——	8.00E-02	8.00E-06	1.20E+03	2.89E-01	2.31		
265	Nitrosodi-n-propylamine, n-	s	621-64-7	O	130.19	9.35E-05	1.30	——	5.45E-02	8.17E-06	9.89E+03	4.00E-01	1.35		
266	Nitrosodiethanolamine	l	1116-54-7	O	134.14	2.05E-09	0.48	——	7.27E-02	7.70E-06	7.33E+07	5.00E-04	-1.28		
267	Nitrosodiethylamine, N-	l	55-18-5	O	102.14	3.60E-05	0.48	——	8.00E-02	8.00E-06	1.47E+05	1.42E+00	0.34		
268	Nitrosodimethylamine, N-	l	62-75-9	O	74.08	2.16E-05	0.56	——	1.34E-01	9.72E-06	1.00E+06	5.37E+00	-0.64		
269	Nitrosodiphenylamine	s	86-30-6	O	198.22	2.08E-04	2.52	——	3.12E-02	6.35E-06	3.51E+01	9.88E-02	3.16		
270	Nitrosopyrrolidine, n-	l	930-55-2	O	100.12	7.48E-07	-0.19	——	8.00E-02	8.00E-06	7.80E+05	1.75E-01	0.23		
271	Nitrotoluene, m	l	99-08-1	O	137.14	2.24E-03	2.15	——	6.42E-02	7.69E-06	4.98E+02	1.50E-01	2.36		
272	Nitrotoluene, o	l	88-72-2	O	137.14	1.87E-03	2.15	——	6.47E-02	7.73E-06	6.00E+02	1.50E-01	2.36		
273	Nitrotoluene, p	s	99-99-0	O	137.14	2.29E-03	2.15	——	6.40E-02	7.70E-06	4.00E+02	1.20E-01	2.36		
274	Octamethylpryrophosphoramide	l	152-16-9	O	286.25	1.16E-08	-0.51	——	8.00E-02	8.00E-06	1.00E+06	9.88E-04	-1.01		
275	Oxamyl	s	23135-22-0	O	219.26	1.60E-11	0.70	——	5.57E-02	5.75E-06	2.80E+05	3.83E-07	-1.20		
276	Parathion	s	56-38-2	O	291.26	2.37E-05	3.75	——	1.70E-02	5.80E-06	1.18E+01	1.73E-05	3.73		
277	Pebulate	l	1114-71-2	O	203.35	9.85E-04	2.63	——	5.10E-02	5.38E-06	9.20E+01	8.85E-03	3.51		
278	Pentachlorobenzene	s	608-93-5	O	250.34	3.16E-02	4.50	——	6.70E-02	6.30E-06	6.50E-01	1.67E-03	5.22		
279	Pentachloronitrobenzene	s	82-68-8	O	295.34	2.57E-02	4.11	——	1.59E-02	6.10E-06	7.11E-02	1.13E-04	5.03		
280	Pentachlorophenol	s	87-86-5	OA	266.34	1.16E-05	2.61	——	5.60E-02	6.10E-06	1.40E+01	1.70E-05	4.74		
281	Phenanthrene	s	85-01-8	O	178.23	5.40E-03	4.15	——	3.33E-02	7.47E-06	9.94E-01	6.80E-04	4.35		

No	COMPOUND	Physical State	CAS number	Type	M.W. (g/mole)	H' (cm^3-H_2O/cm^3-air)	LogK_{oc}	Log K_d	D_{air} (cm^2/s)	D_{wat} (cm^2/s)	Solubility (mg/l)	Vapor Pressure (mm Hg)	Log K_{ow}	Br_{Abs} (g soil/g D.W.)	Br_{Bs} (g soil/g D.W.)
282	Phenol	s	108-95-2	O	94.11	2.47E-05	1.24	——	8.20E-02	9.10E-06	8.70E+04	4.63E-01	1.51		
283	Phenyl mercuric acetate	s	62-38-4	O	336.74	3.41E-09	2.20	——	8.00E-02	8.00E-06	4.37E+03	3.04E-06	0.89		
284	Phenylene diamine, m-	s	108-45-2	O	108.14	9.56E-07	0.04	——	6.63E-02	9.90E-06	3.51E+05	2.28E-02	-0.39		
285	Phenylene diamine, p-	s	106-50-3	O	108.14	5.24E-08	0.04	——	7.15E-02	8.92E-06	3.80E+04	4.60E-03	-0.39		
286	Phorate	l	298-02-2	O	260.38	4.99E-04	3.74	——	8.00E-02	8.00E-06	4.40E+01	1.30E-03	3.37		
287	Phosphine	g	7803-51-2	I	34.00	1.46E+02	———	CE	3.81E-01	1.82E-05	4.00E+02	3.14E+04	-0.27		
288	Phosphoric acid	s	7664-38-2	I	98.00	CE	———	CE	CE	CE	CE	3.00E-02	-0.77		
289	Phosphorus, white	s	7723-14-0	I	123.90	5.65E-02	3.05	——	CE	CE	3.00E+00	2.50E-02	3.08		
290	Phthalic anhydride	s	85-44-9	O	148.12	2.54E-07	1.90	——	6.36E-02	7.90E-06	6.20E+03	2.00E-04	2.07		
291	Polybrominated biphenyls	s	67774-32-7	O	627.59	1.62E-04	3.33	——	CE	4.63E-06	1.10E-02	5.20E-08	6.39		
292	Polychlorinated biphenyls	l	1336-36-3	O	290.00	1.75E-02	5.72	——	1.04E-01	1.00E-05	5.55E-02	7.60E-05	6.30		
293	Potassium cyanide	s	151-50-8	I	65.12	0.00E+00	———	CE	CE	CE	7.20E+05	0.00E+00	-1.69		
294	Pronamide	s	23950-58-5	O	256.13	3.74E-04	2.30	——	8.00E-02	8.00E-06	1.50E+01	4.00E-04	3.57		
295	Propargite	l	2312-35-8	O	350.48	1.44E-06	3.75	——	3.94E-02	4.20E-06	5.00E-01	4.48E-08	3.73		
296	Propargyl alcohol	l	107-19-7	O	56.06	1.34E-05	0.73	——	1.04E-01	1.24E-05	5.57E+06	1.20E+01	-0.42		
297	Propham	s	122-42-9	O	179.22	5.30E-06	1.71	——	5.71E-02	6.28E-06	2.50E+02	1.35E-04	2.66		
298	Propylene oxide	l	75-56-9	O	58.08	3.47E-03	0.10	——	1.04E-01	1.16E-05	4.76E+05	5.32E+02	0.03		
299	Pyrene	s	129-00-0	O	202.26	4.57E-04	4.58	——	2.72E-02	7.24E-06	1.35E-01	4.25E-06	4.93		
300	Pyridine	l	110-86-1	O	79.10	2.91E-01	0.64	——	9.10E-02	7.60E-06	3.00E+02	2.00E+01	0.80		
301	Quinoline	l	91-22-5	O	129.16	1.15E-04	2.76	——	5.46E-02	8.31E-06	6.78E+03	9.60E-02	2.14		
302	Selenious acid	s	7783-00-8	I	128.97	1.27E-05	———	CE	CE	CE	1.67E+06	3.00E+00	-3.18	1.50E-02	2.20E-02
303	Selenium	s	7782-49-2	M	78.96	0.00E+00	———	0.34	CE	CE	0.00E+00	0.00E+00	0.24	1.50E-02	2.20E-02
304	Selenourea	CE	630-10-4	O	118.98	CE	CE	——	CE	CE	CE	CE	-2.63		
305	Silver	s	7440-22-4	M	107.87	0.00E+00	———	-1.00	0.00E+00	0.00E+00	0.00E+00	0.00E+00	0.00	1.70E-01	1.00E-01
306	Sodium azide	s	26628-22-8	I	65.01	CE	———	CE	CE	CE	4.20E+05	CE	0.86		
307	Sodium cyanide	s	143-33-9	I	49.01	0.00E+00	———	CE	CE	CE	5.80E+05	0.00E+00	-1.69		
308	Sodium diethyldithiocarbamate	s	148-18-5	O	171.26	CE	CE	——	CE	CE	CE	CE	0.27		
309	Sodium fluoride	s	7681-49-4	I	41.99	0.00E+00	———	CE	CE	CE	4.00E+04	0.00E+00	-0.77		
310	Strychnine	s	57-24-9	O	334.42	6.65E-12	1.90	——	8.00E-02	8.00E-06	1.43E+02	1.67E-10	1.85		

No	COMPOUND	Physical State	CAS number	Type	M.W. (g/mole)	H' (cm^3-H_2O/cm^3-air)	$LogK_{oc}$	Log K_d	D_{air} (cm^2/s)	D_{wat} (cm^2/s)	Solubility (mg/l)	Vapor Pressure (mm Hg)	Log K_{ow}	Br_{Abs} (g soil/g D.W.)	Br_{Bs} (g soil/g D.W.)
311	Styrene	l	100-42-5	O	104.15	1.14E-01	2.88	——	7.10E-02	8.00E-06	3.10E+02	6.24E+00	2.90		
312	Tetrachlorobenzene, 1,2,4,5-	s	95-94-3	O	215.89	4.99E-02	3.20	——	2.11E-02	8.80E-06	3.00E-01	5.40E-03	4.57		
313	Tetrachloroethane, 1,1,1,2-	s	630-20-6	O	167.85	9.98E-02	2.98	——	7.10E-02	7.90E-06	1.10E+03	1.22E+01	2.93		
314	Tetrachloroethane, 1,1,2,2-	l	79-34-5	O	167.85	1.55E-02	1.89	——	7.10E-02	7.90E-06	2.97E+03	5.17E+00	2.19		
315	Tetrachloroethylene	l	127-18-4	O	165.83	7.65E-01	2.19	——	7.20E-02	8.20E-06	2.00E+02	1.84E+01	2.97		
316	Tetrachlorophenol, 2,3,4,6-	s	58-90-2	OA	231.89	2.54E-04	2.02	——	2.17E-02	7.10E-06	1.00E+02	5.02E-03	4.09		
317	Tetraethyl dithiopyrophosphate	l	3689-24-5	O	322.32	1.75E-04	2.87	——	1.50E-02	5.50E-06	2.50E+01	1.70E-04	3.98		
318	Tetraethyl lead	l	78-00-2	O	323.45	3.31E+00	3.69	——	1.32E-02	6.40E-06	8.00E-01	1.50E-01	4.88		
319	Thallium chloride	s	7791-12-0	I	239.84	0.00E+00	——	CE	CE	CE	2.90E+03	0.00E+00	CE	1.00E-03	4.00E-04
320	Thallium nitrate	s	10102-45-1	I	266.39	7.19E-11	——	CE	CE	CE	9.55E+04	4.71E-07	CE		
321	Thallium sulfate	s	7446-18-6	I	504.83	0.00E+00	——	CE	CE	CE	4.87E+04	0.00E+00	CE		
322	Thiofanox	s	39196-18-4	O	218.32	3.90E-07	1.77	——	2.55E-02	6.62E-06	5.20E+03	3.10E-04	2.16		
323	Thiophanatemethyl	s	23564-05-8	O	342.40	< 3.82E-07	0.95	——	4.55E-02	4.68E-06	3.50E+00	< 7.50E-08	1.50		
324	Thiram	s	137-26-8	O	240.44	< 3.28E-06	2.83	——	2.25E-02	6.24E-06	3.00E+01	< 7.50E-06	1.70		
325	Tin	s	7440-31-5	M	118.71	0.00E+00	——	CE	0.00E+00	0.00E+00	0.00E+00	0.00E+00	1.29	1.00E-02	6.00E-03
326	Toluene	l	108-88-3	O	92.14	2.76E-01	2.15	——	8.70E-02	8.60E-06	5.30E+02	2.82E+01	2.54		
327	Toluenediamine, 2,4-	s	95-80-7	O	122.17	7.48E-08	3.11	——	8.00E-02	8.00E-06	7.47E+03	8.36E-05	0.16		
328	Toluenediamine, 2,6-	s	823-40-5	O	122.17	5.15E-10	CE	——	6.87E-02	7.97E-06	4.80E+04	1.98E-05	0.16		
329	Toluene diisocyanate, 2,4/2,6-	l	26471-62-5	O	174.16	6.86E-06	3.35	——	6.09E-02	6.80E-06	1.11E+05	8.00E-02	3.74		
330	Toluidine, p-	s	106-49-0	O	107.16	3.82E-04	1.40	——	8.00E-02	8.00E-06	7.20E+03	3.30E-01	1.62		
331	Toxaphene	s	8001-35-2	O	413.81	1.40E-04	4.98	——	1.16E-02	4.34E-06	7.40E-01	4.19E-06	6.79		
332	TP Silvex, 2,4,5-	s	93-72-1	O	269.51	5.45E-07	3.41	——	1.94E-02	5.80E-06	1.40E+02	5.20E-06	3.68		
333	Triallate	s	2303-17-5	O	304.67	4.53E-04	3.16	——	4.58E-02	4.84E-06	4.00E+00	1.20E-04	4.57		
334	Trichloro-1,2,2-trifluoroethane, 1,1,2	l	76-13-1	O	187.38	2.20E+01	3.11	——	7.80E-02	8.20E-06	2.00E+02	3.60E+02	3.09		

No	COMPOUND	Physical State	CAS number	Type	M.W. (g/mole)	H' (cm^3-H_2O/cm^3-air)	LogK$_{oc}$	Log K_d	D_{air} (cm^2/s)	D_{wat} (cm^2/s)	Solubility (mg/l)	Vapor Pressure (mm Hg)	Log K_{ow}	Br_{Abs} (g soil/g D.W.)	Br_{Ex} (g soil/g D.W.)
335	Trichlorobenzene, 1,2,4-	l	120-82-1	O	181.45	5.90E-02	3.22	------	3.00E-02	8.23E-06	4.88E+01	3.36E-01	3.93		
336	Trichloroethane, 1,1,1-	l	71-55-6	O	133.40	7.15E-01	2.04	------	7.80E-02	8.80E-06	1.33E+03	1.24E+02	2.68		
337	Trichloroethane, 1,1,2-	l	79-00-5	O	133.40	3.80E-02	1.70	------	7.92E-02	8.80E-06	4.42E+03	2.52E+01	2.01		
338	Trichloroethylene	l	79-01-6	O	131.39	4.28E-01	1.97	------	7.90E-02	9.10E-06	1.10E+03	7.20E+01	2.47		
339	Trichlorofluoromethane	l	75-69-4	O	137.37	4.03E+00	2.13	------	8.70E-02	9.70E-06	1.10E+03	6.87E+02	2.13		
340	Trichlorophenol, 2,4,5-	s	95-95-4	OA	197.45	1.78E-04	2.47	------	2.91E-02	7.03E-06	1.20E+03	1.63E-02	3.45		
341	Trichlorophenol, 2,4,6-	s	88-06-2	OA	197.45	3.19E-04	2.12	------	3.18E-02	6.25E-06	9.82E+02	1.18E-02	3.45		
342	Trichlorophenoxyacetic acid, 2,4,5-	s	93-76-5	O	255.48	3.62E-07	1.72	------	8.00E-02	8.00E-06	2.78E+02	3.61E-06	3.26		
343	Trichloropropane, 1,1,2-	l	598-77-6	O	147.43	1.21E+00	2.24	------	3.96E-02	9.30E-06	4.44E+01	6.64E+00	2.43		
344	Trichloropropane, 1,2,3-	l	96-18-4	O	147.43	1.58E-02	2.59	------	7.10E-02	7.90E-06	1.90E+03	3.70E+00	2.50		
345	Triethylamine	l	121-44-8	O	101.19	1.99E-02	1.12	------	7.54E-02	7.51E-06	1.50E+04	5.00E+01	1.51		
346	Trifluralin	s	1582-09-8	O	335.28	2.01E-03	4.14	------	1.49E-02	4.70E-06	6.00E-01	1.10E-04	5.31		
347	Trimethylbenzene, 1,2,3-	l	526-73-8	O	120.19	1.33E-01	2.77	------	6.77E-02	7.41E-06	7.52E+01	1.49E+00	3.55		
348	Trinitrobenzene, 1,3,5-	s	99-35-4	O	213.11	2.87E-06	1.15	------	8.00E-02	8.00E-06	3.53E+02	9.90E-05	1.45		
349	Trinitrophenylmethylnitramine, 2,4,6-	s	479-45-8	O	287.15	8.31E-11	2.37	------	5.69E-02	6.40E-06	7.50E+01	4.00E-10	2.04		
350	Trinitrotoluene, 2,4,6-	s	118-96-7	O	227.13	1.90E-05	2.48	------	5.41E-02	6.57E-06	1.30E+02	1.24E-04	1.99		
351	Uranium	s	7440-61-1	M	238.03	0.00E+00	--------	3.47	0.00E+00	0.00E+00	0.00E+00	0.00E+00	0.00	5.00E-03	4.00E-03
352	Vanadium	s	7440-62-2	M	50.94	0.00E+00	--------	3.00	0.00E+00	0.00E+00	0.00E+00	0.00E+00	0.00	3.60E-03	3.00E-03
353	Vanadium pentoxide	s	1314-62-1	I	181.88	0.00E+00	--------	CE	CE	CE	8.00E+03	0.00E+00	CE	3.60E-03	3.00E-03
354	Vernam	l	1929-77-7	O	203.35	7.36E-04	3.44	------	5.10E-02	5.39E-06	9.85E+01	1.04E-02	3.51		
355	Vinyl acetate	l	108-05-4	O	86.09	2.29E-02	0.72	------	8.50E-02	9.20E-06	2.00E+04	1.09E+02	0.73		
356	Vinyl chloride	g	75-01-4	O	62.50	3.49E+00	1.04	------	1.06E-01	1.23E-05	2.76E+03	2.80E+03	1.62		
357	Warfarin	s	81-81-2	O	308.33	1.15E-07	2.96	------	1.63E-02	4.40E-06	1.70E+01	1.16E-07	3.20		
358	Xylenes	l	1330-20-7	O	106.17	2.93E-01	2.38	------	7.40E-02	8.50E-06	1.98E+02	8.06E+00	3.09		

No	COMPOUND	Physical State	CAS number	Type	M.W. (g/mole)	H ' (cm^3-H_2O/cm^3-air)	$LogK_{oc}$	Log K_d	D_{air} (cm^2/s)	D_{wat} (cm^2/s)	Solubility (mg/l)	Vapor Pressure (mm Hg)	Log K_{ow}	Br_{Abz} (g soil/g D.W.)	Br_{Bz} (g soil/g D.W.)
359	Xylene, m-	l	108-38-3	O	106.17	3.05E-01	2.29	------	7.00E-02	7.80E-06	1.60E+02	8.00E+00	3.20		
360	Xylene, o-	l	95-47-6	O	106.17	7.36E-04	2.11	------	8.70E-02	1.00E-05	1.78E+02	6.75E+00	3.13		
361	Xylene, p-	l	106-42-3	O	106.17	3.18E-01	2.49	------	7.69E-02	8.44E-06	1.85E+02	8.76E+00	3.17		
362	Zinc	s	7440-66-6	M	65.39	0.00E+00	--------	1.20	0.00E+00	0.00E+00	0.00E+00	0.00E+00	-0.47	9.00E-02	4.40E-02
363	Zinc cyanide	s	557-21-1	I	117.43	CE	--------	1.60	CE	CE	0.00E+00	CE	-2.31		
364	Zinc phosphide	s	1314-84-7	I	258.12	0.00E+00	--------	1.60	CE	CE	0.00E+00	0.00E+00	CE		
365	6 C aliphatics (TPH)	l	---	O	81	3.3E+01	2.9	------	1.0E-01	1.0E-05	3.6E+01	2.7E+02	---		
366	>6-8 C aliphatics (TPH)	l	---	O	100	5.0E+01	3.6	------	1.0E-01	1.0E-05	5.4E+00	4.8E+01	---		
367	>8-10 C aliphatics (TPH)	l	---	O	130	8.0E+01	4.5	------	1.0E-01	1.0E-05	4.3E-01	4.8E+00	---		
368	>10-12 C aliphatics (TPH)	l	---	O	160	1.2E+02	5.4	------	1.0E-01	1.0E-05	3.4E-02	4.8E-01	---		
369	>12-16 C aliphatics (TPH)	l	---	O	200	5.2E+02	6.7	------	1.0E-01	1.0E-05	7.6E-04	3.6E-02	---		
370	>16-35 C aliphatics (TPH)	l	---	O	270	4.9E+03	8.8	------	1.0E-01	1.0E-05	2.5E-06	8.4E-04	---		
371	5-7 C aromatics (TPH) - Benzene	l		O	78	2.27E-01	1.82	------	8.8E-02	9.8E-06	1.77E+03	9.50E+01	---		
372	>7-8 C aromatics (TPH) - Toluene	l	---	O	92	2.76E-01	2.15	------	8.7E-02	8.6E-06	5.30E+02	2.82E+01	---		
370	>8-10 C aromatics (TPH)	l	---	O	120	4.8E-01	3.2	------	1.0E-01	1.0E-05	6.5E+01	4.8E+00	---		
371	>10-12 C aromatics (TPH)	l	---	O	130	1.4E-01	3.4	------	1.0E-01	1.0E-05	2.5E+01	4.8E-01	---		
375	>12-16 C aromatics (TPH)	l	---	O	150	5.3E-02	3.7	------	1.0E-01	1.0E-05	5.8E+00	3.6E-02	---		
376	>16-21 C aromatics (TPH)	l	---	O	190	1.3E-02	4.2	------	1.0E-01	1.0E-05	6.5E-01	8.4E-04	---		
377	>21-35 C aromatics (TPH)	s	---	O	240	6.7E-04	5.1	------	1.0E-01	1.0E-05	6.6E-03	3.3E-07	---		

Legend

s	*compound solid at @ 20 °C*	D_{air}	*Diffusion coefficient in air (cm^2/s)*
l	*compound liquid at @ 20 °C*	D_{wat}	*Diffusion coefficient in water (cm^2/s)*
g	*compound gaseous at @ 20 °C*	K_{ow}	*Octanol-water partition coefficient (cm^3-H_2O/cm^3-Octanol)*
H'	*Dimensionless Henry's Law Constant H' = H x 41.57 @ 20 °C (cm^3-H_2O/cm^3-air)*	Br_{Abg}	*Soil-to-above ground plant biotransfer factor (g soil/g plant tissue dry weight)*
H	*Henry's Law Constant (atm-m^3/mole)*	Br_{Bg}	*Soil-to-below ground plant biotransfer factor (g soil/g plant tissue dry weight)*
MW	*Molecular Weight (g/mole)*	*Type*	*O: Organic, I: Inorganic, M: Metal, OA: Organic Acids*
K_{oc}	*Soil organic carbon-water partition coefficient (cm^3-H_2O/g-Carbon)*	*CE*	*Not found, Can not estimate*
K_d	*Soil-water partition coefficient (cm^3-H_2O/g-Soil)*	*NA/reacts*	*Not applicable because reacts with water*
		Values in italic	*Estimated by TCEQ*

Figure: 30 TAC §350.73(f)(1)(A)

Soil-Water Distribution Coefficients (K_d) for Aluminum and Lead									
	pH ≤ 5			pH 5-9			pH ≥9		
	Sandy Soil	Loamy Soil	Clayey Soil	Sandy Soil	Loamy Soil	Clayey Soil	Sandy Soil	Loamy Soil	Clayey Soil
Aluminum	3,980	3,980	44,600	35,300	35,300	35,300	353	353	353
Lead	10	10	12	234	597	1,830	234	597	1,830

Sandy Soil: <10% by weight clay, organic matter, and iron and aluminum oxyhydroxides.

Loamy Soil: 10-30% by weight clay, organic matter, and iron and aluminum oxyhydroxides.

Clayey Soil: >30% by weight clay, organic matter, and iron and aluminum oxyhydroxides.

Figure: 30 TAC §350.73(f)(1)(B)

K_{oc} Values for Ionizing Organic COCs as a Function of pH									
pH	Benzoic Acid	2-Chloro-phenol	2,4-Dichloro-phenol	2,4 - Dinitro-phenol	Penta-chloro-phenol	2,3,4,5-Tetra-chloro-phenol	2,3,4,6-Tetra-chloro-phenol	2,4,5-Tri-chloro-phenol	2,4,6-Tri-chloro-phenol
4.9	5.54E+00	3.98E+02	1.59E+02	2.94E-02	9.05E+03	1.73E+04	4.45E+03	2.37E+03	1.04E+03
5.0	4.64E+00	3.98E+02	1.59E+02	2.55E-02	7.96E+03	1.72E+04	4.15E+03	2.36E+03	1.03E+03
5.1	3.88E+00	3.98E+02	1.59E+02	2.23E-02	6.93E+03	1.70E+04	3.83E+03	2.36E+03	1.02E+03
5.2	3.25E+00	3.98E+02	1.59E+02	1.98E-02	5.97E+03	1.67E+04	3.49E+03	2.35E+03	1.01E+03
5.3	2.72E+00	3.98E+02	1.59E+02	1.78E-02	5.10E+03	1.65E+04	3.14E+03	2.34E+03	9.99E+02
5.4	2.29E+00	3.98E+02	1.58E+02	1.62E-02	4.32E+03	1.61E+04	2.79E+03	2.33E+03	9.82E+02
5.5	1.94E+00	3.97E+02	1.58E+02	1.50E-02	3.65E+03	1.57E+04	2.45E+03	2.32E+03	9.62E+02
5.6	1.65E+00	3.97E+02	1.58E+02	1.40E-02	3.07E+03	1.52E+04	2.13E+03	2.31E+03	9.38E+02
5.7	1.42E+00	3.97E+02	1.58E+02	1.32E-02	2.58E+03	1.47E+04	1.83E+03	2.29E+03	9.10E+02
5.8	1.24E+00	3.97E+02	1.58E+02	1.25E-02	2.18E+03	1.40E+04	1.56E+03	2.27E+03	8.77E+02
5.9	1.09E+00	3.97E+02	1.57E+02	1.20E-02	1.84E+03	1.32E+04	1.32E+03	2.24E+03	8.39E+02
6.0	9.69E-01	3.96E+02	1.57E+02	1.16E-02	1.56E+03	1.24E+04	1.11E+03	2.21E+03	7.96E+02
6.1	8.75E-01	3.96E+02	1.57E+02	1.13E-02	1.33E+03	1.15E+04	9.27E+02	2.17E+03	7.48E+02
6.2	7.99E-01	3.96E+02	1.56E+02	1.10E-02	1.15E+03	1.05E+04	7.75E+02	2.12E+03	6.97E+02
6.3	7.36E-01	3.95E+02	1.55E+02	1.08E-02	9.98E+02	9.51E+03	6.47E+02	2.06E+03	6.44E+02
6.4	6 89E-01	3.94E+02	1.54E+02	1.06E-02	8.77E+02	8.48E+03	5.42E+02	1.99E+03	5.89E+02
6.5	6.51E-01	3.93E+02	1.53E+02	1.05E-02	7.81E+02	7.47E+03	4.55E+02	1.91E+03	5.33E+02
6.6	6.20E-01	3.92E+02	1.52E+02	1.04E-02	7.03E+02	6.49E+03	3.84E+02	1.82E+03	4.80E+02
6.7	5.95E-01	3.90E+02	1.50E+02	1.03E-02	6.40E+02	5.58E+03	3.27E+02	1.71E+03	4.29E+02
6.8	5.76E-01	3.88E+02	1.47E+02	1.02E-02	5.92E+02	4.74E+03	2.80E+02	1.60E+03	3.81E+02
6.9	5.60E-01	3.86E+02	1.45E+02	1.02E-02	5.52E+02	3.99E+03	2.42E+02	1.47E+03	3.38E+02
7.0	5.47E-01	3.83E+02	1.41E+02	1.02E-02	5.21E+02	3.33E+03	2.13E+02	1.34E+03	3.00E+02
7.1	5.38E-01	3.79E+02	1.38E+02	1.02E-02	4.96E+02	2.76E+03	1.88E+02	1.21E+03	2.67E+02
7.2	5.32E-01	3.75E+02	1.33E+02	1.01E-02	4.76E+02	2.28E+03	1.69E+02	1.07E+03	2.39E+02
7.3	5.25E-01	3.69E+02	1.28E+02	1.01E-02	4.61E+02	1.87E+03	1.53E+02	9.43E+02	2.15E+02
7.4	5.19E-01	3.62E+02	1.21E+02	1.01E-02	4.47E+02	1.53E+03	1.41E+02	8.19E+02	1.95E+02
7.5	5.16E-01	3.54E+02	1.14E+02	1.01E-02	4.37E+02	1.25E+03	1.31E+02	7.03E+02	1.78E+02
7.6	5.13E-01	3.44E+02	1.07E+02	1.01E-02	4.29E+02	1.02E+03	1.23E+02	5.99E+02	1.64E+02
7.7	5.09E-01	3.33E+02	9.84E+01	1.00E-02	4.23E+02	8.31E+02	1.17E+02	5.07E+02	1.53E+02
7.8	5.06E-01	3.19E+02	8.97E+01	1.00E-02	4.18E+02	6.79E+02	1.13E+02	4.26E+02	1.44E+02
7.9	5.06E-01	3.04E+02	8.07E+01	1.00E-02	4.14E+02	5.56E+02	1.08E+02	3.57E+02	1.37E+02
8.0	5.06E-01	2.86E+02	7.17E+01	1.00E-02	4.10E+02	4.58E+02	1.05E+02	2.98E+02	1.31E+02

Figure: 30 TAC §350.73(f)(1)(C)

K_d Values (L/kg) for Inorganic COCs as a Function of pH[a]													
pH	Sb	As	Ba	Be	Cd	Cr (3)	Cr(6)	Hg	Ni	Ag	Se	Tl	Zn
4.9	9.6E+01	2.5E+01	1.1E+01	2.3E+01	1.5E+01	1.2E+03	3.1E+01	4.0E-02	1.6E+01	1.0E-01	1.8E+01	4.4E+01	1.6E+01
5.0	9.1E+01	2.5E+01	1.2E+01	2.6E+01	1.7E+01	1.9E+03	3.1E+01	6.0E-02	1.8E+01	1.3E-01	1.7E+01	4.5E+01	1.8E+01
5.1	8.7E+01	2.5E+01	1.4E+01	2.8E+01	1.9E+01	3.0E+03	3.0E+01	9.0E-02	2.0E+01	1.6E-01	1.6E+01	4.6E+01	1.9E+01
5.2	8.3E+01	2.6E+01	1.5E+01	3.1E+01	2.1E+01	4.9E+03	2.9E+01	1.4E-01	2.2E+01	2.1E-01	1.5E+01	4.7E+01	2.1E+01
5.3	7.9E+01	2.6E+01	1.7E+01	3.5E+01	2.3E+01	8.1E+03	2.8E+01	2.0E-01	2.4E+01	2.6E-01	1.4E+01	4.8E+01	2.3E+01
5.4	7.6E+01	2.6E+01	1.9E+01	3.8E+01	2.5E+01	1.3E+04	2.7E+01	3.0E-01	2.6E+01	3.3E-01	1.3E+01	5.0E+01	2.5E+01
5.5	7.2E+01	2.6E+01	2.1E+01	4.2E+01	2.7E+01	2.1E+04	2.7E+01	4.6E-01	2.8E+01	4.2E-01	1.2E+01	5.1E+01	2.6E+01
5.6	6.9E+01	2.6E+01	2.2E+01	4.7E+01	2.9E+01	3.5E+04	2.6E+01	6.9E-01	3.0E+01	5.3E-01	1.1E+01	5.2E+01	2.8E+01
5.7	6.5E+01	2.7E+01	2.4E+01	5.3E+01	3.1E+01	5.5E+04	2.5E+01	1.0E+00	3.2E+01	6.7E-01	1.1E+01	5.4E+01	3.0E+01
5.8	6.2E+01	2.7E+01	2.6E+01	6.0E+01	3.3E+01	8.7E+04	2.5E+01	1.6E+00	3.4E+01	8.4E-01	9.8E+00	5.5E+01	3.2E+01
5.9	6.0E+01	2.7E+01	2.8E+01	6.9E+01	3.5E+01	1.3E+05	2.4E+01	2.3E+00	3.6E+01	1.1E+00	9.2E+00	5.6E+01	3.4E+01
6.0	5.7E+01	2.7E+01	3.0E+01	8.2E+01	3.7E+01	2.0E+05	2.3E+01	3.5E+00	3.8E+01	1.3E+00	8.6E+00	5.8E+01	3.6E+01
6.1	5.4E+-01	2.7E+01	3.1E+01	9.9E+01	4.0E+01	3.0E+05	2.3E+01	5.1E+00	4.0E+01	1.7E+00	8.0E+00	5.9E+01	3.9E+01
6.2	5.2E+01	2.8E+01	3.3E+01	1.2E+02	4.2E+01	4.2E+05	2.2E+01	7.5E+00	4.2E+01	2.1E+00	7.5E+00	6.1E+01	4.2E+01
6.3	4.9E+01	2.8E+01	3.5E+01	1.6E+02	4.4E+01	5.8E+05	2.2E+01	1.1E+01	4.5E+01	2.7E+00	7.0E+00	6.2E+01	4.4E+01
6.4	4.7E+01	2.8E+01	3.6E+01	2.1E+02	4.8E+01	7.7E+05	2.1E+01	1.6E+01	4.7E+01	3.4E+00	6.5E+00	6.4E+01	4.7E+01
6.5	4.5E+01	2.8E+01	3.7E+01	2.8E+02	5.2E+01	9.9E+05	2.0E+01	2.2E+01	5.0E+01	4.2E+00	6.1E+00	6.6E+01	5.1E+01
6.6	4.3E+01	2.8E+01	3.9E+01	3.9E+02	5.7E+01	1.2E+06	2.0E+01	3.0E+01	5.4E+01	5.3E+00	5.7E+00	6.7E+01	5.4E+01
6.7	4.1E+01	2.9E+01	4.0E+01	5.5E+02	6.4E+01	1.5E+06	1.9E+01	4.0E+01	5.8E+01	6.6E+00	5.3E+00	6.9E+01	5.8E+01
6.8	3.9E+01	2.9E+01	4.1E+01	7.9E+02	7.5E+01	1.8E+06	1.9E+01	5.2E+01	6.5E+01	8.3E+00	5.0E+00	7.1E+01	6.2E+01
6.9	3.7E+01	2.9E+01	4.2E+01	1.1E+03	9.1E+01	2.1E+06	1.8E+01	6.6E+01	7.4E+01	1.0E+01	4.7E+00	7.3E+01	6.8E+01
7.0	3.5E+01	2.9E+01	4.2E+01	1.7E+03	1.1E+02	2.5E+06	1.8E+01	8.2E+01	8.8E+01	1.3E+01	4.3E+00	7.4E+01	7.5E+01
7.1	3.4E+01	2.9E+01	4.3E+01	2.5E+03	1.5E+02	2.8E+06	1.7E+01	9.9E+01	1.1E+02	1.6E+01	4.1E+00	7.6E+01	8.3E+01
7.2	3.2E+01	3.0E+01	4.4E+01	3.8E+03	2.0E+02	3.1E+06	1.7E+01	1.2E+02	1.4E+02	2.0E+01	3.8E+00	7.8E+01	9.5E+01
7.3	3.1E+01	3.0E+01	4.4E+01	5.7E+03	2.8E+02	3.4E+06	1.6E+01	1.3E+02	1.8E+02	2.5E+01	3.5E+00	8.0E+01	1.1E+02
7.4	2.9E+01	3.0E+01	4.5E+01	8.6E+03	4.0E+02	3.7E+06	1.6E+01	1.5E+02	2.5E+02	3.1E+01	3.3E+00	8.2E+01	1.3E+02
7.5	2.8E+01	3.0E+01	4.6E+01	1.3E+04	5.9E+02	3.9E+06	1.6E+01	1.6E+02	3.5E+02	3.9E+01	3.1E+00	8.5E+01	1.6E+02
7.6	2.6E+01	3.1E+01	4.6E+01	2.0E+04	8.7E+02	4.1E+06	1.5E+01	1.7E+02	4.9E+02	4.8E+01	2.9E+00	8.7E+01	1.9E+02
7.7	2.5E+01	3.1E+01	4.7E+01	3.0E+04	1.3E+03	4.2E+06	1.5E+01	1.8E+02	7.0E+02	5.9E+01	2.7E+00	8.9E+01	2.4E+02
7.8	2.4E+01	3.1E+01	4.9E+01	4.6E+04	1.9E+03	4.3E+06	1.4E+01	1.9E+02	9.9E+02	7.3E+01	2.5E+00	9.1E+01	3.1E+02
7.9	2.3E+01	3.1E+01	5.0E+01	6.9E+04	2.9E+03	4.3E+06	1.4E+01	1.9E+02	1.4E+03	8.9E+01	2.4E+00	9.4E+01	4.0E+02
8.0	2.2E+01	3.1E+01	5.2E+01	1.0E+05	4.3E+03	4.3E+06	1.4E+01	2.0E+02	1.9E+03	1.1E+02	2.2E+00	9.6E+01	5.3E+02

[a] non pH-dependent inorganic K_d values for cyanide, and vanadium are 9.9, and 50 respectively.

Figure: 30 TAC §350.74(a)

Risk-Based Exposure Limit Equations and Default Exposure Factors for Residents

RBEL-1:
Inhalation of carcinogenic COCs - RBEL (mg/m^3)

$$^{Air}RBEL_{Inh\text{-}c} = \frac{RL \times ATc \times 365\ days/yr}{URF \times 1000\ \mu g/mg \times EF.res \times ED.A.res}$$

Inhalation of noncarcinogenic COCs - RBEL (mg/m^3)

$$^{Air}RBEL_{Inh\text{-}nc} = \frac{RfC \times HQ \times AT.A.res \times 365\ days/yr}{EF.res \times ED.A.res}$$

RBEL-2:
Dermal contact with carcinogenic COCs in soil - RBEL (mg/kg)

$$^{Soil}RBEL_{Derm\text{-}c} = \frac{RL \times ATc \times 365\ days/yr}{SF_d \times MF \times 10^{-6}\ kg/mg \times EF.res \times DF.adj \times ABS.d}$$

where: $SF_d = \frac{SF_o}{ABS_{GI}}$ when ABS_{GI} <50%, otherwise $SF_d = SF_o$; and

$$DF.adj = \frac{(SA_{0<6})(AF_{0<6})(ED_{0<6})}{(BW_{0<6})} + \frac{(SA_{6<18})(AF_{6<18})(ED_{6<18})}{(BW_{6<18})} + \frac{(SA_{18<30})(AF_{18<30})(ED_{18<30})}{(BW_{18<30})}$$

Dermal contact with noncarcinogenic COCs in soil - RBEL (mg/kg)

$$^{Soil}RBEL_{Derm\text{-}nc} = \frac{HQ \times RfD_d \times BW.C \times AT.C.res \times 365\ days/yr}{10^{-6}\ kg/mg \times ED.C.res \times EF.res \times SA.C.res \times AF.C.res \times ABS.d}$$

where $RfD_d = (RfD_o)(ABS_{GI})$ when ABS_{GI} <50%, otherwise $RfD_d = RfD_o$

RBEL-3:
Ingestion of carcinogenic COCs in soil - RBEL (mg/kg)

$$^{Soil}RBEL_{Ing\text{-}c} = \frac{RL \times ATc \times 365\ days/yr}{SF_o \times MF \times 10^{-6}\ kg/mg \times EF.res \times IRsoil.AgeAdj.res \times RBAF}$$

Ingestion of noncarcinogenic COCs in soil - RBEL (mg/kg)

$$^{Soil}RBEL_{Ing\text{-}nc} = \frac{HQ \times BW.C \times RfD_o \times AT.C.res \times 365\ days/yr}{10^{-6}\ kg/mg \times EF.res \times ED.C.res \times IRsoil.C.res \times RBAF}$$

RBEL-5:
Class 3 Groundwater RBEL

$$^{GW}RBEL_{Class\ 3} = 100 \times RBEL\text{-}4$$

RBEL-7:
Ingestion of carcinogenic COCs in above-ground vegetables - RBEL (mg/kg)

$$^{AbgVeg}RBEL_{Ing\text{-}c} = \frac{RL \times ATc \times 365\ day/yr}{EF.res \times SF_o \times MF \times IRabg.AgeAdj.res}$$

Ingestion of noncarcinogenic COCs in above-ground vegetables - RBEL (mg/kg)

$$^{AbgVeg}RBEL_{Ing\text{-}nc} = \frac{HQ \times RfD_o \times BW.C \times AT.C.res \times 365\ day/yr}{EF.res \times ED.C.res \times IRabg.C.res}$$

Ingestion of carcinogenic COCs in below-ground vegetables - RBEL (mg/kg)

$$^{BgVeg}RBEL_{Ing\text{-}c} = \frac{RL \times ATc \times 365\ day/yr}{EF.res \times SF_o \times MF \times IRbg.AgeAdj.res}$$

Ingestion of noncarcinogenic COCs in below-ground vegetables - RBEL (mg/kg)

$$^{BgVeg}RBEL_{Ing\text{-}nc} = \frac{HQ \times RfD_o \times BW.C \times AT.C.res \times 365\ day/yr}{EF.res \times ED.C.res \times IRbg.C.res}$$

Risk-Based Exposure Limit Equations and Default Exposure Factors for Residents	
RBEL-4: Ingestion of carcinogenic COCs in water - RBEL (mg/L) $^{GW}RBEL_{Ing\text{-}c}$ = primary MCL when available, or a secondary MCL under the conditions described in §350.74(f)(3), otherwise $\frac{RL \times AT_c \times 365\ days/yr}{SF_o \times MF \times IRw.AgeAdj.res \times EF.res}$ Ingestion of noncarcinogenic COCs in water - RBEL (mg/L) $^{GW}RBEL_{Ing\text{-}nc}$ = primary MCL when available, or a secondary MCL under the conditions described in §350.74(f)(3), otherwise $\frac{RfD_o \times HQ \times BW.C \times AT.C.res \times 365\ days/yr}{IRw.C.res \times EF.res \times ED.C.res}$	RBEL-6: Surface Water RBEL $^{SW}RBEL$ =the lowest value of each COC established under §350.74(h)(1) - (5), unless the person has sufficient property-specific surface water quality information specific to the particular surface water body at the affected property to support an adjustment to the RBEL in accordance with §350.74(h)(6). $^{SW}RBEL$ determined pursuant to §350.74(h)(1) - (5) may require modification in response to §350.74(h)(7) - (8).

Risk-Based Exposure Limit Equations and Default Exposure Factors for Residents

Term	Exposure Factor	Default Exposure Factor	Change to Default Exposure Factor Allowed?	Citation for Change
ABS.d**	Dermal Absorption Fraction (unitless)	(Figure: 30 TAC §350.74(c))	Tier 2/3	§350.74(j)(1)(B)
ABS_{GI}	Gastrointestinal Absorption Fraction (unitless)	(Figure: 30 TAC §350.74(c))	Tier 2/3	§350.74(j)(1)(A)
AF.C.res	Soil-to-Skin Adherence Factor (mg/cm^2-event) - Child	0.2	No	NA
$AF_{(0<6)}$	Age-Specific Adherence Factor (mg/cm^2-event)	0.2	No	NA
$AF_{(6<18)}$	Age-Specific Adherence Factor (mg/cm^2-event)	0.1	No	NA
$AF_{(18<30)}$	Age-Specific Adherence Factor (mg/cm^2-event)	0.1	No	NA
AT.A.res	Averaging Time - noncarcinogens (yr)-Adult	30	No	NA
ATc	Averaging Time - carcinogens (yr)	70	No	NA
AT.C.res	Averaging Time - noncarcinogens (yr) -Child	6	No	NA
BW.C	Body Weight (kg) - Child	15	No	NA
$BW_{(0<6)}$	Age-Specific Body Weight (kg)	15	No	NA
$BW_{(6<18)}$	Age-Specific Body Weight (kg)	45	No	NA
$BW_{(18<30)}$	Age-Specific Body Weight (kg)	70	No	NA
DF.adj	Dermal Adjustment Factor (mg-yr/kg-event)	352	No	NA
ED.A.res	Exposure Duration (yr) - Adult	30	No	NA
ED.C.res	Exposure Duration (yr) - Child	6	No	NA
$ED_{(0<6)}$	Age-Specific Exposure Duration (yr)	6	No	NA
$ED_{(6<18)}$	Age-Specific Exposure Duration (yr)	12	No	NA
$ED_{(18<30)}$	Age-Specific Exposure Duration (yr)	12	No	NA
EF.res	Exposure Frequency (days/yr) (event/yr for dermal soil)	350	No	NA
HQ	Hazard Quotient (unitless)	1	No	NA
IRsoil.AgeAdj.res	Age-Adjusted Soil Ingestion Rate (mg-yr/kg-day)	120	No	NA
IRsoil.C.res	Soil Ingestion Rate (mg/day) - Child	191	No	NA
IRw.AgeAdj.res	Age-Adjusted Water Ingestion Rate (L-yr/kg-day)	0.80	No	NA
IRw.C.res	Water Ingestion Rate (L/Day) - Child	0.64	No	NA
MF	Modifying Factor for SFo (unitless)	1	No	NA
	for Arsenic	0.1	No	
RBAF	Relative Bioavailability Factor (unitless)	1	Tier 2/3	§350.74(j)(1)(C)
	for Arsenic	0.78	Tier 2/3	§350.74(j)(1)(C)
RfC*	Reference Concentration (mg/m^3)	Chemical Specific	NA	§350.73(a) and (c)

Risk-Based Exposure Limit Equations and Default Exposure Factors for Residents				
Term	Exposure Factor	Default Exposure Factor	Change to Default Exposure Factor Allowed?	Citation for Change
RfD_o	Oral Reference Dose (mg/kg-day)	Chemical Specific	NA	§350.73(a)
RfD_d	Dermal Reference Dose (mg/kg-day)	Chemical Specific	NA	§350.73(a)
RL	Risk Level (unitless)	10^{-5}	No	NA
SA.C.res	Skin Surface Area (cm^2)- Child	2200	No	NA
$SA_{(0<6)}$	Age-specific Skin Surface Area (cm^2)	2200	No	NA
$SA_{(6<18)}$	Age-specific Skin Surface Area (cm^2)	3500	No	NA
$SA_{(18<30)}$	Age-specific Skin Surface Area (cm^2)	4800	No	NA
SF_d	Dermal Slope Factor $(mg/kg\text{-}day)^{-1}$	Chemical Specific	NA	§350.73(a)
SF_o	Oral Slope Factor $(mg/kg\text{-}day)^{-1}$	Chemical Specific	NA	§350.73(a)
URF*	Inhalation Unit Risk Factor $(\mu g/m^3)^{-1}$	Chemical Specific	NA	§350.73(a) and (c)
Vegetable Ingestion Rate - Age-Adjusted (kg-yr/kg-day)				
	IRabg.AgeAdj.res Aboveground Vegetables	0.0028	No	NA
	IRbg.AgeAdj.res Below-Ground Vegetables	0.0012	No	NA
Vegetable Ingestion Rate - Child (kg/day)				
	IRabg.C.res Aboveground Vegetables	0.0024	No	NA
	IRbg.C.res Below-Ground Vegetables	0.0010	No	NA

Footnote:
* When no RfC or URF is available, then the person shall use the most current TCEQ Chronic Remediation-Specific Effects Screening Level value as the RfC unless §350.73(b) applies.
** It is not necessary to calculate a soil dermal contact RBEL for COCs with a vapor pressure in mm HG ≥ 1.
NA means not applicable.

Risk Based Exposure Limit Equations and Default Exposure Factors for Commercial/Industrial Worker

RBEL-1:

Inhalation of carcinogenic COCs - RBEL (mg/m^3)

$$^{Air}RBEL_{Inh\text{-}c} = \frac{RL \times ATc \times 365\ days/yr}{URF \times 1000\ \mu g/mg \times EF.w \times ED.w}$$

Inhalation of noncarcinogenic COCs - RBEL (mg/m^3)

$$^{Air}RBEL_{Inh\text{-}nc} = \frac{RfC \times HQ \times AT.w \times 365\ days/yr}{EF.w \times ED.w}$$

RBEL-2:

Dermal contact with carcinogenic COCs in soil - RBEL (mg/kg)

$$^{Soil}RBEL_{Derm\text{-}c} = \frac{RL \times BW.A \times ATc \times 365\ days/yr}{SF_d \times MF \times 10^{-6}\ kg/mg \times ED.w \times EF.w \times SA.w \times AF.w \times ABS.d}$$

where: $SF_d = \frac{SF_o}{ABS_{GI}}$ when $ABS_{GI} < 50\%$, otherwise $SF_d = SF_o$

Dermal contact with noncarcinogenic COCs in soil - RBEL (mg/kg)

$$^{Soil}RBEL_{Derm\text{-}nc} = \frac{HQ \times RfD_d \times BW.A \times AT.w \times 365\ days/yr}{10^{-6}\ kg/mg \times ED.w \times EF.w \times SA.w \times AF.w \times ABS.d}$$

where $RfD_d = (RfD_o)\ (ABS_{GI})$ when $ABS_{GI} < 50\%$, otherwise $RfD_d = RfD_o$

RBEL-4:

Ingestion of carcinogenic COCs in water - RBEL (mg/L)

$^{GW}RBEL_{Ing\text{-}c}$ = primary MCL when available, or a secondary MCL under the conditions described in §350.74(f)(3), otherwise

$$\frac{RL \times BW.A \times ATc \times 365\ days/yr}{SF_o \times MF \times IRw.w \times EF.w \times ED.w}$$

Ingestion of noncarcinogenic COCs in water - RBEL (mg/L)

$^{GW}RBEL_{Ing\text{-}nc}$ = primary MCL when available, or a secondary MCL under the conditions described in §350.74(f)(3), otherwise

$$\frac{RfD_o \times HQ \times BW.A \times AT.w \times 365\ days/yr}{IRw.w \times EF.w \times ED.w}$$

RBEL-5:

Class 3 groundwater RBEL

$$^{GW}RBEL_{Class3} = 100 \times RBEL\text{-}4$$

Risk-Based Exposure Limit Equations and Default Exposure Factors for Commercial/Industrial Worker	
RBEL-3: Ingestion of carcinogenic COCs in soil - RBEL (mg/kg) $^{Soil}RBEL_{Ing\text{-}c} = \frac{RL \times BW.A \times AT_c \times 365\ days/yr}{SF_o \times MF \times 10^{-6}\ kg/mg \times EF.w \times ED.w \times IRsoil.w \times RBAF}$ Ingestion of noncarcinogenic COCs in soil - RBEL (mg/kg) $^{Soil}RBEL_{Ing\text{-}nc} = \frac{HQ \times BW.A \times RfD_o \times AT.w \times 365\ days/yr}{10^{-6}\ kg/mg \times EF.w \times ED.w \times IRsoil.w \times RBAF}$	RBEL-6: Surface Water RBEL ^{SW}RBEL =the lowest value of each COC established under §350.74(h)(1) - (5), unless the person has sufficient property-specific surface water quality information specific to the particular surface water body at the affected property to support an adjustment to the RBEL in accordance with §350.74(h)(6). ^{SW}RBEL determined pursuant to §350.74(h)(1) - (5) may require modification in response to §350.74(h)(7) - (8).

Risk-Based Exposure Limit Equations and Default Exposure Factors for Commercial/Industrial Worker

Term	Exposure Factor	Default Exposure Factor	Change to Default Exposure Factor Allowed?	Citation for Change
ABS.d**	Dermal Absorption Fraction (unitless)	(Figure: 30 TAC §350.74(c))	Tier 2/3	§350.74(j)(1)(B)
ABS_{GI}	Gastrointestinal Absorption Fraction (unitless)	(Figure: 30 TAC §350.74(c))	Tier 2/3	§350.74(j)(1)(A)
AF.w	Soil-to-Skin Adherence Factor (mg/cm^2-event)	0.2	No	NA
ATc	Averaging Time - carcinogens (yr)	70	No	NA
AT.w	Averaging Time - noncarcinogens (yr)	25	Tier 2/3	§350.74(j)(2)
BW.A	Body Weight, adult (kg)	70	No	NA
ED.w	Exposure Duration (yr)	25	Tier 2/3	§350.74(j)(2)
EF.w	Exposure Frequency (days/yr) (event/yr for dermal soil)	250	Tier 2/3	§350.74(j)(2)
HQ	Hazard Quotient (unitless)	1	No	NA
IRsoil.w	Soil Ingestion Rate (mg/day)	100	No	NA
IRw.w	Water Ingestion Rate (L/day)	1.4	No	NA
MF	Modifying Factor for SF_o (unitless)	1	No	NA
	for Arsenic	0.1	No	NA
RBAF	Relative Bioavailability Factor (unitless)	1	Tier 2/3	§350.74(j)(1)(D)
	for Arsenic	0.78	Tier 2/3	§350.74(j)(1)(D)
RfC*	Reference Concentration (mg/m^3)	Chemical-Specific	NA	§350.73(a) and (c)
RfD_o	Oral Reference Dose (mg/kg-day)	Chemical-Specific	NA	§350.73(a)
RfD_d	Dermal Reference Dose (mg/kg-day)	Chemical-Specific	NA	§350.73(a)
RL	Risk Level (unitless)	10^{-5}	No	NA
SA.w	Skin Surface Area (cm^2)	2500	No	NA
SF_d	Dermal Slope Factor $(mg/kg\text{-}day)^{-1}$	Chemical-Specific	NA	§350.73(a)
SF_o	Oral Slope Factor $(mg/kg\text{-}day)^{-1}$	Chemical-Specific	NA	§350.73(a)
URF*	Inhalation Unit Risk Factor $(\mu g/m^3)^{-1}$	Chemical-Specific	NA	§350.73(a) and (c)

Footnote:

* When no RfC or URF is available, then the person shall use the most current TCEQ Chronic Remediation-Specific Effects Screening Level value as the RfC unless §350.73(b) applies.

** It is not necessary to calculate a soil dermal contact RBEL for COCs with a vapor pressure in mm HG $\geq$ 1.

NA means not applicable.

Figure: 30 TAC §350.75(b)(1)

Tier 1 PCL Equations

Groundwater Ingestion PCL Equation: $^{GW}GW_{Ing}$

Exposure Pathway Description: Ingestion of groundwater
Source Medium: Groundwater
Exposure Medium: Groundwater

$^{GW}GW_{Ing} = {}^{GW}RBEL_{Ing}$ *(See Eq. RBEL-4, Figure: 30 TAC §350.74(a))*

Class 3 Groundwater PCL Equation: $^{GW}GW_{Class\ 3}$

Exposure Pathway Description: Class 3 groundwater
Source Medium: Class 3 groundwater
Exposure Medium: Class 3 groundwater

$^{GW}GW_{Class\ 3} = {}^{GW}RBEL_{Class\ 3}$ *(See Eq.RBEL-5, Figure: 30 TAC §350.74(a))*

Groundwater Volatilization PCL Equation: $^{Air}GW_{Inh\text{-}V}$

Exposure Pathway Description: Inhalation of volatiles from class 1, 2, or 3 groundwater
Source Medium: Class 1, 2, or 3 groundwater
Exposure Medium: Outdoor air

$$^{Air}\mathrm{GW}_{Inh\text{-}V} = \frac{^{Air}\mathrm{RBEL}_{Inh-}}{VF_{Wamb}} \text{ (See Eq. RBEL-1, Figure: 30 TAC §350.74(a))}$$

$$VF_{wamb}\left[\frac{mg/m^3 - air}{mg/L - H_2O}\right] = \frac{H'}{1+\left[\frac{U_{air}\delta_{air}L_{gw}}{W_g D_{ws}^{eff}}\right]} \bullet \left[10^3 \frac{L}{m^3}\right]$$

$$D_{ws}^{eff}\left[\frac{cm^2}{s}\right] = (h_{cap} + h_v)\left[\frac{h_{cap}}{D_{cap}^{eff}} + \frac{h_v}{D_s^{eff}}\right]^{-1}$$

$$D_{cap}^{eff}\left[\frac{cm^2}{s}\right] = D^{air}\frac{\theta_{acap}^{3.33}}{\theta_T^2} + \left[\frac{D^{wat}}{H'}\right]\left[\frac{\theta_{wcap}^{3.33}}{\theta_T^2}\right]$$

$$D_s^{eff}\left[\frac{cm^2}{s}\right] = D^{air}\frac{\theta_{as}^{3.33}}{\theta_T^2} + \left[\frac{D^{wat}}{H'}\right]\left[\frac{\theta_{ws}^{3.33}}{\theta_T^2}\right]$$

Groundwater-to-Surface Water PCL Equation: ^{SW}GW				
Exposure Pathway Description: Discharge of class 1, 2, or 3 groundwater to surface water Source Medium: Class 1, 2, or 3 groundwater Exposure Medium: Surface water $$^{SW}GW = \frac{^{SW}SW}{DF}$$ *(See Eq. RBEL-6, Figures: 30 TAC §350.74(a); and 30 TAC §350.75(i)(4))*				
Term	***COC Chemical/Physical and Affected Property Parameters Definition***	***Tier 1 Defaults***	***Change to Tier 1 Default Allowed?***	***Rule Citation Regarding Change***
ρ_b	Soil bulk density (g/cm^3)	1.67	Tier 2, 3	§350.75(c) and (d)
θ_{ws}	Volumetric water content of vadose zone soils (cm^3-water/cm^3-soil)	0.16	Tier 2, 3	§350.75(c) and (d)
θ_{as}	Volumetric air content of vadose zone soils (cm^3-air/cm^3-soil) = θ_T-θ_{ws}	0.21	Tier 2, 3	§350.75(c) and (d)
θ_T	Total soil porosity = 1 - (ρ_b/ρ_s) (cm^3-pore space/cm^3-soil)	0.37	Tier 2, 3	§350.75(c) and (d)
ρ_s	Particle density (g/cm^3)	2.65	Tier 2, 3	§350.75(c) and (d)
H′	Dimensionless Henry's Law Constant	(Figure: 30 TAC §350.73(f))	No	NA
H	Henry's Law Constant (atm-m^3/mole) (H=H′RT)	(Figure: 30 TAC §350.73(f))	No	NA
R	Universal Gas Constant (atm m^3 mol^{-1} $°K^{-1}$)	8.206×10^{-5}	No	NA
T	Temperature (°K) = 273 + °C	293	No	NA
U_{air}	Windspeed above ground surface in ambient mixing zone (cm/s)	240	Tier 2, 3	§350.75(c) and (d)

Term	COC Chemical/Physical and Affected Property Parameters Definition	Tier 1 Defaults	Change to Tier 1 Default Allowed?	Rule Citation Regarding Change
δ_{air}	Ambient air mixing zone height (cm)	200	No	NA
L_{gw}	Depth to groundwater = $h_{cap} + h_v$ (cm)	305	Tier 2, 3	§350.75(c) and (d)
D^{eff}_{ws}	Effective diffusivity above water table (cm^2/s)	COC and affected property specific	Tier 2, 3	§350.73(f) and §350.75(c) and (d)
D^{eff}_{cap}	Effective diffusivity in the capillary fringe (cm^2/s)	COC and affected property specific	Tier 2, 3	§350.73(f) and §350.75(c) and (d)
D^{eff}_{s}	Effective diffusivity in vadose zone soils (cm^2/s)	COC and affected property specific	Tier 2,3	§350.73(f) and §350.75(c) and (d)
h_{cap}	Thickness of capillary fringe (cm)	5	Tier 2, 3	§350.75(c) and (d)
h_v	Thickness of vadose zone (cm)	300	Tier 2, 3	§350.75(c) and (d)
W_g	Width of groundwater source in the direction to the closest off-site property line from the groundwater source (cm)			§350.75(c) and (d)
	• 0.5 acre source	4,500	Tier 2, 3	
	• 30 acre source	34,800	Tier 2, 3	
θ_{acap}	Volumetric air content of capillary fringe soils (cm^3-air/cm^3-soil)	0.037	Tier 2, 3	§350.75(c) and (d)
θ_{wcap}	Volumetric water content of capillary fringe soils (cm^3-water/cm^3-soil)	0.333	Tier 2, 3	§350.75(c) and (d)
D^{air}	Diffusion coefficient in air (cm^2/s)	(Figure: 30 TAC §350.73(f))	No	NA
D^{wat}	Diffusion coefficient in water (cm^2/s)	(Figure: 30 TAC §350.73(f))	No	NA
DF	Surface Water Dilution Factor	NA	Tier 2, 3	§350.75(i)(4)

Soil PCL Equation: $^{Tot}Soil_{Comb}$

Exposure Pathway Description: Combined equation for ingestion of surface soil + dermal contact with surface soil + inhalation of surface soil volatiles and particulates + consumption of garden vegetables grown in contaminated surface soil
Source Medium: Surface soils
Exposure Medium: Surface soil and air (and vegetables for residential land use only).

Residential

$$^{Tot}Soil_{Comb} = \frac{1}{[\frac{1}{^{Air}Soil_{Inh-VP}}]+[\frac{1}{^{Soil}Soil_{Derm}}]+[\frac{1}{^{Soil}Soil_{Ing}}]+\left[\left(\frac{1}{^{Veg}Soil_{Ing-Inorg}}\right) or \left(\frac{1}{^{Veg}Soil_{Ing-Org}}\right)\right]}$$

Commercial/Industrial Worker

$$^{Tot}Soil_{Comb} = \frac{1}{\left(\frac{1}{^{Air}Soil_{Inh-VP}}\right)+\left(\frac{1}{^{Soil}Soil_{Derm}}\right)+\left(\frac{1}{^{Soil}Soil_{Ing}}\right)}$$

Soil PCL Equation: $^{Air}Soil_{Inh-VP}$

Exposure Pathway Description: Inhalation of surface soil volatiles and particulates
Source Medium: Surface soils
Exposure Medium: Air

$$^{Air}Soil_{Inh-VP} = \frac{^{Air}RBEL_{Inh}}{VF_{ss} + PEF}$$ *(See Eq. RBEL-1, Figure: 30 TAC §350.74(a))*

Soil PCL Equation: $^{Soil}Soil_{Derm}$

Exposure Pathway Description: Dermal contact with surface soil
Source Medium: Surface soil
Exposure Medium: Surface soil

$$^{Soil}Soil_{Derm} = ^{Soil}RBEL_{Derm}$$ *(See Eq. RBEL-2, Figure: 30 TAC §350.74(a))*

Exposure Pathway Description: Ingestion of surface soil
Source Medium: Surface soil
Exposure Medium: Surface soil

$$^{Soil}Soil_{Ing} = ^{Soil}RBEL_{Ing}$$ *(See Eq. RBEL – 3, Figure: 30 TAC §350.74(a))*

Soil PCL Equation: $^{Veg}Soil_{Ing\text{-}Inorg}$, & $^{Veg}Soil_{Ing\text{-}Org}$ (for residential land use only).

Exposure Pathway Description: Consumption of garden vegetables grown in contaminated surface soil
Source Medium: Surface soil
Exposure Medium: Vegetables

$$^{Veg}Soil_{Ing-Inorg} = \frac{1}{\frac{Br_{abg}}{{}^{AbgVeg}RBEL_{Ing}} + \frac{Br_{bg}}{{}^{bgVeg}RBEL_{Ing}}}$$ *(See Eq. RBEL – 7, Figure: 30 TAC §350.74(a))*

$$^{Veg}Soil_{Ing-Org} = \frac{\left({}^{BgVeg}RBEL_{Ing}\right)\left(Ks_{Veg}\right)}{\left(RCF\right)\left(VG_{bg}\right)}$$ *(See Eq. RBEL – 7, Figure: 30 TAC §350.74(a))*

Soil PCL Equation: $^{Air}Soil_{Inh\text{-}V}$

Exposure Pathway Description: Inhalation of subsurface soil volatiles
Source Medium: Subsurface soils
Exposure Medium: Air

$$^{Air}Soil_{Inh-V} = \frac{^{Air}RBEL_{Inh}}{VF_{ss}}$$ *(See Eq. RBEL – 1, Figure: 30 TAC §350.74(a))*

Volatilization Factor: VF_{ss}

Where VF_{ss} is the smaller of the two following VF_{ss} values

$$VF_{ss}\left[\frac{mg/m^3 - air}{mg/kg - Soil}\right] = \frac{2\rho_b D_A}{(Q/C)\left[3.14 D_A{}^{\tau}\right]^{\frac{1}{2}}} \cdot \left(\frac{10^4 cm^2}{m^2}\right)$$

$$D_A = \left[\frac{\theta_{as}^{3.33} D^{air} H' + \theta_{ws}^{3.33} D^{wat}}{\left[\theta_{ws} + K_d P_b + \theta_{as} H'\right]\theta_T^2}\right]$$

or

$$VF_{ss}\left[\frac{mg/m^3 - air}{mg/kg - soil}\right] = \frac{P_b d_s}{(Q/C)\tau} \cdot \left(\frac{10^4 cm^2}{m^2}\right)$$

Particulate Emission Factor: PEF

$$PEF\left[\frac{mg/m^3-air}{mg/kg-soil}\right]=\frac{(0.036)(1-V)\left(\frac{U_m}{U_1}\right)^3 F(x)}{(Q/C)(3600s/hr)}$$

Soil-to-Groundwater PCL Equation: ^{GW}Soil

Exposure Pathway Description: Soil leachate to groundwater
Source Medium: Surface and subsurface soils
Exposure Medium: Groundwater

$$^{GW}Soil=\frac{(GroundwaterPCL^*)\cdot LDF}{K_{sw}}$$

$$K_{sw}\left[\frac{(mg/L-H_2O)}{(mg/kg-soil)}\right]=\frac{\rho_b}{\theta_{ws}+K_d\rho_b+H'\theta_{as}}$$

*Critical groundwater PCL as determined in accordance with §350.78 of this title (relating to Determination of Critical PCLs) or attenuation action level as determined in accordance with §350.33(f)(4)(D) of this title (relating to Remedy Standard B).

Theoretical Residual Soil Saturation Limit PCL ($Soil_{Res}$)

$$Soil_{Res}(mg/kg)=\left(\frac{Res.sat\times\theta_\tau\times p}{\rho_b}\right) x\ 1{,}000{,}000\ mg/kg$$

Term	*COC Chemical/Physical and Affected Property Parameters Definition*	*Tier 1 Defaults*	*Change to Tier 1 Default Allowed?*	*Rule Citation Regarding Change*
Br_{Abg}	Soil-to-above ground plant biotransfer factor (g soil/g dry weight plant tissue)	(Figure: 30 TAC §350.73(f))	Tier 2, 3	§350.73(f)(2)
Br_{Bg}	Soil-to-below ground plant biotransfer factor (g soil/g dry weight plant tissue)	(Figure: 30 TAC §350.73(f))	Tier 2, 3	§350.73(f)(2)
RCF	Ratio of concentration in roots to concentration in soil pore water (mg/kg) (μg/ml)	$\frac{(10^{((0.77 \times \log K_{ow})-1.52)}+0.82)}{0.222}$	Special Consideration	§350.73(f)
$\log K_{ow}$	Octanol-water partition coefficient	(Figure: 30 TAC §350.73(f))	Special Consideration	§350.73(f)
Ks_{Veg}	Soil-water partition coefficient (mL/g) = $K_{oc} \times f_{oc}$	chemical specific	Tier 2, 3	§350.73(f) and §350.75(c) and (d)
VG_{bg}	Below ground vegetable correction factor (unitless)	0.01	No	NA
D_A	Apparent diffusivity (cm^2/sec)	chemical specific	Tier 2, 3	§350.73(f) and §350.75(c) and (d)
ρ_b	Soil bulk density (g/cm^3)	1.67	Tier 2, 3	§350.75(c) and (d)
Q/C	Inverse of mean concentration in air at center of affected soil area ([g/m^2-s]/[kg/m^3])			§350.75(c) and (d)
	Default location assumed: • 0.5 acre source • 30 acre source	Houston 79.25 40.76	Tier 2, 3 Tier 2, 3 Tier 2, 3	
	Tier 2, 3 may estimate Q/C from the following equation for Houston: Q/C=-9.3087 ln (x) + 69.989, (where x = source area acreage), or other equation representative of Q/C for other city more representative of the affected property conditions and acceptable to the executive director (see USEPA Soil Screening Level Guidance: Technical Background Document, May 1996, EPA/540/R-95/128)			
τ	Exposure interval (s)	9.5×10^8	Tier 2, 3	§350.74(j)(2)
θ_{ws}	Volumetric water content of vadose zone soils (cm^3-water/cm^3-soil)	0.16	Tier 2, 3	§350.75(c) and (d)
θ_{as}	Volumetric air content of vadose zone soils (cm^3-air/cm^3-soil) = θ_T-θ_{ws}	0.21	Tier 2, 3	§350.75(c) and (d)
D^{air}	Diffusion coefficient in air (cm^2/s)	(Figure: 30 TAC §350.73(f))	No	NA
D^{wat}	Diffusion coefficient in water (cm^2/s)	(Figure: 30 TAC §350.73(f))	No	NA
H′	Dimensionless Henry's Law Constant	(Figure: 30 TAC	No	NA

		§350.73(f))		
H	Henry's Law Constant (atm-m^3/mole) (H=H'RT)	(Figure: 30 TAC §350.73(f))	No	NA
K_d	Soil-water partition coefficient (cm^3-water/g-soil) • for organics • for inorganic	(Figure: 30 TAC §350.73(f)) $k_d = K_{oc}\ f_{oc}$ k_d = pH dependent value	Tier 2, 3	§350.73(f) and (Figures: 30 TAC §350.73(f)(1)(A), (B), (C))
K_{oc}	Soil organic carbon-water partition coefficient (cm^3-water/g-carbon)	(Figure: 30 TAC §350.73(f))	Tier 2, 3	§350.73(f) and (Figure: 30 TAC §350.73(f)(1)(B))
f_{oc}	Fraction of organic carbon in soil (g-carbon/g-soil) • VF_{ss} • Ks_{veg} • K_{sw}	 0.008 0.008 0.002	 Tier 2, 3 Tier 2, 3	 §350.75(c) and (d) §350.75(c) and (d)
θ_T	Total soil porosity = 1 - (ρ_b/ρ_s) (cm^3-pore space/cm^3-soil)	0.37	Tier 2, 3	§350.75(c) and (d)
ρ_s	Particle density (g/cm^3)	2.65	Tier 2, 3	§350.75(c) and (d)
d_s	Thickness of affected surficial soil (cm)	305	Tier 2, 3	§350.75(c) and (d)
V	Fraction vegetative cover (unitless)	0.5	Tier 2, 3	§350.75(c) and (d)
U_m	Mean annual windspeed at 7 m height (m/s)	4.8	Tier 2, 3	§350.75(c) and (d)
U_t	Equivalent threshold value of windspeed at 7 m height (m/s)	11.32	Tier 2, 3	§350.75(c) and (d)

Tier 1 PCL Equations

Term	*COC Chemical/Physical and Affected Property Parameters Definition*	*Tier 1 Defaults*	*Change to Tier 1 Default Allowed?*	*Rule Citation Regarding Change*
F(x)	Function dependent on (U_t/U_m) derived using Cowherd et. al. (1985) (unitless)	0.224	Tier 2, 3	§350.75(c) and (d)
R	Universal Gas Constant (atm m^3 mol^{-1} $°K^{-1}$)	8.206×10^{-5}	No	NA
T	Temperature (°K) = 273 + EC	293	No	NA
K_{sw}	Soil-leachate partition factor for COC (mg/L-water/mg/kg-soil)	property-specific	Tier 2, 3	§350.73(f) and §350.75(c) and (d)
LDF	Leachate Dilution Factor 0.5 acre source area 30 acre source area	 20 10	 Tier 2, 3 Tier 2, 3	 §350.75(c) and (d) §350.75(c) and (d)
Res.sat	The residual saturation limit where the NAPL becomes mobile (cm^3/cm^3) Res.sat = $\frac{10{,}000 \text{ mg/kg} \times \rho_b}{1{,}000{,}000 \text{ mg/kg} \times p \times \theta_T^{[\theta T]}}$	0.04514	Tier 2, 3	§350.75(c) and (d)
p	The density of the NAPL (g/cm^3)	1	Tier 2, 3	§350.75(c) and (d)

Air Source Medium Exposure Pathway PCL Equation

PCL Eq.: $^{Air}Air_{Inh}$
Exposure Pathway Description: Inhalation of air
Source Medium: Air
Exposure Medium: Air

$$^{Air}Air_{Inh} = {}^{Air}RBEL_{Inh}$$ *(See Eq. RBEL-1, Figure: 30 TAC §350.74(a))*

Surface Water Exposure Pathway PCL Equation

PCL Eq.: ^{SW}SW
Exposure Pathway Description: Aquatic life and human health protection ($^{SW}RBEL$) and ecological protection ($^{SW}SW_{Eco}$)
Source Medium: Surface water
Exposure Medium: Surface water

$$^{SW}SW = \text{the lessor of } {}^{SW}RBEL \text{ and } {}^{SW}SW_{ECO}$$

(see RBEL-6, Figure 30 TAC §350.74(a), §350.74(h), and §350.77(a))

Figure: 30 TAC §350.76(c)(3)

Equation for Adult Lead Exposure Commercial/Industrial Land Use (Tier 1)

$$^{Soil}Soil_{Ing} = {}^{Soil}RBEL_{Ing}$$

$$^{Soil}RBEL_{Ing}(\mu g/g) = \frac{\left(PbB_{95}fetal/\left(R\times(GSD_i)^{1.645}\right)\right) - PbB0}{BKSF\times(IR_{sd}\times AF_{sd}\times EF_{sd}/365)}$$

Parameter	Definition (units)	Default
PbB_{95} fetal	95th Percentile PbB in Fetus (µg/dL)	10
R	Mean Ratio of Fetal to Maternal PbB	0.9
GSD_i	Individual Geometric Standard Deviation	1.91
PbB0	Baseline Blood Lead Value (µg/dL)	1.64
BKSF	Biokinetic Slope Factor (µg/dL per µg/day)	0.4
IR_{sd}	Soil/Dust Ingestion Rate (g/day)	0.05
EF_{sd}	Soil/Dust Exposure Frequency (days/yr)	250
AF_{sd}	Absolute Absorption Fraction of Lead in Soil/Dust	0.10

Figure: 30 TAC§350.76(c)(4)

Equation for Adult Lead Exposure Commercial/Industrial Land Use (Tiers 2 & 3 only)		
$^{Soil}Soil_{Ing} = {}^{Soil}RBEL_{Ing}$		
$^{Soil}RBEL_{Ing}(\mu g/g) = \frac{\left(PbB_{95}fetal/\left(R\times\left(GSD_i\right)^{1.645}\right)\right)-PbB0}{BKSF\times\left(\left(IR_{sf}\times AF_s\times EF_{s/365}\right)+\left(K_{sd}\times IR_d\times AF_d\times EF_d/365\right)\right)}$		
Parameter	**Definition (units)**	**Defaults**
PbB_{95} fetal	95th Percentile PbB in Fetus (µg/dL)	10
R	Mean Ratio of Fetal to Maternal PbB	0.9
GSD_i	Individual Geometric Standard Deviation	1.91
Parameter	**Definition (units)**	**Defaults**
PbB0	Baseline Blood Lead Value (µg/dL)	1.64
BKSF	Biokinetic Slope Factor (µg/dL per µg/day)	0.4
IR_s	Soil Ingestion Rate (g/day)	0.025
IR_d	Dust Ingestion Rate (g/day)	0.025
K_{sd}	Ratio of Concentration in Dust to that in Soil	***
EF_s	Soil Exposure Frequency (days/yr)	250
EF_d	Dust Exposure Frequency (days/yr)	250
AF_s	Absolute Absorption Fraction of Lead in Soil	0.10
AF_d	Absolute Absorption Fraction of Lead in Dust	0.10
***Based on direct measurement data on the concentrations of lead in both soil and dust at the affected property.		

Figure: 30 TAC §350.76(f)(3)

Equations for Calculating Cancer Slope Factors and Unit Risk Factors for Carcinogenic PAHs

$$SF_{PAH} = (SF_{B(a)P})\ (RPF_{PAH})$$

where: SF_{PAH} = adjusted cancer slope factor for a PAH $(mg/kg\text{-}day)^{-1}$

$SF_{B[a]P}$ = cancer slope factor for benzo{a}pyrene $(mg/kg\text{-}day)^{-1}$

RPF_{PAH} = relative potency factor for a PAH in Figure 30 TAC §350.76(f)(2) (unitless)

$$URF_{PAH} = (URF_{B(a)P})\ (RPF_{PAH})$$

where: URF_{PAH} = adjusted inhalation unit risk factor for a PAH $(\mu g/m^3)^{-1}$

$URF_{B[a]P}$ = inhalation unit risk factor for benzo{a}pyrene $(\mu g/m^3)^{-1}$

RPF_{PAH} = relative potency factor for a PAH in (Figure 30 TAC §350.76(f)(2)) (unitless)

Figure: 30 TAC §350.76(g)(2)

Hydrocarbon Fractions and Toxicity Factors		
Aliphatic Hydrocarbon Fraction	Surrogate for Oral RfD	Surrogate for Inhalation RfC
C_6	n-hexane	n-hexane[1] commercial hexane[2]
$>C_6$-C_8	n-hexane	n-hexane[1] commercial hexane[2]
$>C_8$-C_{10}	C9-C17 aliphatics	dearomatized white spirits
$>C_{10}$-C_{12}	C9-C17 aliphatics	dearomatized white spirits
$>C_{12}$-C_{16}	C9-C17 aliphatics	dearomatized white spirits
$>C_{16}$-C_{21}	white mineral oils	----
$>C_{16}$-C_{21} (for transformer mineral oil releases only)	transformer mineral oil	----
$>C_{21-35}$ [3]	white mineral oil	----
$>C_{21}$-C_{35} (for transformer mineral oil releases only)	transformer mineral oil	----
Aromatic Hydrocarbon Fraction	**Surrogate for Oral RfD**	**Surrogate for Inhalation RfC**
$>C_{7-8}$	ethylbenzene	ethylbenzene
$>C_8$-C_{10}	multiple aromatic compounds	high flash aromatic naphtha
$>C_{10}$-C_{12}	multiple aromatic compounds	high flash aromatic naphtha
$>C_{12}$-C_{16}	multiple aromatic compounds	multiple aromatic compounds
$>C_{16}$-C_{21}	pyrene	----
$>C_{21}$-C_{35} [3]	pyrene	----

Footnotes:

1. For mixtures with greater than 53% n-hexane content.
2. For mixtures with less than or equal to 53% n-hexane content.
3. The person may truncate the analysis at C_{28} when there does not appear to be significant mass of $>C_{28}$ based on the gas chromatogram and the product is anticipated to be a lighter hydrocarbon (e.g., gasoline, diesel, not transformer mineral oil, or used motor oil).

Figure: 30 TAC §350.77(b)

TIER 1: EXCLUSION CRITERIA CHECKLIST

This exclusion criteria checklist is intended to aid the person and the TCEQ in determining whether or not further ecological evaluation is necessary at an affected property where a response action is being pursued under the Texas Risk Reduction Program (TRRP). Exclusion criteria refer to those conditions at an affected property which preclude the need for a formal ecological risk assessment (ERA) because there are **incomplete or insignificant ecological exposure pathways** due to the nature of the affected property setting and/or the condition of the affected property media. This checklist (and/or a Tier 2 or 3 ERA or the equivalent) must be completed by the person for all affected property subject to the TRRP. The person should be familiar with the affected property but need not be a professional scientist in order to respond, although some questions will likely require contacting a wildlife management agency (i.e., Texas Parks and Wildlife Department or U.S. Fish and Wildlife Service). The checklist is designed for general applicability to all affected property; however, there may be unusual circumstances which require professional judgement in order to determine the need for further ecological evaluation (e.g., cave-dwelling receptors). In these cases, the person is strongly encouraged to contact TCEQ before proceeding.

Besides some preliminary information, the checklist consists of three major parts, **each of which must be completed unless otherwise instructed.** PART I requests affected property identification and background information. PART II contains the actual exclusion criteria and supportive information. PART III is a qualitative summary statement and a certification of the information provided by the person. **Answers should reflect existing conditions and should not consider future remedial actions at the affected property.** Completion of the checklist should lead to a logical conclusion as to whether further evaluation is warranted. Definitions of terms used in the checklist have been provided and users are strongly encouraged to familiarize themselves with these definitions before beginning the checklist.

Name of Facility:

Affected Property Location:

Mailing Address:

TCEQ Case Tracking #s:

Solid Waste Registration #s:

Voluntary Cleanup Program #:

EPA I.D. #s:

Definitions[1]

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1 These definitions were taken from 30 TAC §350.4 and may have both ecological and human health applications. For the purpose of this checklist, it is understood that only the ecological applications are of concern.

Affected property - The entire area (i.e., on-site and off-site; including all environmental media) which contains releases of chemicals of concern at concentrations equal to or greater than the assessment level applicable for residential land use and groundwater classification.

Assessment level - A critical protective concentration level for a chemical of concern used for affected property assessments where the human health protective concentration level is established under a Tier 1 evaluation as described in §350.75(b) of this title (relating to Tiered Human Health Protective Concentration Level Evaluation), except for the protective concentration level for the soil-to-groundwater exposure pathway which may be established under Tier 1, 2, or 3 as described in §350.75(i)(7) of this title, and ecological protective concentration levels which are developed, when necessary, under Tier 2 and/or 3 in accordance with §350.77(c) and/or (d), respectively, of this title (relating to Ecological Risk Assessment and Development of Ecological Protective Concentration Levels).

Bedrock - The solid rock (i.e., consolidated, coherent, and relatively hard naturally formed material that cannot normally be excavated by manual methods alone) that underlies gravel, soil or other surficial material.

Chemical of concern - Any chemical that has the potential to adversely affect ecological or human receptors due to its concentration, distribution, and mode of toxicity. Depending on the program area, chemicals of concern may include the following: solid waste, industrial solid waste, municipal solid waste, and hazardous waste as defined in Texas Health and Safety Code, §361.003, as amended; hazardous constituents as listed in 40 Code of Federal Regulations Part 261, Appendix VIII, as amended; constituents on the groundwater monitoring list in 40 Code of Federal Regulations Part 264, Appendix IX, as amended; constituents as listed in 40 CFR Part 258 Appendices I and II, as amended; pollutant as defined in Texas Water Code, §26.001, as amended; hazardous substance as defined in Texas Health and Safety Code, §361.003, as amended, and the Texas Water Code, §26.263, as amended; regulated substance as defined in Texas Water Code, §26.342, as amended and §334.2 of this title (relating to Definitions), as amended; petroleum product as defined in Texas Water Code, §26.342, as amended and §334.122(b)(12) of this title (relating to Definitions for ASTs), as amended; other substances as defined in Texas Water Code, §26.039(a), as amended; and daughter products of the aforementioned constituents.

Community - An assemblage of plant and animal populations occupying the same habitat in which the various species interact via spatial and trophic relationships (e.g., a desert community or a pond community).

Complete exposure pathway - An exposure pathway where a human or ecological receptor is exposed to a chemical of concern via an exposure route (e.g., incidental soil ingestion, inhalation of volatiles and particulates, consumption of prey, etc).

De minimus - The description of an area of affected property comprised of one acre or less where the ecological risk is considered to be insignificant because of the small extent of contamination, the absence of protected species, the availability of similar unimpacted habitat nearby, and the lack of adjacent sensitive environmental areas.

Ecological protective concentration level - The concentration of a chemical of concern at the point of exposure within an exposure medium (e.g., soil, sediment, groundwater, or surface water) which is determined in accordance with §350.77(c) or (d) of this title (relating to Ecological Risk Assessment and Development of Ecological Protective Concentration Levels) to be protective for ecological receptors. These concentration levels are primarily intended to be protective for more mobile or wide-ranging ecological receptors and, where appropriate, benthic invertebrate communities within the waters in the state. These concentration levels are not intended to be directly protective of receptors with limited mobility or range (e.g., plants, soil invertebrates, and

small rodents), particularly those residing within active areas of a facility, unless these receptors are threatened/endangered species or unless impacts to these receptors result in disruption of the ecosystem or other unacceptable consequences for the more mobile or wide-ranging receptors (e.g., impacts to an off-site grassland habitat eliminate rodents which causes a desirable owl population to leave the area).

Ecological risk assessment - The process that evaluates the likelihood that adverse ecological effects may occur or are occurring as a result of exposure to one or more stressors; however, as used in this context, only chemical stressors (i.e., COCs) are evaluated.

Environmental medium - A material found in the natural environment such as soil (including non-waste fill materials), groundwater, air, surface water, and sediments, or a mixture of such materials with liquids, sludges, gases, or solids, including hazardous waste which is inseparable by simple mechanical removal processes, and is made up primarily of natural environmental material.

Exclusion criteria - Those conditions at an affected property which preclude the need to establish a protective concentration level for an ecological exposure pathway because the exposure pathway between the chemical of concern and the ecological receptors is not complete or is insignificant.

Exposure medium - The environmental medium or biologic tissue in which or by which exposure to chemicals of concern by ecological or human receptors occurs.

Facility - The installation associated with the affected property where the release of chemicals of concern occurred.

Functioning cap - A low permeability layer or other approved cover meeting its design specifications to minimize water infiltration and chemical of concern migration, and prevent ecological or human receptor exposure to chemicals of concern, and whose design requirements are routinely maintained.

Landscaped area - An area of ornamental, or introduced, or commercially installed, or manicured vegetation which is routinely maintained.

Off-site property (off-site) - All environmental media which is outside of the legal boundaries of the on-site property.

On-site property (on-site) - All environmental media within the legal boundaries of a property owned or leased by a person who has filed a self-implementation notice or a response action plan for that property or who has become subject to such action through one of the agency's program areas for that property.

Physical barrier - Any structure or system, natural or manmade, that prevents exposure or prevents migration of chemicals of concern to the points of exposure.

Point of exposure - The location within an environmental medium where a receptor will be assumed to have a reasonable potential to come into contact with chemicals of concern. The point of exposure may be a discrete point, plane, or an area within or beyond some location.

Protective concentration level - The concentration of a chemical of concern which can remain within the source medium and not result in levels which exceed the applicable human health risk-based exposure limit or ecological protective concentration level at the point of exposure for that exposure pathway.

Release - Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, with the exception of:

(A) A release that results in an exposure to a person solely within a workplace, concerning a claim that the person may assert against the person's employer;

(B) An emission from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(C) A release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. §2011 *et seq.*), if the release is subject to requirements concerning financial protection established by the Nuclear Regulatory Commission under §170 of that Act;

(D) For the purposes of the environmental response law §104, as amended, or other response action, a release of source, by-product, or special nuclear material from a processing site designated under §102(a)(1) or §302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. §7912 and §7942), as amended; and

(E) The normal application of fertilizer.

Sediment - Non-suspended particulate material lying below surface waters such as bays, the ocean, rivers, streams, lakes, ponds, or other similar surface water body (including intermittent streams). Dredged sediments which have been removed from below surface water bodies and placed on land shall be considered soils.

Sensitive environmental areas - Areas that provide unique and often protected habitat for wildlife species. These areas are typically used during critical life stages such as breeding, hatching, rearing of young, and overwintering. Examples include critical habitat for threatened and endangered species, wilderness areas, parks, and wildlife refuges.

Source medium - An environmental medium containing chemicals of concern which must be removed, decontaminated and/or controlled in order to protect human health and the environment. The source medium may be the exposure medium for some exposure pathways.

Stressor - Any physical, chemical, or biological entity that can induce an adverse response; however, as used in this context, only chemical entities apply.

Subsurface soil - For human health exposure pathways, the portion of the soil zone between the base of surface soil and the top of the groundwater-bearing unit(s). For ecological exposure pathways, the portion of the soil zone between 0.5 feet and 5 feet in depth.

Surface cover - A layer of artificially placed utility material (e.g., shell, gravel).

Surface soil - For human health exposure pathways, the soil zone extending from ground surface to 15 feet in depth for residential land use and from ground surface to 5 feet in depth for commercial/industrial land use; or to the top of the uppermost groundwater-bearing unit or bedrock, whichever is less in depth. For ecological exposure pathways, the soil zone extending from ground surface to 0.5 feet in depth.

Surface water - Any water meeting the definition of surface water in the state as defined in §307.3 of this title (relating to Abbreviations and Definitions), as amended.

PART I. Affected Property Identification and Background Information

1) Provide a description of the specific area of the response action and the nature of the release. Include estimated acreage of the affected property and the facility property, and a description of the type of facility and/or operation associated with the affected property. Also describe the location of the affected property with respect to the facility property boundaries and public roadways.

Attach available USGS topographic maps and/or aerial or other affected property photographs to this form to depict the affected property and surrounding area. Indicate attachments:

Q Topo map Q Aerial photo Q Other

2) Identify environmental media known or suspected to contain chemicals of concern (COCs) at the present time. Check all that apply:

Known/Suspected COC Location	Based on sampling data?	
Q Soil ≤5 ft below ground surface	Q Yes	Q No
Q Soil >5 ft below ground surface	Q Yes	Q No
Q Groundwater	Q Yes	Q No
Q Surface Water/Sediments	Q Yes	Q No

Explain (previously submitted information may be referenced):

3) Provide the information below for the nearest surface water body which has become or has the potential to become impacted from migrating COCs via surface water runoff, air deposition, groundwater seepage, etc. Exclude wastewater treatment facilities and storm water conveyances/impoundments authorized by permit. Also exclude conveyances, decorative ponds, and those portions of process facilities which are:

a. Not in contact with surface waters in the State or other surface waters which are ultimately in contact with surface waters in the State; and

b. Not consistently or routinely utilized as valuable habitat for natural communities including birds, mammals, reptiles, etc.

The nearest surface water body is _____ feet/miles from the affected property and is named _____. The water body is best described as a:

Q freshwater stream: _____ perennial (has water all year)
_____ intermittent (dries up completely for at least 1 week a year)
_____ intermittent with perennial pools
Q freshwater swamp/marsh/wetland
Q saltwater or brackish marsh/swamp/wetland
Q reservoir, lake, or pond; approximate surface acres:
Q drainage ditch
Q tidal stream Q bay Q estuary
Q other; specify

Is the water body listed as a State classified segment in Appendix C of the current Texas Surface Water Quality Standards; §§307.1 - 307.10?

Q Yes Segment # _____ Use Classification:

Q No

If the water body is not a State classified segment, identify the first downstream classified segment.

Name:

Segment #:

Use Classification:

As necessary, provide further description of surface waters in the vicinity of the affected property:

PART II. Exclusion Criteria and Supportive Information
Subpart A. Surface Water/Sediment Exposure

1) Regarding the affected property where a response action is being pursued under the TRRP, have COCs migrated and resulted in a release or imminent threat of release to either surface waters or to their associated sediments via surface water runoff, air deposition, groundwater seepage, etc.? Exclude wastewater treatment facilities and storm water conveyances/impoundments authorized by permit. Also exclude conveyances, decorative ponds, and those portions of process facilities which are:

a. Not in contact with surface waters in the State or other surface waters which are ultimately in contact with surface waters in the State; and

b. Not consistently or routinely utilized as valuable habitat for natural communities including birds, mammals, reptiles, etc.

Q Yes Q No

Explain:
If the answer is Yes to Subpart A above, the affected property does not meet the exclusion criteria. However, complete the remainder of Part II to determine if there is a complete and/or significant soil exposure pathway, then complete PART III - Qualitative Summary and Certification. If the answer is No, go to Subpart B.

Subpart B. Affected Property Setting

In answering "Yes" to the following question, it is understood that the affected property is not attractive to wildlife or livestock, including threatened or endangered species (i.e., the affected property does not serve as valuable habitat, foraging area, or refuge for ecological communities). (May require consultation with wildlife management agencies.)

1) Is the affected property wholly contained within contiguous land characterized by: pavement, buildings, landscaped area, functioning cap, roadways, equipment storage area, manufacturing or process area, other surface cover or structure, or otherwise disturbed ground?

Q Yes Q No

Explain:

If the answer to Subpart B above is Yes, the affected property meets the exclusion criteria, assuming the answer to Subpart A was No. Skip Subparts C and D and complete PART III - Qualitative Summary and Certification. If the answer to Subpart B above is No, go to Subpart C.

Subpart C. Soil Exposure

1) Are COCs which are in the soil of the affected property solely below the first 5 feet beneath ground surface **or** does the affected property have a physical barrier present to prevent exposure of receptors to COCs in surface soil?

Q Yes Q No

Explain:

If the answer to Subpart C above is Yes, the affected property meets the exclusion criteria, assuming the answer to Subpart A was No. Skip Subpart D and complete PART III - Qualitative Summary and Certification. If the answer to Subpart C above is No, proceed to Subpart D.

Subpart D. *De Minimus* Land Area

In answering "Yes" to the question below, it is understood that all of the following conditions apply:

□ The affected property is not known to serve as habitat, foraging area, or refuge to threatened/endangered or otherwise protected species. (Will likely require consultation with wildlife management agencies.)

□ Similar but unimpacted habitat exists within a half-mile radius.

□ The affected property is not known to be located within one-quarter mile of sensitive environmental areas (e.g., rookeries, wildlife management areas, preserves). (Will likely require consultation with wildlife management agencies.)

□ There is no reason to suspect that the COCs associated with the affected property will migrate such that the affected property will become larger than one acre.

1) Using human health protective concentration levels as a basis to determine the extent of the COCs, does the affected property consist of one acre or less and does it meet all of the conditions above?

Q Yes Q No

Explain how conditions are met/not met:

If the answer to Subpart D above is Yes, then no further ecological evaluation is needed at this affected property, assuming the answer to Subpart A was No. Complete PART III - Qualitative Summary and Certification. If the answer to Subpart D above is No, proceed to Tier 2 or 3 or comparable ERA.

PART III. Qualitative Summary and Certification (Complete in all cases.)

Attach a brief statement (not to exceed 1 page) summarizing the information you have provided in this form. This summary should include sufficient information to verify that the affected property meets or does not meet the exclusion criteria. The person should make the initial decision regarding the need for further ecological evaluation (i.e., Tier 2 or 3) based upon the results of this checklist. After review, TCEQ will make a final determination on the need for further assessment. **Note that the person has the continuing obligation to re-enter the ERA process if changing circumstances result in the affected property not meeting the Tier 1 exclusion criteria.**

Completed by: _____ *(Typed/Printed Name)*

_____ *(Title)*

_____ *(Date)*

I believe that the information submitted is true, accurate, and complete, to the best of my knowledge.

_____ *(Typed/Printed Name of Person)*

_____ *(Title of Person)*

_____ *(Signature of Person)*

_____ *(Date Signed)*

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Building and Procurement Commission

Request for Proposal

The Texas Building and Procurement Commission (TBPC) announces the issuance of Request for Proposal (RFP) #303-7-11208. TBPC seeks a 5 year lease of approximately 10,500 square feet of office space in the west Dallas County or east Tarrant County area, Texas.

The deadline for questions is March 8, 2007 and the deadline for proposals is March 16, 2007 at 3:00 P.M. The award date is March 23, 2007. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at REQUEST FOR PROPOSAL http://esbd.tbpc.state.tx.us/docs/303/69364_1.doc.

TRD-200700885
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: March 7, 2007

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of February 23, 2007, through March 1, 2007. 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 March 7, 2007. The public comment period for these projects will close at 5:00 p.m. on April 6, 2007.

FEDERAL AGENCY ACTIONS:

Applicant: Gulf Marine Fabricators; Location: The project is located in Corpus Christi Bay at the facility located at 248 Farm-to-Market Road 1069, in Ingleside, San Patricio County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 677975; Northing: 3078750. Project Description: The applicant proposes to amend Permit 21175(07) to excavate a graving dock facility to be used during the fabrication of an offshore oil/gas platform hull component. The graving dock will be located in the south yard of the applicant's facility behind an existing bulkhead and will measure 600 feet in length and 250 feet in width. Approximately 335,000 cubic yards of material would be mechanically excavated/hydraulically dredged from the dock area to achieve a final depth of -35 feet mean low tide (MLT). The excavated/dredged material would be placed in the applicant's on-site placement area. The dock would consist of steel sheet-piled walls, a concrete slab floor, and driven pile relieving platforms on the sides. Once the fabrication of the hull is complete, the existing bulkhead wall would be pulled and the graving dock would be flooded. The hull structure would then be floated out of the dock and into the existing deepwater area (-45 feet MLT) located in front of the proposed graving dock facility. From there, the platform hull component would be towed through the Corpus Christi Ship Channel and eventually to an offshore location. CCC Project No. : 07-0121-F1; Type of Application: U.S.A.C.E. permit application #SWG-2006-2562 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: James A. Whitson, Jr.; Location: The project is located approximately 3 miles southeast of Cedar Point in Galveston Bay, State Tract (ST) 127, in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Morgans Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Proposed pipeline begins: Easting: 312668.16; Northing: 3279157.25. Proposed pipeline ends: Easting: 312037.81; Northing: 3279193.29. Project Description: The applicant proposes to lay and maintain two pipelines up to 3 inches in diameter and approximately 2,100 feet in length in the same ditch from an existing well in ST 127 to an existing Davis Petroleum Corporation Platform also located in ST 127. The proposed pipelines would be buried at least 6 feet below the mud line. CCC Project No.: 07-0124-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-142 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 Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Texas Gulf Coast Stewards; Location: The project is located in State of Texas Waters, approximately 8 miles offshore. Project Description: The project consists of thousands of reefs in 5 reef site corridors. The reefs will be made from both pre-fabricated designs and fill materials, with approximately 1,649,778 cubic yards of construction materials and rubble. The reefs will directly impact about 3,500 acres of bottom of the Gulf of Mexico over the 191,400-acre footprint of the 5 reef site corridors. The project purpose is to provide habitat enhancement through the construction of artificial reefs. The Texas Great Barrier Reef Program will be utilizing donated obsolete bridge and concrete road-bed material, and non-functional preformed concrete structures like broken concrete culverts and other similar materials in addition to the fabricated structures. To provide habitat for juvenile fishes and encrusting/boring organisms, oyster shell, limestone rock (approximately one foot or less in diameter) and similar size pieces of clean concrete material (rubble) will be placed on approved sites, often

near or around larger fabricated structures (see inserts showing relative profiles and position on the bottom on drawings for Sections A through E and Reef Density Analysis Plan). Because of the size and shape of these materials, they will be low profile (less than 3 feet), but will usually have more surface area than the fabricated material because of the volume and shape. All material will first be brought to staging areas where it will be inspected by TGBRP personnel and Texas Parks and Wildlife Department (TPWD) personnel, if they so desire, to ensure that it meets TPWD standards before it is put out. The applicant proposes to build reefs in 5 sites of a reefing corridor described on the charts for sections (sites) A through E. Acreage by site is as follows: Section A - 29,760 acres; Section B - 20,390 acres; Section C - 39,760 acres; Section D - 27,890 acres; and Section E - 73,600 acres. The total area in acres for these sections (sites) is 191,400 acres. We envision deploying a total of 391,113 reef units over the whole reefing corridor. We are defining a reef unit as an individual unit of fabricated material (approximately 3 cubic yards) or a single unit of approximately 8 cubic yards of other than fabricated materials such as rubble, limestone rock, or oyster shells. This is shown on the Reef Density Analysis Plan as a 25' x 25' Rubble Area. A reef unit is a subset of a reef on a reef site. There will be thousands of reefs in the reefing corridor made up of a number of fabricated and other than fabricated materials. If we divided the material evenly between the 5 sites (Sections A through E), there would be approximately 78, 223 reef units at each site at maximum build out. The exact number of units and reefs deployed in a given area or site, however, will depend on favorable bottom available, type of habitat needed, and the amount of fishing pressure expected. Low profile rubble and other low profile materials will only be used where the bottom type is appropriate (not on soft or shifting sand bottoms). The total area covered by these 391,113 reef units on all sites would be approximately 3,500 acres. The total bottom area covered by reef material would be approximately 01.83% of the proposed reefing corridor (3,500/191,400). Therefore, there are 206,222 of these reef units at 8 cubic yards each included in our calculations for a total of 1,649,778 cubic yards for the whole reefing area or about 330,000 cubic yards per site, assuming equal distribution among sites. There are 184,891 fabricated reef units included in our calculations at 3 cubic yards each for a total of 554,673 cubic yards or about 111,000 cubic yards per site, assuming equal distribution among sites. The total volume of all type of reef units over the whole reefing area would be approximately 2,204,451 cubic yards (1,649,778 + 554,673). This was rounded up to 2,204,500 in the Reef Density Analysis Plan. We estimate the acreage (footprint) of the material used in the TGBRP at potential build out to be about 3,500 acres. CCC Project No.: 07-0126-F1; Type of Application: U.S.A.C.E. permit application #SWG-2006-2523 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

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, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200700905

Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: March 7, 2007

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/12/07 - 03/18/07 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/12/07 - 03/18/07 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200700866
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 6, 2007

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that, before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 16, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 16, 2007**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Brazos Valley Petroleum Corporation dba In & Out 7; DOCKET NUMBER: 2006-1872-PST-E; IDENTIFIER: RN102482346; LOCATION: Vidor, Orange County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §334.72(2), by failing to report a suspected release; 30 TAC §334.10(b), by failing to maintain all underground storage tank (UST) records and make them available for inspection to commission personnel upon request; and 30 TAC §334.74(3), by failing to immediately investigate and confirm a suspected release of regulated substances; PENALTY: $12,240; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: Flying J Inc. dba Flying J C Store; DOCKET NUMBER: 2006-1813-PST-E; IDENTIFIER: RN100814458; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point; 30 TAC §334.7(d)(3), by failing to provide written notice of any change or additional information; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; PENALTY: $5,457; ENFORCEMENT COORDINATOR: Jason Godeaux, (512) 239-2541; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(3) COMPANY: Arthur D. Henricks, III; DOCKET NUMBER: 2007-0267-WOC-E; IDENTIFIER: RN103698635; LOCATION: Stephenville, Erath County, Texas; TYPE OF FACILITY: water operation; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: River Acres Water Supply Corporation; DOCKET NUMBER: 2006-2028-PWS-E; IDENTIFIER: RN101222966; LOCATION: Nueces County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(b)(4) and Texas Health & Safety Code (THSC), §341.0315(c), by failing to maintain the residual disinfectant concentration; 30 TAC §290.42(d)(2)(F) and §290.44(d)(1), by failing to install air release devices; 30 TAC §290.121(a), by failing to maintain an up-to-date chemical and microbiological plan; and 30 TAC §290.45(f)(1), by failing to secure a written contract, a signed document of specific terms, or a memorandum or letter of understanding between the purchaser and wholesaler; PENALTY: $735; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(5) COMPANY: Starrville Water Supply Corporation; DOCKET NUMBER: 2007-0098-PWS-E; IDENTIFIER: RN101450237; LOCATION: Winona, Smith County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4), by exceeding the maximum contaminant level for total trihalomethanes; PENALTY: $750; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(6) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2006-2006-AIR-E; IDENTIFIER: RN100225945; LOCATION: Brazoria County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.715(a), Flexible Permit Number 20432, Special Condition Chapter III-1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §116.115(c), New Source Review Permit Number 7836, Special Condition 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $20,000; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Ullah Brothers, Incorporated dba Sinton Travel Center; DOCKET NUMBER: 2006-1916-PST-E; IDENTIFIER: RN101815546; LOCATION: Sinton, San Patricio County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide release detection for the piping associated with the UST system; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors; 30 TAC §334.72(3)(A), by failing to report a suspected release; and 30 TAC §334.74, by failing to immediately investigate and confirm a suspected release of regulated substances; PENALTY: $16,000; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(8) COMPANY: White Oak Utilities, Inc.; DOCKET NUMBER: 2006-1981-MWD-E; IDENTIFIER: RN102335825; LOCATION: Montgomery County, Texas; TYPE OF FACILITY: water reclamation plant; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System Permit Number 14133001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, Sludge Provisions, and the Code, §26.121(a), by failing to comply with the permitted effluent limits and by failing to submit the annual sludge report; PENALTY: $5,400; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: City of Wilmer; DOCKET NUMBER: 2006-1884-PWS-E; IDENTIFIER: RN101414332; LOCATION: Wilmer, Dallas County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(4)(C), (m), (m)(4), and THSC, §341.033(a), by failing to employ at least two operators holding a Class "C" license or higher groundwater license, by failing to initiate maintenance and housekeeping practices to ensure good working conditions and general appearance, and by failing to maintain the water storage facilities; 30 TAC §290.45(b)(1)(D)(i) and THSC, §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute per connection; and 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), by failing to maintain a minimum chlorine residual of at least 0.2 milligrams per liter throughout the distribution system; PENALTY: $2,087; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200700865
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 6, 2007

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Enforcement Orders

An agreed order was entered regarding City of Coleman, Docket No. 2003-0347-MLM-E on February 26, 2007 assessing $9,115 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pharr, Docket No. 2003-0357-PST-E on February 26, 2007 assessing $22,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ricardo Ortega dba Ortega's Trees & Landscaping, Docket No. 2003-0543-LII-E on February 26, 2007 assessing $250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Will Harper, Docket No. 2004-0982-PST-E on February 26, 2007 assessing $3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at (512) 239-2053 , Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Imran Investments, Inc. dba Mainland Texaco, Docket No. 2004-1114-PST-E on February 26, 2007 assessing $3,200 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 Teer Plating Co., Inc., Docket No. 2004-2109-IHW-E on February 26, 2007 assessing $35,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at (512) 239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Madat Hirani dba Circle J Food Store, Docket No. 2005-0041-PST-E on February 26, 2007 assessing $4,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachael Gaines, Staff Attorney at (512) 239-0078, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding New Town Water Corporation, Docket No. 2005-0135-PWS-E on February 26, 2007 assessing $1,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney at (512) 239-0063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Port Arthur, Docket No. 2005-0884-MSW-E on February 26, 2007 assessing $10,125 in administrative penalties with $2,025 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 Metroplex Lucky Star, LLC dba Coastal 1, Docket No. 2005-1189-PST-E on February 26, 2007 assessing $3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Alpine, Docket No. 2005-1242-MLM-E on February 26, 2007 assessing $15,432 in administrative penalties with $3,086 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sadruddin & Sons, Inc. dba Churchill Grocery, Docket No. 2005-1291-PWS-E on February 26, 2007 assessing $3,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mark Curnutt, Staff Attorney at (512) 239-0624, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding U.S. International Boundary and Water Commission, Docket No. 2005-1298-PWS-E on February 26, 2007 assessing $665 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Parks and Wildlife Department, Docket No. 2005-1801-MWD-E on February 23, 2007 assessing $6,080 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Mosley, Staff Attorney at (512) 239-0627, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EAS Oil, LLC dba Stage Coach Stop, Docket No. 2005-1990-PWS-E on February 26, 2007 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel La Caille, Enforcement Coordinator at (512) 239-1387, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Janice L. Wilson, Docket No. 2006-0271-LII-E on February 26, 2007 assessing $250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ISP Synthetic Elastomers LP, Docket No. 2006-0422-AIR-E on February 26, 2007 assessing $3,225 in administrative penalties with $645 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Price Construction, Ltd., Docket No. 2006-0537-AIR-E on February 26, 2007 assessing $6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachael Gaines, Staff Attorney at (512) 239-0078, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BFI Waste Services of Texas, LP dba Allied Waste Services of Beaumont, Docket No. 2006-0742-MSW-E on February 26, 2007 assessing $500 in administrative penalties with $100 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 Tom Woodruff Signature Homes, L.L.C., Docket No. 2006-0757-WQ-E on February 26, 2007 assessing $3,600 in administrative penalties with $720 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, 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. 2006-0783-AIR-E on February 26, 2007 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at (409) 899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding C. Kun, Corp. dba One Hour Martinizing, Docket No. 2006-0788-DCL-E on February 26, 2007 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Barge & Boat, Inc., Docket No. 2006-0874-AIR-E on February 26, 2007 assessing $21,700 in administrative penalties with $4,340 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cu Hoang, Docket No. 2006-0877-MSW-E on February 26, 2007 assessing $2,500 in administrative penalties with $500 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 Cerrito Gas Processing, L.L.C., Docket No. 2006-0947-AIR-E on February 26, 2007 assessing $1,090 in administrative penalties with $218 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Rhodes, Enforcement Coordinator at (512) 239-2879, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Clarke Products, Inc., Docket No. 2006-0959-AIR-E on February 26, 2007 assessing $25,000 in administrative penalties with $5,000 deferred.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at (409) 899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pflugerville, Docket No. 2006-0966-MWD-E on February 26, 2007 assessing $12,700 in administrative penalties with $2,540 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jose I. Ortiz dba Quality First Cleaners, Docket No. 2006-1007-DCL-E on February 26, 2007 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Kerrville, Docket No. 2006-1021-MWD-E on February 26, 2007 assessing $24,900 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 Tim O'Brien dba O'Brien's Restaurant, Docket No. 2006-1033-PWS-E on February 26, 2007 assessing $2,840 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator at (512) 239-0086, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chivly Kaing Pich dba Bernard Grocery, Docket No. 2006-1061-PWS-E on February 26, 2007 assessing $950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Noorain, Inc. dba Country Cleaners, Joy Cleaners, Professional Cleaners, Deluxe Cleaners, and Country Cleaners, Docket No. 2006-1088-DCL-E on February 26, 2007 assessing $5,157 in administrative penalties with $1,034 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Ballinger, Docket No. 2006-1102-PWS-E on February 26, 2007 assessing $765 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amy Martin, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hamid Enterprises Inc. dba Dilleys Dry Cleaner, Docket No. 2006-1104-DCL-E on February 26, 2007 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Maverick County, Docket No. 2006-1129-PWS-E on February 26, 2007 assessing $1,880 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Al-Ameen, Inc. dba Plus Cleaners, Docket No. 2006-1134-DCL-E on February 26, 2007 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James A. Buford dba Buford's Cleaning, Docket No. 2006-1161-DCL-E on February 26, 2007 assessing $1,185 in administrative penalties with $237 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 Henry Janer dba 1.35 Cleaners, Docket No. 2006-1214-DCL-E on February 26, 2007 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Roger Gomez dba Optimum Calves and Optimum Calves, L.L.C., Docket No. 2006-1231-AGR-E on February 26, 2007 assessing $7,350 in administrative penalties with $1,470 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding La Moderna, Inc., Docket No. 2006-1233-AIR-E on February 26, 2007 assessing $1,490 in administrative penalties with $298 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PJ's Cleaners, Inc. dba US Cleaners, Docket No. 2006-1239-DCL-E on February 26, 2007 assessing $2,370 in administrative penalties with $474 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lufkin Industries, Inc., Docket No. 2006-1258-AIR-E on February 26, 2007 assessing $4,250 in administrative penalties with $850 deferred.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at (409) 899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stepano Young Kim, Jr. dba Brookhaven Cleaners, Docket No. 2006-1270-DCL-E on February 26, 2007 assessing $880 in administrative penalties with $176 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mikyung Lim dba Fountain Place Cleaners, Docket No. 2006-1314-DCL-E on February 26, 2007 assessing $889 in administrative penalties with $178 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator at (512) 239-0086, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Iturrino and Associates, Inc. dba Dry Cleaner Super Center, Docket No. 2006-1321-DCL-E on February 26, 2007 assessing $889 in administrative penalties with $178 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Abdourezak M. Oman dba Lincoln Centre Cleaners, Docket No. 2006-1322-DCL-E on February 26, 2007 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator at (512) 239-0086, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MH Cleaners, Inc. dba Lone Star Cleaners & Laundry, Docket No. 2006-1341-DCL-E on February 26, 2007 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Alison Echlin, Enforcement Coordinator at (512) 239-3308, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Windemere Lakes, L.L.C. dba $1.25 Dry Clean World, Docket No. 2006-1357-DCL-E on February 26, 2007 assessing $889 in administrative penalties with $178 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jaime Granados dba McAllen Cleaners, Docket No. 2006-1375-DCL-E on February 26, 2007 assessing $1,185 in administrative penalties with $237 deferred.

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 Royal Family Corporation dba A-1 Cleaners, Docket No. 2006-1377-DCL-E on February 26, 2007 assessing $912 in administrative penalties with $182 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 Dung Van Le dba 1.19 Super Cleaners, Docket No. 2006-1417-DCL-E on February 26, 2007 assessing $1,209 in administrative penalties with $242 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 777 Enterprises, Inc. dba C Martinez Tailors & Dry Cleaners, Docket No. 2006-1425-DCL-E on February 26, 2007 assessing $3,023 in administrative penalties with $606 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Magellan Pipeline Company, L.P., Docket No. 2006-1439-AIR-E on February 26, 2007 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rental Service Corporation, Docket No. 2006-1441-AIR-E on February 26, 2007 assessing $1,200 in administrative penalties with $240 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Rhodes, Enforcement Coordinator at (512) 239-2879, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Paul Martin Moore III dba D & M Cleaners, Docket No. 2006-1477-DCL-E on February 26, 2007 assessing $889 in administrative penalties with $178 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 Heather Anne Jernigan dba Jernigan Cleaners, Docket No. 2006-1501-DCL-E on February 26, 2007 assessing $889 in administrative penalties with $178 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Godeaux, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tinh Nguyen dba Hi Quality Cleaners, Docket No. 2006-1536-DCL-E on February 26, 2007 assessing $1,040 in administrative penalties with $208 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Godeaux, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Van Thi Pham dba NY Cleaners, Docket No. 2006-1561-DCL-E on February 26, 2007 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bill L. Dover Company, Inc. dba Wildwood Country Store, Docket No. 2006-1567-PST-E on February 26, 2007 assessing $1,940 in administrative penalties with $388 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding D & M Cleaners, Inc. dba D & M Cleaners, Docket No. 2006-1580-DCL-E on February 26, 2007 assessing $889 in administrative penalties with $178 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel La Caille, Enforcement Coordinator at (512) 239-1387, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 6914 M.L.K. Center, Inc. dba Pilgrim Laundry & Dry Cleaners, Docket No. 2006-1607-DCL-E on February 26, 2007 assessing $1,067 in administrative penalties with $214 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rainbow $1.25 Cleaners, Inc. dba Rainbow Cleaners IV, Docket No. 2006-1610-DCL-E on February 26, 2007 assessing $285 in administrative penalties with $57 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Raymond Goolsby dba Rainbow Cleaners, Docket No. 2006-1612-DCL-E on February 26, 2007 assessing $2,134 in administrative penalties with $426 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alvin G. Randolph dba Crown Cleaners, Docket No. 2006-1620-DCL-E on February 26, 2007 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hye Yon Taylor dba Texas Cleaners, Docket No. 2006-1648-DCL-E on February 26, 2007 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John Thames Excavating, Ltd., Docket No. 2006-1688-WQ-E on February 26, 2007 assessing $1,600 in administrative penalties with $320 deferred.

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 Kyung Hughes dba Jen's Cleaners, Docket No. 2006-1707-DCL-E on February 26, 2007 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Nash Trucking & Construction Inc., Docket No. 2006-1913-WQ-E on February 26, 2007 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mylan Enterprises, Inc. dba Dry Clean Super Center, Docket No. 2006-1435-DCL-E on February 26, 2007 assessing $889 in administrative penalties with $178 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200700897
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 7, 2007

♦ ♦ ♦

Notice of Availability of the Draft 2006 Clean Water Act, §305(b) Water Quality Inventory and the §303(d) List

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the Draft 2006 Clean Water Act (CWA), §305(b) Water Quality Inventory and the §303(d) List. The report is an overview of the status of surface waters in the state, including concerns for public health, fitness for use by aquatic species and other wildlife, and specific pollutants and their possible sources. In addition, a draft summary is provided of water bodies that do not support beneficial uses or water quality criteria and those water bodies that demonstrate cause for concern. The report is used by TCEQ for management decisions including monitoring, planning, implementing, and funding best management practices to control pollution sources, and to develop a list of impaired waters for selecting parameters for which total maximum daily load analyses will be initiated.

For 2006, TCEQ will submit an integrated report to the United States Environmental Protection Agency (EPA) following the format introduced in 2002. The report was developed using the 2000 Texas Surface Water Quality Standards adopted by TCEQ.

The report will be available March 19, 2007, on the TCEQ Web site at: *http://www.tceq.state.tx.us/compliance/monitoring/water/quality/data/06twqi/twqi06.html*. Information regarding the public comment period may also be found on the Web site at: *http://www.tceq.state.tx.us/compliance/monitoring/water/quality/data/06twqi/public_comment.html*. Review and comment on individual water bodies and the summaries, as described on the Web site, are encouraged in the period before April 18, 2007.

Any data and information provided to TCEQ to refute or substantiate current assessments must be submitted in summary format, collected using approved TCEQ methods and materials, and consistent with TCEQ quality assurance requirements.

After the public comment period, TCEQ will evaluate all additional data or information received. If any additional data or information submitted influences the draft inventory and list, this will be reflected in the final Draft 2006 Water Quality Inventory and the §303(d) List submitted to the EPA for approval.

TCEQ will consider and respond to comments received on the draft during the March 19 - April 18, 2007, comment period in the "Response to Comments" document to be posted on the Web site with the Draft 2006 Water Quality Inventory and the §303(d) List. TCEQ will not respond to comments regarding guidance issues other than those that impact changes implemented in 2006.

Comments must be received by 5:00 p.m. on April 18, 2007. Information must be submitted in writing and cannot be accepted by phone. Individuals unable to access documents on the TCEQ Web site may contact M. Blair, Texas Commission on Environmental Quality, Monitoring Operations Division, MC 165, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200700867
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: March 6, 2007

♦ ♦ ♦

Notice of District Petition

Notice issued March 6, 2007.

TCEQ Internal Control No. 09112006-D09; Santo Water Supply Corporation (the "Petitioner") filed a petition with the Texas Commission on Environmental Quality (TCEQ) to convert Santo Water Supply Corporation to Santo Special Utility District (the "District") and to transfer Certificate of Convenience and Necessity (CCN) No. 11388 from Santo Water Supply Corporation to Santo Special Utility District. Santo Special Utility District's business address will be: P.O. Box 248, Santo, TX 76472-0248. The petition was filed pursuant to Chapters 49 and 65 of the Texas Water Code, 30 Texas Administrative Code Chapters 291 and 293, and the procedural rules of the TCEQ. The proposed District is located in Palo Pinto, Hood, and Parker counties and will contain approximately 84,725 acres. The territory to be included in the proposed District includes all of the singularly certified service area covered by CCN No. 11388. CCN No. 11388 will be transferred after a positive confirmation election.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this 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 the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this 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, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200700896
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 7, 2007

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Notice of Water Rights Application

Notice issued February 28, 2007.

APPLICATION NO. 12105; Stephen T. Brown, Dolores C. Brown, and Boston T. Brown, P.O. Box 321, West Columbia, TX 77486, Applicant, have applied for a Water Use Permit to divert and use not to exceed 250 acre-feet of water from the San Bernard River, Brazos-Colorado River Basin for storage in an off-channel reservoir and subsequent diversion for agricultural purposes in Brazoria County. The application and fees were received on August 31, 2006. Additional information was received on November 10 and December 7, 2006. The application was accepted for filing and declared administratively complete on December 27, 2006. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at 512- 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200700895
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 7, 2007

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Office of the Governor

Request for Grant Applications (RFA) for the Safe and Drug-Free Schools and Communities (SDFSC) Act Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that implement drug and violence prevention activities which compliment or support local independent school district activities during the state fiscal year 2008 grant cycle.

Purpose: The purpose of the SDFSC Act Fund Program is to support programs that prevent violence in and around schools; prevent the illegal use of alcohol, tobacco, and drugs; involve parents and communities; and are coordinated with related federal, state, school, and community efforts and resources to foster a safe and drug-free learning environment that supports student academic achievement.

Available Funding: Federal funding is authorized under the No Child Left Behind Act of 2001, Public Law 107-110. As of the date of the issuance of this RFA, the U.S. Congress has not finalized federal appropriations for federal fiscal year 2007. All awards are subject to the availability of appropriated funds and any modifications or additional requirements that may be imposed by law.

Funding Levels: No minimum or maximum funding levels.

Required Match: None.

Standards: Grantees must comply with the standards applicable to this funding source cited in the *Texas Administrative Code* (1 TAC Chapter 3) and all statutes, requirements, and guidelines applicable to this funding.

Prohibitions: Grant funds may not be used to support the following services, activities, or costs:

(1) proselytizing or sectarian worship;

(2) lobbying;

(3) any portion of the salary of, or any other compensation for, an elected or appointed government official;

(4) vehicles or equipment for government agencies that are for general agency use;

(5) weapons, ammunition, explosives or military vehicles;

(6) admission fees or tickets to any amusement park, recreational activity or sporting event;

(7) promotional gifts;

(8) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and the event is not related to amusement and/or social activities in any way;

(9) membership dues for individuals;

(10) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (i.e., supplanting);

(11) fundraising;

(12) construction;

(13) medical services;

(14) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training;

(15) legal services for adult offenders; and

(16) overtime pay.

Eligible Applicants:

(1) State agencies;

(2) Cities;

(3) Counties;

(4) Independent school districts;

(5) Nonprofit corporations;

(6) Native American tribes;

(7) Crime Control and Prevention Districts;

(8) Universities;

(9) Colleges;

(10) Juvenile boards;

(11) Regional education service centers;

(12) Community supervision and corrections departments;

(13) Council of governments; and

(14) Faith-based organizations. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

Requirements:

(1) Projects must meet the following principles of effectiveness:

(a) be based on an assessment of objective data regarding the incidence of violence and illegal drug use in the elementary schools and secondary schools and communities to be served, including an objective analysis of the current conditions and consequences regarding violence and illegal drug use, including delinquency and serious discipline problems among students who attend such schools (including private school students who participate in the drug and violence prevention program) that is based on ongoing local assessment or evaluation activities;

(b) be based on an established set of performance measures aimed at ensuring that the elementary schools, secondary schools, and communities to be served by the program have a safe, orderly, and drug-free learning environment;

(c) be based on scientifically-based research that provides evidence that the program to be used will reduce violence and illegal drug use;

(d) be based on an analysis of the data reasonably available at the time of the prevalence of risk factors, including high or increasing rates of reported cases of child abuse and domestic violence; protective factors, buffers, assets; or other variables in schools and communities in the state identified through scientifically-based research; and

(e) include meaningful and ongoing consultation with and input from parents in the development of the application and administration of the program or activity.

(2) Grant activities must include:

(a) activities that complement and support local independent school district activities including developing and implementing activities to prevent and reduce violence associated with prejudice and intolerance;

(b) dissemination of information about drug and violence prevention; and

(c) development and implementation of community-wide drug and violence prevention planning and organizing.

(3) All juvenile projects or applications for projects serving delinquent or at-risk youth must address at least one of the following:

(a) Family Stability. Programs or other initiatives designed to strengthen family support systems in an effort to positively impact the lives of youth and divert them from a path of serious, violent, and chronic delinquency.

(b) Substance Abuse Early Intervention and Prevention. Programs or other initiatives designed to address the use and abuse of illegal and other prescription and nonprescription drugs and the use and abuse of alcohol. Programs, research, or other initiatives include control, prevention, and treatment.

(c) Education. Programs or other initiatives designed to prevent truancy, suspension, and expulsion. School safety programs may include support for school resource officers and law-related education.

(d) Disproportionate Minority Contact. Programs or other initiatives designed to address the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system.

(e) Justice System Impact. Programs or other initiatives designed to impact offender accountability and/or improve the practice, policies, or procedures within the juvenile justice system.

(f) Gang Prevention. Programs or other initiatives designed to address issues related to juvenile gang activity, including prevention and intervention efforts directed at reducing gang-related activities.

(g) Rural Access. Programs or other initiatives designed to provide prevention, intervention, and treatment services located outside a metropolitan area.

(h) Training. Programs or other initiatives designed to offer specialized training for staff working directly with at-risk youth or juvenile offenders that can positively impact the quality of the services, staff turnover rates, and program stability.

Project Period: Grant-funded projects must begin on or after September 1, 2007, and expire on or before August 31, 2008.

Application Process: Applicants must access CJD's grant management website at https://cjdonline.governor.state.tx.us to register and apply for funding.

Preferences: Preference will be given to:

(1) programs or activities that prevent illegal drug use and violence for:

(a) children and youth who are not normally served by state educational agencies or local educational agencies; and

(b) populations that need special services or additional resources (such as youth in juvenile detention facilities, runaway or homeless children and youth, pregnant and parenting teenagers, and school dropouts).

(2) programs that pursue a comprehensive approach to drug and violence prevention that includes providing and incorporating mental health services related to drug and violence prevention.

Closing Date for Receipt of Applications: All applications must be submitted via CJD's grant management website on or before May 1, 2007.

Selection Process:

(1) For eligible local and regional projects:

(a) Applications are forwarded by CJD to the appropriate regional council of governments (COG).

(b) The COG's criminal justice advisory committee will prioritize all eligible applications based on identified community and/or comprehensive planning, cost, and program effectiveness.

(c) CJD will accept priority listings that are approved by the COG's executive committee.

(d) CJD will make all final funding decisions based on approved COG priorities, reasonableness of the project, availability of funding, and cost-effectiveness.

(2) For state discretionary projects, applications will be reviewed by CJD staff members or a group selected by the executive director of CJD. CJD will make all final funding decisions based on eligibility, reasonableness, availability of funding, and cost effectiveness.

Contact Person: If additional information is needed, contact Ryan Clinton at ryan.clinton@governor.state.tx.us or at (512) 463-1919.

TRD-200700886
Christopher Burnett
Assistant General Counsel
Office of the Governor
Filed: March 7, 2007

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Request for Grant Applications (RFA) for the State Criminal Justice Planning (Fund 421) Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that reduce crime and improve the criminal or juvenile justice system during the state fiscal year 2008 grant cycle.

Purpose: The purpose of the Fund 421 Program is to reduce crime and improve the criminal or juvenile justice system.

Available Funding: Section 102.056 of the Texas Code of Criminal Procedure establishes state funding for this purpose, and §772.006 of the Texas Government Code designates CJD as the administering agency. The source of funding is a biennial appropriation by the Texas Legislature from funds collected through court costs and fees.

Funding Levels: No minimum or maximum funding levels.

Required Match: None.

Standards: Grantees must comply with the standards applicable to this funding source cited in the Texas Administrative Code (1 TAC Chapter 3), and all statutes, requirements, and guidelines applicable to this funding.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

(1) proselytizing or sectarian worship;

(2) lobbying;

(3) any portion of the salary of, or any other compensation for, an elected or appointed government official;

(4) vehicles or equipment for government agencies that are for general agency use;

(5) weapons, ammunition, explosives, or military vehicles;

(6) admission fees or tickets to any amusement park, recreational activity, or sporting event;

(7) promotional gifts;

(8) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and the event is not related to amusement and/or social activities in any way;

(9) membership dues for individuals;

(10) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state, or local funds (i.e., supplanting);

(11) fundraising;

(12) construction;

(13) medical services;

(14) transportation, lodging, per diem, or any related costs for participants when grant funds are used to develop and conduct training; and

(15) legal services for adult offenders.

Eligible Applicants:

(1) State agencies;

(2) Units of local government;

(3) Independent school districts;

(4) Nonprofit corporations;

(5) Native American tribes;

(6) Crime control and prevention districts;

(7) Universities;

(8) Colleges;

(9) Hospital districts;

(10) Juvenile boards;

(11) Regional education service centers;

(12) Community supervision and corrections departments;

(13) Councils of governments; and

(14) Faith-based organizations that provide direct services. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

Requirements:

(1) Projects must focus on reducing crime and improving the criminal or juvenile justice system; and

(2) All juvenile projects or applications for projects serving delinquent or at-risk youth must address at least one of the following:

(a) Family Stability. Programs or other initiatives designed to strengthen family support systems in an effort to positively impact the lives of youth and divert them from a path of serious, violent, and chronic delinquency.

(b) Substance Abuse Early Intervention and Prevention. Programs or other initiatives designed to address the use and abuse of illegal and other prescription and nonprescription drugs and the use and abuse of alcohol. Programs or other initiatives include control, prevention, and treatment.

(c) Education. Programs or other initiatives designed to prevent truancy, suspension, and expulsion. School safety programs may include support for school resource officers and law-related education.

(d) Disproportionate Minority Contact. Programs or other initiatives designed to address the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system.

(e) Justice System Impact. Programs or other initiatives designed to impact offender accountability and/or improve the practices, policies, or procedures within the juvenile justice system.

(f) Gang Prevention. Programs or other initiatives designed to address issues related to juvenile gang activity, including prevention and intervention efforts directed at reducing gang-related activities.

(g) Rural Access. Programs or other initiatives designed to provide prevention, intervention, and treatment services located outside a metropolitan area.

(h) Training. Programs or other initiatives designed to offer specialized training for staff working directly with at-risk youth or juvenile offenders that can positively impact the quality of the services, staff turnover rates, and program stability.

Project Period: Grant-funded projects must begin on or after September 1, 2007, and expire on or before August 31, 2008.

Application Process: Applicants must access CJD's grant management website at https://cjdonline.governor.state.tx.us to register and apply for funding.

Preferences: Preference will be given to applicants who demonstrate cost effective programs focused on a comprehensive and effective approach to services that compliment the Governor's strategies.

Closing Date for Receipt of Applications: All applications must be submitted via CJD's grant management website on or before May 1, 2007.

Selection Process:

(1) For eligible local and regional projects:

(a) Applications will be forwarded by CJD to the appropriate regional council of governments (COG).

(b) The COG's criminal justice advisory committee prioritizes all eligible applications based on identified community and/or comprehensive planning, cost, and program effectiveness.

(c) CJD will accept priority listings that are approved by the COG's executive committee.

(d) CJD will make all final funding decisions based on COG priorities, reasonableness, availability of funding, and cost-effectiveness.

(2) For state discretionary projects, applications will be reviewed by CJD staff members or a review group selected by the executive director. CJD will make all final funding decisions based on eligibility, reasonableness, availability of funding, and cost-effectiveness.

Contact person: If additional information is needed, contact Whitney Stark at whitney.stark@governor.state.tx.us or (512) 463-1919.

TRD-200700888
Christopher Burnett
Assistant General Counsel
Office of the Governor
Filed: March 7, 2007

Request for Grant Applications (RFA) for the S.T.O.P. Violence Against Women Act (VAWA) Fund Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that reduce and prevent violence against women during the state fiscal year 2008 grant cycle.

Purpose: The purpose of the VAWA Fund Program is to assist in developing and strengthening effective law enforcement and prosecution strategies to combat violent crimes against women and to develop and strengthen victim services in such cases.

Available Funding: Federal funding is authorized for these project under the Violence Against Women Act of 1994 (VAWA) and reauthorized and amended by the Violence Against Women Act of 2000 (VAWA 2000) and by the Violence Against Women Act of 2005 (VAWA 2005) as amended (U.S.C. §§3796gg - 3796gg-5). As of the date of the issuance of this RFA, the U.S. Congress has not finalized federal appropriations for federal fiscal year 2007. All awards are subject to the availability of appropriated funds and any modifications or additional requirements that may be imposed by law.

Funding Levels: Minimum grant award - $5,000.

Required Match: Grantees, other than Native American tribes and non-profit, non-governmental victim service providers, must provide matching funds of at least thirty-five percent (35%) of total project expenditures. This requirement may be met through cash and/or in-kind contributions.

Standards: Grantees must comply with the standards applicable to this funding source cited in the Texas Administrative Code (1 TAC Chapter 3) and all statutes, requirements, and guidelines applicable to this funding.

Prohibitions: Grantees may not use grant funds or program income to support the following services, activities, and costs:

(1) proselytizing or sectarian worship;

(2) lobbying;

(3) any portion of the salary of, or any other compensation for, an elected or appointed government official;

(4) vehicles or equipment for governmental agencies that are for general agency use;

(5) weapons, ammunition, explosives, or military vehicles;

(6) admission fees or tickets to any amusement park, recreational activity, or sporting event;

(7) promotional gifts;

(8) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and that event is not related to amusement and/or social activities in any way;

(9) membership dues for individuals;

(10) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state, or local funds (e.g., supplanting), including the Texas Crime Victims Compensation Fund;

(11) fundraising;

(12) overtime;

(13) cash payments to victims;

(14) employment agency fees;

(15) legal assistance and representation in civil matters other than protective orders;

(16) legal defense services for perpetrators of violence against women;

(17) liability insurance on buildings;

(18) major maintenance on buildings;

(19) property loss. Grant funds may not be used to reimburse victims for expenses incurred as a result of a crime, such as insurance deductibles, replacement of stolen property, funeral expenses, lost wages, and medical bills;

(20) services for programs that focus on children and/or men; and

(21) sexual assault or domestic violence prevention curricula developed for schools.

Eligible Applicants:

(1) State agencies;

(2) Units of local government;

(3) Nonprofit corporations;

(4) Indian tribal governments;

(5) Crime control and prevention districts;

(6) Universities;

(7) Colleges;

(8) Community supervision and corrections departments;

(9) Councils of governments (COGs); and

(10) Faith-based organizations. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

Requirements:

(1) All applicants must meet at least one or more of the following statutory program purpose areas established by the federal Office on Violence Against Women and codified at 28 C.F.R. §90:

(a) Training law enforcement officers, judges, other court personnel, and prosecutors to more effectively identify and respond to violent crimes against women, including the crimes of sexual assault, domestic violence, and dating violence;

(b) Developing, training, or expanding units of law enforcement officers, judges, other court personnel, and prosecutors specifically targeting violent crimes against women, including the crimes of sexual assault and domestic violence;

(c) Developing and implementing more effective police, court, and prosecution policies, protocols, orders, and services specifically devoted to preventing, identifying, and responding to violent crimes against women, including the crimes of sexual assault and domestic violence;

(d) Developing, installing, or expanding data collection and communication systems, including computerized systems, linking police, prosecutors, and courts or for the purpose of identifying and tracking arrests, protection orders, violations of protection orders, prosecutions, and convictions for violent crimes against women, including the crimes of sexual assault and domestic violence;

(e) Developing, enlarging, or strengthening victim services programs, including sexual assault, domestic violence, and dating violence programs, developing or improving delivery of victim services to underserved populations, providing specialized domestic violence court advocates in courts where a significant number of protection orders are granted, and increasing reporting and reducing attrition rates for cases involving violent crimes against women, including crimes of sexual assault, domestic violence, and dating violence;

(f) Developing, enlarging, or strengthening programs addressing stalking;

(g) Developing, enlarging, or strengthening programs addressing the needs and circumstances of Indian tribes in dealing with violent crimes against women, including the crimes of sexual assault and domestic violence;

(h) Supporting formal and informal statewide, multidisciplinary efforts, to the extent not supported by state funds, to coordinate the response of state law enforcement agencies, prosecutors, courts, victim services agencies, and other state agencies and departments, to violent crimes against women, including the crimes of sexual assault, domestic violence, and dating violence;

(i) Training of sexual assault forensic medical personnel examiners in the collection and preservation of evidence, analysis, prevention, and providing expert testimony and treatment of trauma related to sexual assault;

(j) Developing, enlarging, or strengthening programs to assist law enforcement, prosecutors, courts, and others to address the needs and circumstances of older and disabled women who are victims of domestic violence or sexual assault, including recognizing, investigating, and prosecuting instances of such violence or assault and targeting outreach and support, counseling, and other victim services to such older and disabled individuals;

(k) Providing assistance to victims of domestic violence and sexual assault in immigration matters;

(l) Maintaining core victim services and criminal justice initiatives, while supporting complementary new initiatives and emergency services for victims and their families;

(m) Supporting the placement of special victim assistants (to be known as "Jessica Gonzales Victim Assistants") in local law enforcement agencies to serve as liaisons between victims of domestic violence, dating violence, sexual assault, and stalking and personnel in local law enforcement agencies in order to improve the enforcement of protection orders. Jessica Gonzales Victim Assistants shall have expertise in domestic violence, dating violence, sexual assault, or stalking and may undertake the following activities:

(i) Developing, in collaboration with prosecutors, courts, and victim service providers, standardized response policies for local law enforcement agencies, including triage protocols to ensure that dangerous or potentially lethal cases are identified and prioritized;

(ii) Notifying persons seeking enforcement of protection orders as to what responses will be provided by the relevant law enforcement agency;

(iii) Referring persons seeking enforcement of protection orders to supplementary services (such as emergency shelter programs, hotlines, or legal assistance services); and

(iv) Taking other appropriate action to assist or secure the safety of the person seeking enforcement of a protection order; and

(n) To provide funding to law enforcement agencies, nonprofit nongovernmental victim services providers, and State, tribal, territorial, and local governments, (which funding stream shall be known as the Crystal Judson Domestic Violence Protocol Program) to promote--

(i) The development and implementation of training for local victim domestic violence service providers, and to fund victim services personnel, to be known as "Crystal Judson Victim Advocates," to provide supportive services and advocacy for victims of domestic violence committed by law enforcement personnel:

(ii) The implementation of protocols within law enforcement agencies to ensure consistent and effective responses to the commission of domestic violence by personnel within such agencies (such as the model policy promulgated by the International Association of Chiefs of Police 'Domestic Violence by Police Officers: A Policy of the IACP, Police Response to Violence Against Women Project' July 2003);

(iii) The development of such protocols in collaboration with State, tribal, territorial and local victim services providers and domestic violence.

Project Period: Grant-funded projects must begin on or after September 1, 2007, and will expire on or before August 31, 2008.

Application Process: Applicants must access CJD's grant management webste at https://cjdonline.governor.state.tx.us to register and apply for funding.

Preferences: Preference will be given to applicants that demonstrate cost effective programs that incorporate multiple disciplines into one comprehensive approach to provide services. An example of this type of approach is advocacy, law enforcement, prosecution, and other government and non-government services working together under a single project to restore victims to full mental, emotional and physical health in a professional environment of cooperation and respect among the service providers. In an effort to streamline administrative and reporting processes, grantees are encouraged to consolidate grant requests whenever possible in lieu of submitting multiple applications.

Closing Date for Receipt of Applications: All applications must be submitted via CJD's grant management website on or before May 1, 2007.

Selection Process:

(1) For eligible local and regional projects:

(a) Applications will be forwarded by CJD to the appropriate regional council of governments (COG).

(b) The COG's criminal justice advisory committee will prioritize all eligible applications based on identified community and/or comprehensive planning, cost and program effectiveness.

(c) CJD will accept priority listings that are approved by the COG's executive committee.

(d) CJD will make all final funding decisions based on approved COG priorities, reasonableness of the project, availability of funding, and cost-effectiveness.

(2) For state discretionary projects, applications will be reviewed by CJD staff members or a group selected by the executive director of CJD. CJD will make all final funding decisions based on eligibility, reasonableness of the project, availability of funding, and cost-effectiveness.

Contact person: If additional information is needed, contact Lori Melcher at lmelcher@governor.state.tx.us or (512) 463-1919.

TRD-200700890
Christopher Burnett
Assistant General Counsel
Office of the Governor
Filed: March 7, 2007

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Texas Health and Human Services Commission

Notice of Adopted Reimbursement Rate for Small, State-Operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR)

Adopted Rate. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) adopted the following interim per diem reimbursement rate for small, state-operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR), including facilities operated by the Texas Department of Aging and Disability Services (DADS): $188.30. The adopted rate is effective September 1, 2006.

Hearing. HHSC conducted a hearing on February 14, 2007, to receive public comment on the proposed reimbursement rate. The hearing was held in accordance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires that public hearings be held on proposed reimbursement rates before such rates are approved by HHSC. Notice of the hearing was published in the January 26, 2007, issue of the *Texas Register* (32 TexReg 418). No persons attended the hearing or provided written or oral comments.

Methodology and Justification. The adopted rate was determined in accordance with the rate setting methodology codified at 1 TAC Chapter 355, Subchapter D, Rule §355.456(f), relating to Reimbursement Rates.

TRD-200700892
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: March 7, 2007

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Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on April 10, 2007, at 1:00 p.m. to receive public comment on the proposed Medicaid payment rates for the following specific procedure codes for positron emission tomography/computed tomography (PET/CT). The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building,

which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Irene Cantu by calling (512) 491-1358, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The proposed payment rates, which will be effective June 18, 2007, are as follows:

*Type of Service Code (TOS)	Procedure Code	Current Medicaid Rate	Proposed Medicaid Rate
4	78608	$ 583.63	$ 975.68
I	78608	$ 76.13	$ 54.28
T	78608	$ 507.50	$ 921.40
4	78609	$ 583.63	$ 975.68
I	78609	$ 76.13	$ 54.28
T	78609	$ 507.50	$ 921.40
4	78811	$ 68.19	$1,038.95
I	78811	$ 59.46	$ 57.01
T	78811	$ 9.00	$ 981.94
4	78812	$ 84.83	$1,378.98
I	78812	$ 73.65	$ 70.92
T	78812	$ 11.18	$1,308.06
4	78813	$ 87.83	$1,419.31
I	78813	$ 76.37	$ 73.37
T	78813	$ 11.46	$1,345.94
4	78814	$ 96.28	$1,584.34
I	78814	$ 83.74	$ 79.92
T	78814	$ 12.55	$1,504.42
4	78815	$ 106.38	$1,780.80
I	78815	$ 90.01	$ 88.65
T	78815	$ 13.91	$1,692.15
4	78816	$ 108.83	$1,829.91
I	78816	$ 94.65	$ 90.83
T	78816	$ 14.18	$1,739.08

*Type of Service Code Key: 4 = radiology (total component); I = professional component for radiology, laboratory, or radiation therapy; T = technical component for radiology, laboratory, or radiation therapy.

Methodology and justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8081, which addresses the reimbursement methodology for radiological providers, 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners, and the specific fee guidelines published in Section 2.2.1.2 of the 2007 Texas Medicaid Provider Procedures Manual. Rule §355.8085 requires HHSC to review the fees for individual services at least every two years.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after March 23, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Irene Cantu by telephone at (512) 491-1358; by fax at (512) 491-1998; or by e-mail at Irene.Cantu@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Irene Cantu, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Irene Cantu at (512) 491-1998; or by e-mail to Irene.Cantu@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Irene Cantu, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

***Required Notice:** The five character codes included in this notice are obtained from the Current Procedural Terminology (CPT®), copyright 2006 by the American Medical Association (AMA). CPT is developed by the AMA as a listing of descriptive terms and five character identifying codes and modifiers for reporting medical services and procedures performed by physicians. The responsibility for the content of this notice is with HHSC and no endorsement by the AMA is intended or should be implied. The AMA disclaims responsibility for

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TRD-200700908
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: March 7, 2007

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Houston-Galveston Area Council

Industrial Construction Crafts Overview Training Request for Proposals

The Houston-Galveston Area Council solicits qualified training providers to assist The WorkSource in teaching short-term NCCER (National Center for Construction Education and Research) construction overview training for specialty industrial crafts trades. The WorkSource and industry partners are addressing the critical workforce shortage facing construction in the Gulf Coast area.

A proposal package is available for download at http://theworksource.org/about/rfp.html and http://h-gac.com. Hard copies of the proposal package are also available. There is not a bidder's conference for this procurement.

Proposals are due at H-GAC offices on or before 5:00 p.m. Central Daylight Time on Tuesday, March 20, 2007. H-GAC will not accept late proposals; we will make no exceptions. Prospective bidders may contact Carol Kimmick at (713) 627-3200 or ckimmick@theworksource.org or visit the web site to request a proposal package.

TRD-200700877
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: March 6, 2007

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Texas Department of Insurance

Company Licensing

Application to change the name of JEFFERSON PILOT LIFE AMERICA INSURANCE COMPANY to LINCOLN LIFE & ANNUITY COMPANY OF NEW YORK, a foreign life, accident and/or health company. The home office is in Syracuse, New York.

Application to change the name of ULICO CASUALTY COMPANY to ULLICO CASUALTY COMPANY, a foreign fire and/or casualty company. The home office is in Wilmington, Delaware.

Application to change the name of RESIDENTIAL GUARANTY CO. to PMI INSURANCE CO., a foreign fire and/or casualty company. The home office is in Phoenix, Arizona.

Application to change the name of AXA RE AMERICA INSURANCE COMPANY to PARIS RE AMERICA INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Wilmington, Delaware.

Application to change the name of QUADRANT INDEMNITY COMPANY to HARBOR POINT REINSURANCE U.S., INC., a foreign fire and/or casualty company. The home office is in Greenwich, Connecticut.

Application for admission to the State of Texas by ENVISION INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Twinsburg, Ohio.

Application for admission to the State of Texas by DAKOTA HOMESTEAD TITLE INSURANCE COMPANY, a foreign title company. The home office is in Sioux Falls, South Dakota.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200700907
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: March 7, 2007

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of THE PROVIDENCE SERVICE CORPORATION, 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-200700906
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: March 7, 2007

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Texas Lottery Commission

Instant Game Number 793 "Cat Scratch Fever"

1.0 Name and Style of Game.

A. The name of Instant Game No. 793 is "CAT SCRATCH FEVER". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 793 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 793.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play

Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, MONEY BAG SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $500, or $1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 793 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
MONEY BAG SYMBOL	DBL
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 793 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, or $500.

I. High-Tier Prize - A prize of $1,000.

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 (793), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 793-0000001-001.

L. Pack - A pack of "CAT SCRATCH FEVER" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CAT SCRATCH FEVER" Instant Game No. 793 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CAT SCRATCH FEVER" Instant Game is determined once the latex on the ticket is scratched off to expose 10 (ten) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol, the player wins prize shown. If a player reveals a "moneybag" play symbol, the player wins DOUBLE the prize shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 10 (ten) 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 10 (ten) 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 10 (ten) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 10 (ten) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols.

C. No duplicate non-winning play symbols.

D. A non-winning prize symbol will never be the same as the winning prize symbol(s).

E. The doubler symbol will appear according to the prize structure and will only appear once on a ticket.

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBER play symbol (i.e., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "CAT SCRATCH FEVER" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and, upon presentation of proper identification, 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, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CAT SCRATCH FEVER" Instant Game prize of $1,000, 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 "CAT SCRATCH FEVER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of 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 "CAT SCRATCH FEVER" 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 "CAT SCRATCH FEVER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any 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 10,080,000 tickets in the Instant Game No. 793. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 793 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,243,200	8.11
$2	621,600	16.22
$4	100,800	100.00
$5	67,200	150.00
$10	67,200	150.00
$20	67,200	150.00
$50	9,030	1,116.28
$100	1,680	6,000.00
$500	78	129,230.77
$1,000	148	68,108.11

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.63. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 793 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 793, 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-200700817
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 1, 2007

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North Central Texas Council of Governments

Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the November 17, 2006 issue of the *Texas Register* (31 TexReg 9539). The selected consultant will perform technical and professional work to perform a Tower 55 Rail Reliever Study.

The consultant selected for this project is Carter & Burgess, 7950 Elmbrook, Dallas, Texas 75247. The maximum amount of this contract is $1,475,000.00.

TRD-200700879
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: March 7, 2007

♦ ♦ ♦

Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on February 28, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of GTE Southwest, Incorporated, doing business as Verizon Southwest, for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 33915 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. 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 inquiries should reference Project Number 33915.

TRD-200700872
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 6, 2007

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Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 2, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cebridge Acquisition, L.P., doing business as Suddenlink Communications, for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 33929 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. 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 inquiries should reference Project Number 33929.

TRD-200700894
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 7, 2007

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Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on March 5, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Charter Communications VI, L.L.C., doing business as Charter Communications, for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 33941, before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. 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 inquiries should reference Project Number 33941.

TRD-200700875
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 6, 2007

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Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on March 5, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Etan Industries, Incorporated, doing business as CMA Communications, for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 33950 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. 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 inquiries should reference Project Number 33950.

TRD-200700876
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 6, 2007

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On March 2, 2007, Tex-Link Communications, Incorporated filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60050. Applicant intends to reflect a change in ownership/control.

The Application: Application of Tex-Link Communications, Incorporated for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 33934.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 21, 2007. 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 33934.

TRD-200700873
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 6, 2007

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Notice of Application for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on March 2, 2007, for designation as an eligible telecommunications carrier and eligible telecommunications provider.

Project Title and Number: Application of NSN Wireless, L.P. for Designation as an Eligible Telecommunications Carrier (ETC) and Eligible Telecommunications Provider (ETP). Docket Number 33935.

The Application: The company is requesting ETC/ETP designation in order to be eligible to receive federal and state universal service funding to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs and ETPs for service areas set forth by the commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by April 5, 2007. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 33935.

TRD-200700874
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 6, 2007

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Notice of Application to Amend Certificated Service Area Boundaries in Comal County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 27, 2007, for an amendment to certificated service area boundaries within Comal County, Texas.

Docket Style and Number: Joint Application of Pedernales Electric Cooperative, Incorporated and New Braunfels Utilities to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Comal County. Docket Number 33913.

The Application: Pedernales Electric Cooperative, Incorporated and New Braunfels Utilities request a service area boundary amendment to provide service to a new residential subdivision named Havenwood at Hunters Crossing. The existing boundaries will traverse over the middle of lots in the newly platted subdivision. The proposed service area boundary will permit both utilities to construct their facilities without encroaching into each others certified boundary areas. The amount of money expected to be expended on new facilities if the application is granted is approximately $500,000.00.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than March 23, 2007, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. 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 33913.

TRD-200700870
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 6, 2007

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Notice of Application to Amend Certificated Service Area Boundaries in Medina County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 27, 2007, for an amendment to certificated service area boundaries within Medina County, Texas.

Docket Style and Number: Application of Medina Electric Cooperative, Incorporated to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Medina County. Docket Number 33914.

The Application: Medina Electric Cooperative, Incorporated (MEC) requests a service area amendment to provide service to property that is located within the service area of Bandera Electric Cooperative, Incorporated (BEC). MEC received a letter from the relevant landowner requesting that the boundary be changed so that all of the landowner's property is located within the service territory of MEC. BEC is in full agreement with the territory amendment. The amount of money expected to be expended on new facilities if the application is granted is approximately $10,000.00.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than March 23, 2007, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. 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 33914.

TRD-200700871
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 6, 2007

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Notice of Filing to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208

Notice is given to the public of Verizon Southwest's application filed with the Public Utility Commission of Texas (commission) on February 8, 2007, to withdraw services pursuant to P.U.C. Substantive Rule §26.208.

Docket Title and Number: Application of Verizon Southwest Tariff Filing to Withdraw Conference Connection Services (CCS) from the Long

Distance Message Telecommunications Service Tariff; Tariff Control Number 33857.

The Application: On February 8, 2007, pursuant to P.U.C. Substantive Rule §26.208(h), Verizon Southwest (Verizon) filed an application to remove Conference Connection Services (CCS) from its Texas Long Distance Message Telecommunications Service Tariff as an active offering. Verizon will limit CCS to current customers at existing locations. Comparable alternative conferencing services are available at competitive rates through BT Conferencing, AT&T Teleconference Services, Premiere Global Services Audio and Web Conferencing Service, Intercall Global Conference Calling Solutions and Verizon Business Audio Conference. Upon approval of this filing, CCS, based upon the present tariff, will be made available to customers until June 1, 2007. After June 1, 2007, the service will no longer be available and will be removed from the tariff. Verizon will waive any termination liability where applicable. Existing customers will be notified via email.

Persons wishing to comment on this application should contact the Public Utility Commission of Texas, by March 14, 2007, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All correspondence should refer to Tariff Control Number 33857.

TRD-200700869
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 6, 2007

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Request for Comments on a Form for the Quantification of a Surcharge for New Electric Meters

The staff of the Public Utility Commission of Texas (commission) requests comments regarding the development of a commission designated form for quantifying a proposed surcharge for recovery of costs of deploying advanced meters. Comments will be received until 3:00 p.m., Friday, March 23, 2007, by the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78711-3326. Project Number 33874, *Form for Transmission and Distribution Utility Advanced Metering Infrastructure Surcharge*, has been established for this proceeding. The commission intends for the form to be a guide in identifying the costs and benefits of replacing existing meter, which are located at the delivery points for retail electric service, with meters that have increased capabilities, such as transmitting data to remote locations or providing data at short intervals.

The commission proposes to modify a model developed by McKinsey & Company for use as the form in this project. The model was developed for evaluating advanced-metering infrastructure projects. The model and its user's guide are available on the internet at:

http://www.puc.state.tx.us/electric/projects/33874/33874.cfm

The commission requests interested persons file general comments about the model and answers to the following questions:

1. What modifications to the model would you suggest for it to estimate the surcharge to each customer on a monthly basis?

2. What is the appropriate discount rate for the net present value (NPV) calculations on the "Project Summary" sheet of the model?

3. What is an appropriate expected life of the new meters?

Responses may be filed by submitting 16 copies to the Filing Clerk within seven days of the date of publication of this notice. All responses should reference Project Number 33874.

Questions concerning this notice should be referred to Slade Cutter, Financial Review, (512)936-7437. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200700893
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 7, 2007

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Texas A&M University, Board of Regents

Request for Proposal

I. Introduction

The Texas A&M University System ("A&M System") is one of the largest systems of higher education in the nation with a statewide network of nine universities, seven state agencies, and a comprehensive health science center. Each of the 17 members has its own mission, history and goals. Together, they provide educational programs, research, outreach and community enhancement services that improve the lives of people in Texas and around the world. With more than 26,000 faculty and staff, the A&M System has a physical presence in 248 of the State's 254 counties and a programmatic presence in every county. The A&M System educates more than 103,000 students and makes more than 15 million additional educational contacts through service and outreach programs each year.

Investments of the A&M System are pooled into two commingled investment funds: the Cash Concentration Pool and the System Endowment Fund.

The Cash Concentration Pool ("Pool") was established in 1990, for the management of institutional funds of the A&M System. The Pool is composed of six asset classes with a total market value at January 31, 2007, of $1.68 billion. The Pool's six asset classes are divided as follows:

Short-Term Portfolio: 6 - 10% plus debt proceeds

Liquidity Portfolio: 20 - 30%

Fixed Income: 20 - 30%

Domestic Equity: 17 - 23%

International Equity: 12 - 16%

Absolute Return: 7 - 9%

The System Endowment Fund ("SEF") consists of endowment funds donated to the Members of the A&M System, with the exception of Texas A&M University in College Station, which generally invests new endowment funds with the A&M Foundation. The goal of the SEF is to support distributions for endowment beneficiaries while maintaining the purchasing power of the endowment in perpetuity. The asset allocation of the $752 million SEF is as follows:

Fixed Income: 13 - 17%

Domestic Equity: 26 - 34%

International Equity: 17 - 23%

Inflation Hedge: 6 - 8%

Absolute Return: 14 - 18%

Private Equity: 9-12%

The Board of Regents has granted to the Chancellor of the A&M System authority for the purchase, sale, assignment, transfer, and management of all investments of the A&M System or its Members. With approval of the Board, the Chancellor has delegated this authority to the Office of Treasury Services staff. The Office of Treasury Services handles the administration of investments and implementation of Board policy.

II. Purpose of RFP

To solicit proposals to provide investment consultant services to the A&M System Office of Treasury Services. This would include, but not be limited to, performance reporting, asset allocation studies, investment manager searches, and assistance in meeting the investment goals of the A&M System.

III. Scope of Services

The primary role of the investment consultant is to provide advice, consultation, and other services, as necessary, to the Office of Treasury Services on all matters related to investments.

The investment consultant will work under the direction of the Office of Treasury Services, maintaining a working partnership relationship on all investment matters.

Any special projects for which the investment consultant will require additional compensation must be approved, in advance, by the Office of Treasury Services.

IV. Description of Services

The investment consultant will perform the following services:

1. Provide preliminary performance reports monthly by the tenth business day of the following month for the Pool and SEF.

2. Provide performance measurement and evaluation reports quarterly for both the Pool and SEF. These reports shall include return numbers, rankings against similar funds, risk/return analysis, and a policy index comparison. Reconciliation with manager reported returns is expected.

3. Review asset allocation and investment policy, at least annually, for the Pool and SEF and make recommendations for revisions.

4. Investment manager searches as requested.

5. Assist with other value added programs such as cash equitization and commission recapture programs as requested.

6. Provide assistance in meeting the A&M System investment goals.

7. Meet with A&M System personnel in College Station, or via teleconference as requested.

8. Attend and/or present at meetings of the Board of Regents and other meetings as requested.

V. RFP Submissions

Responses to the RFP should include answers to the following questions and any other information relevant to your firm's qualifications for investment consultant for the A&M System. **The proposal must be manually signed by a person with authority to bind the firm under a contract.**

1. Explain your firm's experience and credentials that will enable your firm to assist the A&M System in meeting its investment goals.

2. What are the firm's total assets under advisement? What are the demographics of the firm's client base; average account size; retention rate?

3. What percentage of your firm's total business function is solely consulting to endowment funds?

4. Describe your firm's success with similar type funds and include three references with similar type funds.

5. Name the individual(s) and provide resume(s) for the individual(s) who would be assigned to act as investment consultant(s) to the A&M System. Indicate the role(s) the individual(s) would assume in the consulting relationship and how it would benefit the A&M System.

6. Describe your firm's experience, in the last year, with providing the following services to clients and provide a brief explanation of the techniques utilized.

A. Asset allocation studies

B. Manager Searches by investment type and client

7. Provide examples of the firm's ability to evaluate a variety of asset classes. Describe the firm's process for evaluating asset classes and investment managers.

8. Describe the resources available to advisors to provide investment information to the Office of Treasury Services.

9. Provide examples of performance evaluation reports including available indices. Include examples of monthly performance reports and quarterly performance and evaluation reports.

10. Discuss your firm's availability/accessibility to the State of Texas.

11. In an effort to minimize potential conflicts of interest, please disclose any investment management and/or brokerage services provided by your firm or its affiliates.

12. Please include information on pricing including retainer based and fee-for-service schedules.

VI. Subcontractors

It is the policy of the State of Texas and the A&M System to encourage the use of Historically Underutilized Businesses ("HUBs") in our prime contracts, subcontractors, and purchasing transactions. The goal of the HUB program is to promote equal access and equal opportunity in A&M System contracting and purchasing.

Subcontracting opportunities are not anticipated for this RFP and therefore a HUB Subcontracting Plan ("HSP") is not required.

However, if a subcontractor will be used to provide any services, the Proposer will be required to make a good faith effort and complete the State of Texas HSP. In the event that you determine your firm will be using a subcontractor, please contact Mr. Don Barwick from the A&M System's HUB Office at (979) 458-6410 or dbarwick@tamu.edu for assistance in determining available HUB subcontractors and proper completion of the HSP.

VII. Submission Deadline and Address

Four (4) copies of the proposal must be submitted no later than 5 p.m. on Friday, April 6, 2007, to the following address:

Maria L. Robinson

Director of Treasury Services

The Texas A&M University System

200 Technology Way, Suite 1120

College Station, Texas 77845-3424

VIII. Costs Incurred in Responding

All costs directly or indirectly related to preparation of a response to this RFP, or any presentations required to supplement and/or clarify the RFP which may be required by the A&M System, shall be the sole responsibility of your firm.

IX. Selection Criteria

The Investment Consultant will be selected based on the following criteria:

1. Demonstrated competence and qualifications, including experience with similar clients as well as reasonableness of the proposed fee for services; and

2. References

The A&M System reserves the right to negotiate individual elements of the Investment Consultant's proposal and to reject any and all proposals at its discretion.

Once the most qualified firm is identified, the A&M System will negotiate specific terms of the contract. If negotiations are unsuccessful, the A&M System will negotiate with another qualified firm, if applicable.

X. Evaluation Information and Criteria

The A&M System will utilize an evaluation process for the assessment of responses to this RFP. The evaluation will include the overall response to the RFP and the general requirements defined in the RFP. The A&M System will evaluate and make the award on the proposal that is determined to be the best value to the State based on the criteria listed below.

All proposals must be complete and convey all of the information requested to be considered responsive. If the proposal fails to conform to the essential requirements of the RFP, the A&M System alone will determine whether the variance is significant enough to consider the proposal susceptible to being made acceptable and therefore a candidate for further consideration, or not susceptible to being made acceptable and therefore not considered for award.

The following weights have been assigned for the evaluation process:

Demonstrated competence and qualifications 75%

References 25%

Total 100%

XI. Conflicts of Interest

Firms shall, in advance, disclose any conflicts of interest or potential conflicts of interest under the laws of the State of Texas. If selected, the firm will be required to submit to the State Auditor of Texas annual disclosure statements related to conflicts of interest in the format prescribed by the State.

XII. Open Records

All proposals shall be deemed, once submitted, to be the property of The Texas A&M University System and subject to the Public Information Act, Chapter 552 of the Texas Government Code.

XIII. Terms and Conditions

The following terms and conditions will be included in the contract language used by The Texas A&M University System for engaging consultant services. Prior to providing any services or incurring any costs, the successful consultant will be required to execute a contract using the language as shown without additions or deletions, save specific consultant identification, related scope of work and agreed upon fee schedule. No changes to the agreement will be considered and it is recommended proposed bidder find the contract terms acceptable prior to submission of response to this RFP.

1. Default and Termination

A. In the event of substantial failure by a party hereunder to perform in accordance with the terms hereof, the other party may terminate this Agreement upon fifteen (15) days written notice of termination setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period), provided that said failure is through no fault of the terminating party.

B. The A&M System may, without cause, terminate this Agreement at any time upon giving thirty (30) days advance notice to Consultant. Upon termination pursuant to this paragraph, Consultant shall be entitled to payment of such amount as shall compensate Consultant for the services satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement, provided Consultant shall have delivered to the A&M System a final report describing the work completed to the date of termination. The A&M System shall not be required to reimburse Consultant for any services performed or expenses incurred after the date of termination notice.

2. Public Information

A. Information provided to Consultant by the A&M System, including but not limited to information from the members, officers, agents, or employees of The Texas A&M University System or any of its members, and information provided to Consultant by members of the public or any other third party shall belong to the A&M System.

B. Information created, derived, or otherwise produced by Consultant shall remain the exclusive property of Consultant. Consultant acknowledges any final report or papers will be provided in accordance with this Agreement, and that any information contained in any report or papers, which Consultant believes is confidential under Texas law will be clearly designated as such by Consultant. In the event the A&M System receives a request for public information for any portion of any final report or papers that have been designated by Consultant to be confidential, the A&M System will provide notice to Consultant and Consultant may submit a brief to the Office of the Attorney General, as provided by Chapter 552, Texas Government Code.

3. Alternative Dispute Resolution

State law requires that this Agreement include a provision stating that the following dispute resolution process must be used to attempt to resolve a dispute arising under this Agreement:

The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used, as further described herein, by the A&M System and Consultant to attempt to resolve any claim for breach of contract made by the Consultant:

A. Consultant's claim for breach of this Agreement that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Texas Government Code. To initiate the process, Consultant shall submit written notice, as required by subchapter B, to Mr. Gregory R. Anderson, Associate Vice Chancellor and Treasurer. Said notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that the A&M System allegedly breached, the amount of damages Consultant seeks, and the method used to calculate the damages. A copy of the notice shall also be given to all other representatives of the A&M System and Consultant otherwise entitled to notice under this Agreement. Compliance by Consultant with subchapter B is a condition precedent to the filing of

a contested case proceeding under Chapter 2260, subchapter C, of the Texas Government Code.

B. The contested case process provided in Chapter 2260, subchapter C, of the Texas Government Code is Consultant's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by the A&M System if the parties are unable to resolve their disputes under subparagraph (A) of this paragraph.

C. Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this Agreement by the A&M System nor any other conduct of any representative of the A&M System relating to this Agreement shall be considered a waiver of sovereign immunity to suit.

D. The submission, processing and resolution of Consultant's claim is governed by the published rules adopted by the Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.

E. Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by Consultant, in whole or in part.

F. The designated individual responsible on behalf of the A&M System for examining any claim or counterclaim and conducting any negotiations related thereto as required under §2260.052 of the Texas Government Code shall be Mr. Gregory R. Anderson, Associate Vice Chancellor and Treasurer.

4. Miscellaneous

Consultant agrees to indemnify and hold harmless the A&M System from any claim, damage, liability, expense or loss arising out of Consultant's performance under this Agreement.

Consultant shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of the A&M System.

Consultant shall be an independent contractor, and neither Consultant nor any employee of Consultant shall be deemed to be an agent or employee of the A&M System. As an independent contractor, Consultant will be solely responsible for determining the means and methods for performing the services described. Consultant shall observe and abide by all applicable laws and regulations, policies and procedures, including but not limited to, those of the A&M System relative to conduct on its premises.

This Agreement constitutes the sole agreement of the parties and supersedes any other oral or written understanding or agreement. This Agreement may not be amended or otherwise altered except upon the written agreement of both parties.

This Agreement shall be construed under the laws of the State of Texas, and venue for any action brought hereunder shall be Brazos County, Texas.

5. Certifications. By agreeing to and signing this Agreement, the Consultant hereby makes the following certifications and warranties:

A. Delinquent Child Support Obligations. A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under a contract to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The Family Code requires the following statement: Under §231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

B. Prohibited Bids and Agreements. A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The Government Code requires the following statement: Under §2155.004, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

C. Previous Employment with the A&M System. Consultant acknowledges and understands that §2252.901 (as amended) of the Texas Government Code prohibits a state agency from using state appropriated funds to enter into any employment, professional services or consulting services agreement with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If Consultant is an individual, by signing this Agreement, Consultant certifies that §2252.901 (as amended) of the Texas Government Code does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.

D. Franchise Tax. If Consultant is subject to the Texas franchise tax, Consultant certifies that, upon the effective date of this Agreement, it is either exempt from the obligation to pay franchise taxes or is not delinquent in payment of franchise taxes. Consultant agrees that any false statement with respect to franchise tax status shall be a material breach hereof, and the A&M System shall be entitled to terminate this Agreement upon written notice thereof to the Consultant.

E. Debt to State. Pursuant to §2107.008 and §2252.903, Texas Government Code, Consultant agrees that any payments owing to Consultant under this Agreement may be applied directly toward any debt or delinquency that Consultant owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full. "Debt or delinquency" means a debt, tax delinquency, student loan delinquency, or child support delinquency that results in a payment law prohibiting the comptroller from issuing a warrant or initiating an electronic funds transfer.

TRD-200700909
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: March 7, 2007

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Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Hondo, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation architectural and engineering design services described below:

Airport Sponsor: City of Hondo, Hondo Municipal Airport. TxDOT CSJ No.: 07TBHONDO. Scope: Provide architectural/engineering services to design and construct terminal building and associated appurtenances at the Hondo Municipal Airport.

The **HUB** goal is set at **5%**. TxDOT Project Manager is John Greer, P.E.

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 "Hondo 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 E. 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/forms/aviation/550.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 website 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.

Please note:

Six completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than April 3, 2007, 4:00 p.m. 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 (committee) will be composed of Aviation Division staff and 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 http://www.dot.state.tx.us/services/aviation/consultant.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or John Greer, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200700820
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: March 2, 2007

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Aviation Division - Request for Proposal for Aviation Engineering Services

Terry County, 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: Terry County, Terry County Airport. TxDOT CSJ No.: 0705BWNFL. Scope: Provide engineering/design services to rehabilitate and mark taxiways "A," "B," "C," "D," and "E"; rehabilitate and mark runway 2-20; rehabilitate apron; and rehabilitate and mark runway 13-31.

The HUB goal is set at 5%. TxDOT Project Manager is Bijan Jamalabad, P.E.

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 "Terry County Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 E. 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/forms/aviation/550.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 website 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.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than April 10, 2007, 4:00 p.m. Electronic facsimiles or forms sent by e-mail will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The Consultant Selection Committee (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 **http://www.dot.state.tx.us/services/aviation/consultant.htm**. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, or Bijan Jamalabad, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200700884
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: March 7, 2007

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The University of Texas System

Award of Consultant Contract Notification

The University of Texas at San Antonio

Notice of Intent to Seek Consultant Services Related to a Feasibility Study for Capital Campaign

In accordinace with the provisions of *Texas Government Code*, Chapter 2254, The University of Texas at San Antonio (U.T. San Antonio) will be seeking Requests for Proposals to hire a consultant to develop a feasibility study for a possible capital campaign.

The President of The University of Texas at San Antonio has made a finding of fact that the consulting services are necessary. The University of Texas at San Antonio does not currently have the in-house expertise to complete this project.

An award will be made to the proposer that submits the highest ranked proposal based on evaluation criteria developed by U.T. San Antonio.

Parties interested in a copy of the Request for Proposal should contact:

Roman Hernandez, Buyer II, Purchasing & Distribution Services Department, The University of Texas at San Antonio, One UTSA Circle, San Antonio, Texas 78249.

Voice: 210.458.4598

Email: roman.hernandez@utsa.edu

The proposal submission deadline will be Monday, March 26, 2007 at 2:30 p.m. Central Time.

TRD-200700878

Francie A. Frederick

General Counsel to the Board of Regents

The University of Texas System

Filed: March 6, 2007

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 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 and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 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).